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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/475 /2007-476 /2007 - CU[DB] Date 22/07/2009
ST/757/07

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. INDORE

MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

C.C.E. INDORE Appellant

Vs

M/S HINDUSTAN MOTORS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/230-32/ 2009 CU[DB]** dated 15.07.09 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   M/S HINDUSTAN MOTORS LTD.
   SECTOR III, PITAMPUR.
2. Adv. / Consult : Mr. Ramesh Nair, Adv
   "Lakshmi Vihar" AG-192, Sch No – 54
   Vijay Nagar, Indore (MP)
3. S.D.R
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise, I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(Customs Appeal Branch)

18. M/S AVTEC LTD.
    SECTOR III, PITAMPUR.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Service Tax Appeal No. 475 of 2007-Cust. Br.

(Arising out of Order-in-Appeal No. IND-1/106-109/2007 dated 18.5.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Indore)

CCE, Indore — Appellant

Vs.

M/s Hindustan Motors Ltd. — Respondent

Service Tax Appeal No. 476 of 2007

(Arising out of Order-in-Appeal No. IND-1/106-109/2007 dated 18.5.2007 passed by the Commissioner (Appeals). Customs & Central Excise, Indore)

CCE, Indore — Appellant

Vs.

M/s Avtec Ltd. — Respondent

Service Tax Appeal No. 757 of 2007

(Arising out of Order-in-Appeal No. IND-1/178/2007 dated 8.10.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Indore)

CCE, Indore — Appellant

Vs.

M/s Avtec Ltd. — Respondent

Appearance

Appeared for Appellant : Shri Sansar Chand, DR

Appeared for Respondent: Shri Ramesh Nair, Advocate

Date of Hearing: 15.7.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

Final Order No. 57/230-232/09 dated............

Per D.N. Panda :

Ld. Counsel Shri Ramesh Nair submits that when the service recipient was not liable to tax in respect of the service of technical information and assistance, there shall be no recovery of the Service Tax from the recipient under law. All the three Appeals relate to the Adjudication made for the service period from 1.4.98 to 31.6.05. He relies on the judgment of the Hon'ble Court of Bombay in the case of **Indian National Shipowners Association Vs. Union of India** reported in 2009 (13) STR 233 (Bom.) and submits the recipient of certain category of services were not liable to tax prior to 18.4.06. When the services were received from abroad before such date, in absence of statutory provision, the Adjudication made for levy of Service Tax on the Appellants are unsustainable.

2. Ld. DR Shri Sansar Chand submits that there is a Larger Bench decision in the case of **Hindustan Zinc Ltd. Vs. CCE** reported in 2008 (11) STR 338 (Tri. - LB) holding that levy of Service Tax is on rendering ~~of~~ taxable service and not on person. Therefore relying on the decision in the case of **Hindustan Zinc**

(supra), the Adjudication sustained. He also relies on the decision of Hon'ble High Court of Rajasthan in the case of **Union of India Vs. Aditya Cement** reported in 2008 (10) STR 228 for arguing that services being taxable, from whom that tax is realisable is immaterial.

3. Heard both sides.

4. There is no dispute by Revenue that the Appellant was recipient of certain services relating to the period 1.4.98 to 30.6.05. This is certainly the period prior to 18.4.2006. When payment of Service Tax was called for from the recipient of services from 18.4.06, this Appellant should not suffer following decision of Hon'ble High Court of Bombay in the case of **Indian National Shipowners Association** (supra). We have looked into the provisions of Section 68 of the Finance Act 1994. In terms of sub section 2 power has been reserved for the Central government to notify the persons who shall pay taxes when the normal rule of law under sub-section (1) of Section 68 is that the service provider has to pay tax. Also we have looked into Section 66A of the Finance Act 1994. Before Section 66A was enacted there was no authority under law to realise levy of service tax from a person who is recipient in India receiving certain service from outside India. All these aspects have been dealt by the Hon'ble High Court of Bombay in the case of **Indian National Shipowners Association.** Therefore the Larger Bench decision in the case of **Hindustan Zinc Ltd.** which was rendered on 27.6.2008 had no occasion to get the benefit of decision of Hon'ble High Court of Bombay made in **Indian National Shipowners Association** rendered on 11.12.08. Therefore law

laid down by Hon'ble High Court of Bombay shall govern the field in stead of Larger Bench decision. Similarly Revenue's reliance on the decision of Hon'ble High Court of Rajasthan was on the context of Section 66 (2) of the Finance Act 1994. The Appeal of Revenue was dismissed in that case. Even following the ratio laid down by Hon'ble High Court of Rajasthan that when there was no notification for liability, Revenue has no scope to argue further in the present Appeals when there was no enactment to fasten liability in all the three Appeals under Section 66(A) of the Finance Act 1994. Further, decision of Hon'ble High Court of Bombay was made on 11.12.08 while the decision in **Aditya Cement** was made by the Hon'ble High Court of Rajasthan was made on 26.2.08.

5. In view of the ratio laid down by Hon'ble High Court of Bombay and statutory provision of Section 66 A of the Finance Act, 1994 and also getting support from Section 68(2) of Finance Act, 1994 we dismiss all the three Appeals of Revenue.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM