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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/1526/2010 – SM[BR] ST/ STAY /3218/2010-SM[BR] Date **25/01/2011**

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 THE DESIGNER, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 79/2011- **SM[BR]&53/2011** dated 24.12.2010 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 THE DESIGNER,
147, GANGA ROAD, JALANDHAR.

2. Adv. / Consult SHRI S.MALHOTRA ADV.
13-R,HUKAM CHAND COLONY, NEAR D.A.V.COLLEGE,
JALANDHAR.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Service Tax Stay Application No.3218 of 2010 in
Appeal No.1526 of 2010-SM (BR)

[Arising out of Order-in-Appeal No.223-224/CE/LDH/2010 dated 24.09.2010 passed by the Commissioner of Central Excise (Appeals), Chandigarh-II].

For approval and signature:

Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?

3. Whether Their Lordships wish to see the fair copy of the Order?

4. Whether Order is to be circulated to the Departmental authorities?

CCE, Ludhiana — Appellant

Vs.

M/s.The Designer — Respondent

Appearance: Rep. by Shri R.K. Gupta, SDR on behalf of the Deptt.
Rep. by Shri S. Malhotra, Advocate on behalf of the appellants.

CORAM: **Hon'ble Shri Rakesh Kumar, Member (Judicial)**

Final

Order No. 79/2011 SM (Br) &
S-53/2011 SM (Br) /Dated:24.12.2010

Per Rakesh Kumar

Though this matter is listed for stay only after hearing both the sides, I am of the view that this appeal can be taken up for final disposal as the issue is squarely covered by the judgement of the Bombay High Court in the case of Indian National Shipowners Association reported in 2009 (13) STR 235 (Bombay).

2. The respondents are manufacturer of leather articles which they are exporting. They had appointed some overseas commission agents for marketing of their products and those overseas agents were being paid commission. The service of procuring the export orders was taxable as Business Auxiliary Service under Section 65 (105) (ZZb) read with Section 65(19) of the Finance Act, 1994 and during the period from 9.7.2004 onwards, the exemption in respect of this service had been withdrawn and as such the same was taxable. The department, therefore, was of the view that under Rule 2(1)(d)(iv) of the service Tax Rules, 1994, the respondents as service recipient were liable to pay service tax on the commission paid by them to their overseas agent abroad during the period from 9.7.2004 to 31.03.2005. On this basis, a show cause notice dated 24.07.08 was issued to the respondent for demand of service tax amounting to Rs.3,19,954/- along with interest and also for imposition of penalty on them under Section 76, 77 and 78 of the Finance Act, 1994.

The show cause notice was adjudicated by the Dy. Commissioner vide order-in-original dated 15.01.2001 by which the service tax demand was confirmed along with interest and besides this, penalty of Rs.3,14,697/- was imposed under Section 76 as well as 78 ibid and a penalty of Rs.4,000/- was imposed under Section 77 ibid. The respondents filed an appeal before the Commissioner (Appeals) against the Dy. Commissioner's order. The department also filed an appeal before the Commissioner (Appeals) for enhancement of penalty to Rs.3,19,954/- as the Dy. Commissioner had imposed penalty of Rs.3,14,697/- each under Section 76 and 78 instead of Rs.3,19,954/- and he did not include the Education Cess. The Commissioner (Appeals) vide order-in-appeal No.223-224/CE/LDH/2010 dated 24.09.2010 dismissed the department's appeal and allowed the respondent's appeal on the ground that during the period of dispute, there was no provision in the Finance Act, 1994 for charging service tax on taxable services received by a person in India from a person abroad not having any office or establishment in India on reverse charge basis and that such a provision was made by insertion of Section 66 A in the Act only on 18.04.2006. In this regard, he relied upon the judgement of Hon'ble Bombay High Court in the case of Indian National Shipowners Association reported in 2009 (13) STR 235 (Bombay), which has been upheld by the Suprmee court vide jugement reported in 2010 (17) STR J57 SC) and also the decision of the Tribunal in the cases of Foster Wheel Energy Ld. Vs. CCE 2007 (7) STR 443 (Tribunal-Adhmd.). It is against this order of the Commissioner (Appeals) that the Revenue has come in appeal.

3. Heard both sides.

3.1 Shri R.K. Gupta, Departmental Representative assailed the impugned order reiterating the grounds of appeal in the revenue's appeal and emphasised that in terms of Board's Circular No.275/7/2010-CX.8A dated 30.06.2010, in case of taxable service provided by a non-resident, not having office or establishment in India, and received in India, the service tax liability arises w.e.f. 01.01.2005, on reverse charge basis, on the recipient of service in India.

3.2 Shri S. Malhotra, ld. Advocate for the respondent, pleaded that the dispute in this regard is for period prior to 18.04.2006, the date on which Section 66 A had been inserted and, therefore, in view of the Hon'ble Bombay High Court judgement in case of Indian National Shipowners Association (supra), which has been upheld by the Supreme Court, no service tax is chargeable.

4. I have carefully considered the submissions from both the sides and perused the records. The dispute is for period from 9.7.04 to 31.3.2006. There is no dispute that the service providers from whom the Respondent had received the taxable services are not the persons having office or establishment in India. The enabling provisions of Section 66 A

of the Act, 1994 for charging of service tax from the service recipient in India, in respect of taxable services received from abroad from a person not having office or establishment in India was introduced w.e.f. 18.04.2006 and in view of this, Hon'ble Bombay High Court in case of Indian National Shipowners Association (supra) has held that for the period prior to 18.4.2006, the service tax liability cannot be fastened on the service recipient in India in a situation where taxable service is provided by a non-resident person not having office/establishment in India. This judgement of the Hon'ble Bombay High Court has been upheld by the Supreme Court. In view of this, there is no infirmity in the impugned order. The Revenue's appeal as well as stay application is dismissed.

(Rakesh Kumar)
Member (Technical)

Ckp.