14

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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/33 /2008 - CU[DB] Date **25/10/2011**
ST/541/2009

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

To :
M/S LE MERIDEN, JAIPUR [A UNIT OF M/S MAYANK SHARMA ENTERPRISES PVT. LTD.]
1, RIICO, KUKAS, JAIPUR

M/S LE MERIDEN, JAIPUR [A UNIT OF M/S MAYANK SHARMA ENTERPRISES PVT. LTD.] Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/569-570/ 2011 CU[DB]** dated 20.10.2011 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.BIPIN GARG, ADV
B-1/1289-A VASANT KUNJ
NEW 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

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 04.10.2011

For approval and signature:

Hon'ble 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 should 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 Departmental authorities?	Yes

Service Tax Appeal No. 33 of 2008
(Arising out of order in appeal No. 180(RKS) ST/JPR-I/2007 dated 12.10.2007 passed by the Commissioner (Appeals) Central Excise, Jaipur).

M/s. Le Meriden — Appellant

Vs.

CCE, Jaipur — Respondent

AND

Service Tax Appeal No. 451 of 2009
(Arising out of order in original No. 04/2009 dated 13.03.2009 passed by the Commissioner of Central Excise, Jaipur)

M/s. Le Meriden — Appellant

Vs.

CCE, Jaipur — Respondent

Appearance:

Rep. by Ms. Sukriti Das, Advocate for the appellants.
Rep. by Sh. K.K. Jaiswal, SDR for the respondent.

Coram: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Sh. Rakesh Kumar, Member (Technical)

Final Order No. ST/569 - 570/11

Per: Archana Wadhwa:

All the appeals are being disposed of by a common order as the issue is identical.

2. After hearing both the sides, we find that the original adjudicating authority confirmed the demand of service tax of Rs. 6,23,367/- on the ground that while availing the services of M/s Le Meriden SA, France, which fall under the category of franchisee services, the appellant is liable to pay service tax on reverse charge basis, as recipient of services. We find that the period involved in the present appeal is from October 2004 to March 2005. As per the decision of the Hon'ble Bombay High Court in the case of **Indian National Shipowners Association vs. Union of India reported in 2009 (13) ELT 235 (Bom.)**, the service receiver in India is not liable to pay service tax in respect of services received from abroad prior to 18.04.2006, when the provisions of Section 66A of the Finance Act, 1994 were enacted. Inasmuch as, the entire period is before the said date, we find no justification for confirmation of service tax against the appellant in respect of the said services. We accordingly set aside the same alongwith setting aside the

penalty upon them imposed by the original adjudicating authority under Section 78 of the Finance Act, 1994.

3. It is further seen that the said order of the Assistant Commissioner was reviewed by the Commissioner and a review show cause notice was issued for imposition of penalty under Section 76, 77 & 75 of the Finance Act. Vide his order-in-original dated 13.03.2009, the Commissioner imposed penalty of Rs. 100/- per day under Section 76 of the Finance Act. The said order of Commissioner (Appeals) passed in review proceedings is impugned in Appeal No. ST/451/2009-Cus. Inasmuch as we have set aside the confirmation of service tax and imposition of penalty under Section 78, we set aside the imposition of penalty under Section 76 also as imposed by the Commissioner in review order.

4. Further, in Appeal No. ST/33/2008-Cus service tax stands confirmed on the ground that in terms of the provisions of Rule 3(5) of Service Tax Credit Rules, 2002, the appellant could utilize credit to the extent of 35% of the amount of service tax payable on such output services. The said credit rules were substituted with Cenvat Credit Rules, 2004 w.e.f. 10.09.2004 by Notification No. 23/2004-NT dated 10.09.2004 and as per Rule 6(3) (c), service tax provider engaged in providing taxable and non-taxable services is eligible to utilize cenvat credit upto the extent of 20% of an amount of service tax payable on the taxable output services. Inasmuch as they availed and utilized service tax credit to the extent of 35%, instead of 20%, the demand of service tax of Rs. 1,02,123/- stands confirmed against them on

the said ground alongwith confirmation of interest and imposition of penalty of Rs. 10,000/- under Rule 15 of the Cenvat Credit Rules, 2004.

5. Learned Advocate Ms. Sukriti Das appearing for the appellant does not dispute the excess utilization of credit then the permissible limits. We accordingly confirm the demand and interest and imposition of penalty of Rs.10,000/- on the appellant. Both the appeals are disposed of in the above terms.

(Operative portion of the order already pronounced in the Court)

[Archana Wadhwa]
Member (Judicial)

[Rakesh Kumar]
Member [Technical]

/Pant/