TEL●GRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. ST/585 /2007 - CU[DB]
ST/CO/08/08

Date 22/07/2009

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

To :
C.C.E BHOPAL
HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011
C.C.E BHOPAL

Appellant
Vs
Respondent

M/S M.P.STATE COOPERATIVE

I am directed to transmit herewith a certified copy of **Final order No.** ST/233/ **2009 CU[DB]** dated 13.07.09 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 M.P.STATE COOPERATIVE
DAIRY FEDERATION, DUGDH BHAWAN, HABIBGANJ, BHOPAL (M.P)
2. Adv. / Consult :

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

ST/Appeal No.585 /07, ST/CO 8/08-Cus(Br)

(Arising out of order in appeal No. 36/ST/pL/07 dted 19.7.07 passed by the Commisisner of Central Excise, Bhopal)

CCE, Bhopal	Appellant
Vs	
M/s MP State Dairy Cooperative Federation	Respondent

Appeared for the Appellant : Shri S.R. Meena, DR
Appeared for the Respondent : Shri Arun Mehrotra, C.A.

Coram: **Hon'ble Mr.D.N. Panda, Judicial Member**
Hon'ble Mr. Rakesh Kumar, Technical Member

Date of Hearing: 13.7.09

Final Order No. ST/233/09 /2009

Per D.N. Panda:

Revenue being aggrieved by the order passed by the learned Commissioner holding that no service tax can be imposed on the charges recovered from the milk Union by the appellant Federation under the category of Management Consultancy Services, came in appeal to Tribunal. Revenue's grievance is that the respondent Federation gets some charges for providing consultancy to various Milk Unions. Accordingly, the aggregate of such charge giving rise to value of the taxable service received by the respondents shall be taxable under the category of Management Consultancy Services. Also Revenue's contention is that the respondent satisfies the requirement of definition given in Section 65(65) of the Finance Act, 1994 in respect of Management Consultancy Service.

2. Shri Arun Mehrotra, Chartered Accountant appearing for the Respondent submits that the learned Commissioner (Appeals) has correctly understood the role of the Respondents and held that the Federation is a statutory body providing administrative guidance and assistance to Milk Unions of State of Madhya Pradesh as a statutory obligation without acting as a commercial concern. Therefore, the first appellate order should not be disturbed.

3. Heard both the sides and perused the record.

4. We have noticed that the Commissioner (Appeals) in para 10 of the order has clearly brought out what is the role of the Respondent Federation. He has noticed that the respondent is a supervising functionary and guides the Milk Unions of the State of Madhya Pradesh for their efficient operation. It issues various orders and instructions and answers Vidhan Sabha questions as well as clarification in regard to Milk Unions. Accordingly, that authority was of the view that the respondent cannot be held to be a service provider.

4. We appreciate the rationale of imposition of service tax. Services commercially provided is the characteristic of the levy. While sale of goods meant for consumption is taxed, similarly service sector commercially operating are brought to ambit of tax. The present case is of a nodal agency of the State of Madhya Pradesh which is contributing to the purpose of milk production in the State, regulating various activities of the Unions. The respondent is an organ of the State without being commercially

engaged in providing Management Consultancy, assists the Milk Unions of the State. Record does not reveal that other than the guidance and instructions to the milk union of the State, this respondent has ever guided or issued instructions to any other agency in a commercial manner or as a commercial venture. When we notice that the activity carried out by the respondent was not a commercial venture, we agree with the findings of the learned Commissioner (Appeals) appearing in para 10 of the order. Even the learned Commissioner has come to a conclusion that the appellant's activities were known to law for which extended period of limitation was not invokable. We do not find any allegation of suppression of fact or mis-declaration or fraud to invoke the extended period. Therefore, the authority below has allowed appeal of the respondent both on merits as well as on limitation. In absence of any contrary evidence to impeach his order, there is no scope to disturb the same. This calls for dismissal of appeal of Revenue. Accordingly, Revenue's appeal is dismissed.

5. In view of disposal of the appeal, Cross objection filed by the respondent not bringing out any ground to challenge the order of the learned Commissioner(Appeals), that stands dismissed.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

MPS*