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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/763 /2010 – SM[BR] Date 15/12/2010

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

To :
C.C.E. CHANDIGARH

C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH

Appellant
Vs
M/S. SIEL CHEMICAL COMPLEX
Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1420 / 2010-SM[BR] dated 3.12.2010 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. SIEL CHEMICAL COMPLEX

VILLAGE-KHADAULI, TEH. RAJPURA, DISTT. PATIALA.

2. Adv. / Consult SHRI JAY KUMAR ADV.
RESPONDENT:-----------------

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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Single Member Bench

Service Tax Appeal No.763 of 2010-SM

(Arising out of Order-in-Appeal No.19/ST/Appl/CHD-II/2010 dated 24.2.2010 passed by the CCE (A), Chandigarh)

Date of Hearing/Decision: 03.12.2010

For approval and signature:
Hon'ble Mr.M.Veeraiyan Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

CCE, Chandigarh-II Appellant

Vs.

M/s.SIEL Chemical Complex Respondent

Present for the Appellant : Shri K.P.Singh, SDR
Present for the Respondent: Shri Joy Kumar, Advocate

Coram:
Hon'ble Mr.M.Veeraiyan, Member (Technical)

Final **ORDER No.** 1420 /2010 SM (BR)

PER: M.VEERAIYAN

This is an appeal against order of the Commissioner (Appeals) No.19/ST/Appl/CHD-II/2010 dated 24.2.2010.

2. Heard both sides.

3. The respondent is a manufacturer of excisable goods; they are exporting part of the goods manufactured by them; they have availed services of foreign agent in connection with procurement of orders and in respect of other activities of their business. The

original authority has confirmed the service tax demand amounting to Rs.2,67,582/- alongwith interest relating to the period from 1.7.03 to 16.6.05 and imposed equal amount as penalty. On appeal by the department, the Commissioner (Appeals) set aside the order of the original authority holding that the recipients of service are not liable to pay any service tax prior to 18.4.06.

4. Learned DR reiterates the grounds of appeal and submits that the facts of the case in the Indian National Shipowners Association vs. Union of India reported in 2009 (13) STR 235 decided by the Hon'ble Bombay High Court are different from the facts of the present case. He submits that the tax liability is on the recipient with effect from 16.8.2002 by virtue of Notification NO.12/2002-ST dt. 1.8.02 issued under the Finance Act requiring the service recipient, in certain cases, ~~payment of~~ to pay the service tax.

5. Learned Advocate for the respondents, taking me through the decision in the case of Indian National Shipowners Association, submits that the Hon'ble Bombay High Court clearly held that Rule 2(1) (d) (iv) were clearly invalid and that the department did not have legal authority to levy service tax on the recipient of taxable service till introduction of Section 66A of Finance Act, 2006 with effect from 18.4.2006. He also submits that an SLP against the judgement of Hon'ble High Court filed by the department was dismissed by the Hon'ble Supreme Court. He also relies on the decision of the Hon'ble Punjab & Haryana High Court in the case of CCE, Ludhiana vs. Bhandari Hosiery Exports Ltd. reported in 2010 (18) STR 713 (P &H) wherein it has been held that till the time Section 66A was enacted only the person who rendered the service was liable to pay tax and not the recipient of the service. He also relies on the decision of the Tribunal in the case of Pashupati

Spinning and Weaving Mills Ltd. vs. CCE, Chandigarh reported in 2009 (15)STR 274 and in the case of Fifth Avenue vs. CCE, Chennai reported in 2009 (15) STR 387.

6. I have carefully considered the submissions from both sides and perused the records and cited decisions. It has been clearly held by the Hon'ble Bombay High Court and Hon'ble High Court of Punjab and Haryana in the cases cited above, that the recipients of services from Foreign Service provider cannot be subjected to liability to tax prior to 18.4.06 i.e. prior to introduction of Section 66A in the Finance Act, 2006.

7. Therefore, there is no valid reason to interfere with the order of the Commissioner (Appeals).The appeal is therefore rejected.

(Dictated and Pronounced in the open court)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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