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

Appeal No. ST/34 /2009 – SM[BR] Date 26/08/2009

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

C.C.E. LUDHIANA Appellant

Vs

M/S RONTIER CYCLE INDUSTRIES PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1064 / 2009 –SM[BR] dated 11.8.2009 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S RONTIER CYCLE INDUSTRIES PVT. LTD.
   GENERAL MOHAN SINGH ROAD, KANGANWAL, LUDHIANA.
2. Adv. / Consult
   NONE;----------------

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)
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

ST/34/09-SM

(Arising out of Order-in-Appeal No.282/CE/LDH/08 dt.26.9.08 passed by Commissioner of Central Excise, Ludhiana)

CCE, Ludhiana — Appellant

Versus

M/s. Frontier Cycle Inds.(P)Ltd. — Respondent

Appearance
Shri S.Gautam, DR, For Appellant

None for Respondent

Coram: Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final

Date of decision: 11.8.09
Order No. 1064/2009 SM(BR)

Per Rakesh Kumar:

This is a Deptt.'s appeal against Commissioner(Appeals) order-in-Appeal No.282/CE/LDH/08 dt.26.9.08 by which the Commissioner(Appeals) set aside the service tax demand for the period from 9.7.04 to 31.12.04. The respondent had received the taxable service - Business Auxillary Service, provided by a service provider not having any office or establishment in India, from an off shore location. The taxable service had been received by the respondent during period from 9.7.04 to 31.5.05. The Department issued a show cause notice for demand of service tax on the payments made by the respondent to the off shore service provider under Rule 2(i) (d) (iv) of Service Tax Rules,1994. The Asstt. Commissioner vide order-in-original dt.11.3.08 confirmed the service tax demand of Rs.18,428/- alongwith interest at applicable rate and besides this, imposed penalty on the appellant under Section 76,77 & 78 of the Finance Act,1994. The Commissioner(Appeals) however, set aside the demand from the period from 9.7.04 to 31.12.04 on the ground that the necessary notification under Section 68(2) of the Finance Act making the service receiver in India liable for payment of service tax came into effect only on 1.1.05 and, therefore, the service tax can be demanded only for the period w.e.f. 1.1.05. He also set aside the penalty imposed on the respondent. It is against this order that the Deptt. has filed a present appeal.

2. The respondent has given his written submission and requested for decision of the appeal on merit.

2.1 Heard Ld. DR. He defended the impugned order and reiterated the grounds of appeal in the Revenue's appeal. He also cited the Tribunal's judgment in the case of Calvin Wooding Consulting Ltd. vs CCE, Indore reported in 2007(7)STR.411(Tri.-Del.) wherein the Tribunal held that when as per the contract with for service provider, the service receiver was responsible for payment of service tax and the service receiver in India had been authorized to the service provider and pay the service tax, the respondent would be liable to pay service tax on the taxable service received from foreign service provider. The Ld. DR also pleaded that in view of the clear provision of Rule 2(1) (d) (iv) of the Service Tax Rules,1994, the issue of notification under Section 68(2) was not relevant.

3. I have carefully considered the submissions of the Ld. DR and also the submissions made by the respondent in his written submission. The issue regarding service tax on the import of service and liability of the Indian service receiver for payment of service tax in respect of the taxable service received from a foreign service provider had been considered at length by Hon'ble Bombay High Court in the case of Indian National Shipowners Association vs UOI reported in 2009(13)STR.235(Bom.) wherein Hon'ble Bombay High Court held that since Section 66A for charging service tax on the service received by a service receiver in India from a off shore service provider not having any office or establishment in India came into effect on 18.4.06, for the period prior to 18.4.06, no service tax can be charged in respect of such import of taxable service. Since the period of dispute in this case from 9.4.07 to 31.5.05, is prior to 18.4.06, following the judgment of the Hon'ble Bombay High Court, I hold that there is no merit in the Revenue's appeal. The same is dismissed.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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