14

TELEGRAM : CEGCANAL
Website : www. estat.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/71 /2008 - CU[DB] Date **09/05/2011**

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 AVTEC LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/176/ 2011 CU[DB]** dated 06.05.11

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 AVTEC LTD
SECTOR-III,
PITHAMPUR(MP)(FORMERLY
KNOWN AS HINDUSTAN

2. Adv. / Consult
MR.RAMESH NAIR
LAKSHMI VIHAR, AG- 192, SCHEME NO. 54,
VIJAYNAGAR, INDORE(MP)

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branc

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

ST/Appeal No.71 /2008

(Arising out of order in appeal No.IND-1188/07 dated 31.10.2007 dated passed by the Commissioner of Central Excise (Appeals), Indore)

Date of Hearing: 13.4.2011

For Approval and signature:

Hon'ble Ms Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

---

1. Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? No

2. Whether it would be released under Rule 27 of the CESTAT (Procedure) rules, 1982 for publication in any authoritative report or not? No

3. Whether their lordships wish to see the fair copy of the order? Seen

4. Whether order is to be circulated to the Department Authorities? Yes

---

CCE, Indore — Appellants

Vs

M/s Avtec Ltd — Respondent

Appeared for the Appellant: Shri K.K. Jaiswal, DR
Appeared for the Respondent: Shri Manish Saharan, Advocate

Coram: **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

Final ORDER No. ST/176/11

Per Archana Wadhwa:

Being aggrieved by the order passed by the Commissioner, the Revenue has filed the appeal.

2. We have heard Shri K.K. Jaiswal, learned DR and Shri Manish Saharan, learned Advocate.

3. As per the facts on record, the respondent is engaged in the manufacture of engines/transmission and power units of motor vehicles. They obtained technical assistance from M/s Mitsuibishi Motor Corporation, Japan and M/s Oka Motor Company Ltd. Australia. Agreements were entered into with the said two concerns for use of knowhow, technical assistance and technical information in connection with the manufacture of their products.

3. Revenue by considering the said services received by the respondents as falling under the category of 'Consulting Engineer" sought to tax the same in the hands of the recipient assessee in terms of provisions of Rule 2 and 6 of the Service Tax Rules, 1944. Accordingly, a show cause notice was issued on 16.2.2004 raising demand of service tax for the period 1.4.2002 to 31.3.2003 and proposing imposition of penalties under various sections of the Finance Act, 1994.

4. The said show cause notice culminated into an order passed by the Adjudicating Authority confirming service tax of Rs. 4,22,631/- alongwith confirmation of interest and imposition of penalty of identical amounts under Section 78 of the Act. On appeal against the above order, the Commissioner (Appeals) observed that the services provided by the said foreign companies can be considered as falling under ~~the~~ "Consulting Engineer"

services. He also relied upon his earlier order dated 18.5.2007 and held that the payment of royalty by the respondents cannot be considered as payment towards any services, more so, a service by a consulting engineer. He accordingly set aside the order impugned before him. Hence the present appeal.

5. We find that admittedly the service tax is sought to be recovered on the services received from a foreign company on the ground that the foreign company has no office in India and as such, the liability to pay service rests with the service recipient. The period involved in the present appeal is from 1.4.03 to 31.3.03. The Hon'ble Bombay High Court in the case of Indian National Shipowners Association Vs Union of India reported in 2009 (13) STR 235 (Bom.) held that before the enactment of Section 66A w.e.f. 18.4.2006, the recipient of service from a foreign company cannot be held to be liable to service tax. Admittedly, the period in the present appeal is prior to 18.4.2006. As such, by following the decision of Hon'ble Bombay High court, it has to be held that no service tax liability rests upon the respondent. On this limited issue, we reject the appeal filed by the Revenue.

(Order dictated and pronounced in the open Court.)

(ARCHANA WADHWA)
Judicial Member

MPS*

(MATHEW JOHN)
Technical Member