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/643 /2007 - CU[DB] Date **10/08/2011**

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

To :
M/S VINAYAK TEXTILES MILLS
PHASE-VIII,FOCAL POINT, LUDHIANA.
141001

M/S VINAYAK TEXTILES MILLS Appellant

Vs

C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/350/ 2011 CU[DB]** dated 08.08.2011 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. LUDHIANA
CENTRAL EXCISE HOUSE, 'F'
BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult
MR.DSK LEGAL, ATTORNEY & SOLICITORS
21 UGF,ANTARIKSH BHAWAN,
KASTURBA GANDHI MARG, 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

Assistant Registrar
(Customs Appeal Branch)

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

Date of Hearing : 2.8.2011

Service Tax Appeal No. 643 of 2007

[Arising out of the Order-in-Appeal No. 202-CE/Appl./Ldh/2007 dated 3.8.2007 passed by the Commissioner (Appeals), Central Excise, Jalandhar]

Coram:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporter 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 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 Vinayak Textils Mills — Appellant

Vs.

CCE, Ludhiana — Respondent

Appearance:

Appeared for Appellant : Shri Rupender Singh, Advocate
Appeared for Respondent : Shri Sunil Kumar, SDR

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

Final Order No. ST/350/11 dated 8.8.11

Per Archana Wadhwa :

The very short dispute involved in the present appeal is that the appellants are engaged in the manufacture of MMF yarn and exporting the same to foreign countries. They have appointed agents in overseas markets who explore the business opportunity for them and procured export orders. Based on the quantum of sales, these agents are being paid commission. The issue is as to whether the appellants, who are receiving such services from their foreign agent, are liable to pay service tax and commission paid to these foreign agents. The period involved in the appeal is July 2004 to December 2005.

2. The lower authorities have confirmed the service tax against the appellant by relying upon the various provisions of service tax and various notifications. However, we do not feel the need of referring of all of such notifications inasmuch as the issue is no more res integra and stands settled by the Bombay High Court's decision in the case of **Indian National Shipowners Association Vs. Union of India** reported in 2009 (13) STR 235 (Bom.). It stands held that the recipient of various services in India were not liable to pay service tax for the services received from abroad prior to 18.4.2006, when the provisions of Section 66A of Finance Act 1994 were enacted. The said judgement stand approved by the Hon'ble Supreme Court, when the appeal filed by the Revenue was dismissed as reported in 2010 (13) STR J57(SC). As the period involved in the present appeal is prior to 18.4.2006, the ratio of the said decision is fully applicable to the facts of the case and no service tax liability can

be upheld against the appellant. We accordingly set aside the impugned order and allow the appeal with consequential relief.

(Pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM