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

Appeal No. ST/41 & 45 /2008 - CU[DB] Date **31/05/2011**

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

To :
M/S VARDHMAN SPINNING & GENERAL MILLS,
(100% EOU)
SAI ROAD, BADDI.

M/S VARDHMAN SPINNING & GENERAL MILLS, (100% EOU) Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/210-11 2011 CU[DB]** dated

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

2. Adv. / Consult **MR.DEEPAK SINHMAR,ADV**
M/S DSK LEGAL(LAW FIRM)46, ARADHANA
ENCLAVE(OPP TO HYAAT REGENCY)
CHANKYA PURI, N.DELHI.

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
14. M/s Auro Spinning mills.
Sai Road
P.O. Baddi Distt Solan (H.P.)

Assistant Registrar
(Customs Appeal Branch)

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

COURT NO. II

Service Tax appeal No. 41 & 45 of 2008

[All arising out of Order-in-Appeal No. 498/CE/CHD/07 dated 17.10.2007 and 487/CE/CHD/07 dated 15.10.2007 respectively both passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh].

Date of Hearing: 24th May, 2011
Date of Decision: 24th May, 2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judiciall Member;
Hon'ble Shri Sahab Singh, 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?	
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?	

1) ST/41/2008
M/s. Vardhman Spg. & Gen. Mills,

2) ST/45/2008
M/s. Auro Spinng Mills — Appellants

Vs.

CCE,Chandigarh — Respondent

Present for the Appellant :Shri Rupender Singh, Advocate
Present for the Respondent :Shri S.R. Meena, D.R.

**Coram: Hon'ble Shri D.N. Panda, Judicial Member;
Hon'ble Shri Sahab Singh, Technical Member**

FINAL ORDER NO. ST/210 – 211/11

Per D.N. Panda:

ST/41/2008

The facts recorded by the first appellate authority in first para of his order dated 17.10.2007 shows that the appellants had made payment as commission to the foreign based party who had procured order for the appellants. The amount so paid as recipient of service brought the appellant to tax net ~~vide~~ while Section 66A had not ~~cast~~ fastened liability of service tax on the appellants. The impugned order was passed on 17.10.2007 and the first appellate authority had no advantage of reading the law laid down by the Hon'ble High Court of Bomay in writ petition No. 1449/2006 disposed on 11.12.2008 in the case of Indian National Shipowners Association vs. UOI. The said judgment of Hon'ble Bombay High Court reached to finality in view of the dismissal of S.L.P. as reported in 2009-TIOL-129-SC-ST. Having no statutory provision at the relevant point of time for realisation of tax from the appellants, appeal of the appellant is allowed annulling the demand of serviced tax.

ST/45/2008

2. Learned Counsel submits that the issue involved in appeal No. E/45/2008 is of the nature as of appeal No. E/41/2008. We have perused page 62 of the appeal folder carrying the impugned order. We appreciate that the matter being of similar nature as we have disposed off in appeal No.

ST/41/2008, the order aforesaid as recorded shall apply to this appeal also.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(SAHAB SINGH)
TECHNICAL MEMBER

RK