14

TELEGRAM : CEGCANAL
Website : www.cestat.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/14 /2008 - CU[DB] Date **17/10/2011**

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

To :
M/S RAJASTHAN TEXTILES MILLS
PACHPAHAR, BHAWANIMANDI, DIST-JHALAWAR,
RAJASTHAN

M/S RAJASTHAN TEXTILES MILLS Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/554/ 2011 CU[DB]** dated 14.10.2011 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. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.K K ANAND, ADVOCATE
A-103, DEFENCE COLONY, NEW DELHI-110024

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 Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 04/10/2011.
DATE OF DECISION : 04/10/2011.

Service Tax Appeal No. 14 of 2008

[Arising out of the Order-in-Appeal No. 176 (RKS).ST/JPR-I/2007 dated 08/10/2007 passed by The Commissioner (Appeals-I), Customs & Central Excise, Jaipur.]

For Approval and signature :
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, 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?	:	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

M/s Rajasthan Textiles Mills — Appellants

Versus

CCE, Jaipur — Respondent

Appearance

Shri S. Yadav, Advocate – for the Appellants.

Shri R.K. Gupta, Authorized Representative (SDR) – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No. ST/554/11 Dated : 14.10.11

Per. Archana Wadhwa :-

Briefly stated the appellant is engaged in manufacture of cotton yarn and synthetic filament yarn falling under Chapter 52 and 55 of the schedule to the Central Excise Tariff Act, 1985. The appellant is also exporting the yarn and engaged commission agent for procuring of export orders. Such commission agents were paid commission on the basis of procurement of export orders. An explanation has been inserted in Section 65 of the Finance Act, 1994 in the budget 2005-06. This explanation extended the scope of the taxable service and it clarified that taxable service would also include services provided from outside India to a recipient in India w.e.f. 16/6/2005. As the appellant was receiving service of commission agents from outside India, they were liable to pay service tax as per amended provision of Act, ibid read with provision of Rule 2 (1) (d) (iv) of Service Tax Rules, 1994.

2. Accordingly, proceedings were initiated against the appellant for confirmation of demand of service tax of Rs. 1,82,174/- for the period 16/6/05 to 30/11/05. The said show cause notice stands culminated into impugned orders passed by the original Adjudicating Authority and confirmed by Commissioner (Appeals). Hence, the present appeal.

3. After hearing both the sides, duly represented by Shri S. Yadav, learned Advocate from the appellants and Shri R.K.

Gupta, SDR from the respondent, we find that the issue is no more res-integra and stand settled by Hon'ble Bombay High Court in the case of **Indian National Ship Owners Association vs. Union of India** reported in **2009 (13) S.T.R. 235 (Bom.)**. Its stand held that recipient of services in India from a foreign supplier is liable to service tax only from 18/4/06 onwards after enactment of Section 66A. In as much as the period in the present appeal is prior to 18/4/06, we are of the view that no service tax liability can be fastened against the appellant. Accordingly, the impugned orders are set aside and appeal is allowed with consequential relief to the appellant.

(Operative part of the order pronounced in the open court.)

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

PK