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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/627 /2007 - CU[DB] Date **30/08/2011**

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

To :
C.C.E. KANPUR

117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S INSTITUT FRANCAIS DU PETROLE(IFP) Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/404/ 2011 CU[DB]** dated 24.08.2011 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
M/S INSTITUT FRANCAIS DU PETROLE(IFP)
BP 311,H.O. 1-4, AVENUE D BIOS-
PREAU, 92852 RUELIL-
MALMAISON FEDEX, FRANCE.

2. Adv. / Consult : Mr. D Bhattacharya, Adv
S-369 (LGF) GK Part – II
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
PRINCIPAL BENCH, NEW DELHI
Court No.III

ST/Appeal No.627/2007

(Arising out of order in appeal No.286/ST/Appl/KNP/2007 dated 31.7.2007 passed by the Commissioner of Central Excise (Appeals), Kanpur)

Date of Hearing: 9.8.2011

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?	Yes
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?	No

CCE, Kanpur — Appellant

Vs

M/s Institut Francais Du Petrole (IFP) — Respondent

Appeared for the Appellant: Shri Amrish Jain, SDR
Appeared for the Respondent: Shri D. Bhattachrya, Advocate
Ms. D. Jha, Advocate

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

Final ORDER No. ST/404/11

Per Mathew John:

The respondent is a company situated in France and doing its business from France. During the period 2001 to 2002, they provided services of Consulting Engineer to M/s Gas Authority of India Ltd in India. Revenue made out a case that the Respondent has to pay service tax for the services rendered in India and issued show cause notice to the Respondent. The show cause notice was adjudicated by order dated 21.3.2007 confirming tax demand of Rs. 5,52,770/- along with interest. Penalties under Sections 75-A, 76, 77 and 78 were also imposed. The Respondent filed an appeal with the Commissioner (Appeals). The Commissioner (Appeals) allowed the appeal filed by the Respondent mainly on two grounds. The first ground was that services rendered by the Respondent was under a technology transfer agreement and as such, it should be considered as an intellectual property service and not that of a Consulting Engineer. The second ground was that Commissioner (Appeals) held that the demand was time barred because the matter involved interpretation of law. The Commissioner observed that the Revenue has not adduced any evidence to support willful suppression of fact with intent to evade payment of service tax on the part of the respondent. He was of the view that there was no ground for invocation of extended period of time limit for issuing show cause notice.

2. The Department argues that agreement provided for consultation with the Respondent on any problem faced by GAIL relating to the

project and also for training the Engineers of GAIL and various other similar services and therefore, the services should have been correctly classifiable under "Consulting Engineer Service". The Department also pleads that since the Respondent did not take out any registration and did not file returns under Section 70 of the Finance Act, the extended period of time can be invoked against the Respondent.

3. The Respondent in reply argues that the Finance Act, 1994 does not extend to any place outside India and since the Respondent is established outside India and they have hardly done any work in India, they are not liable to service tax. They also point out that in the same ~~mater~~ matter, a show cause notice was issued to Gas Authority of India, ~~and~~ the recipient of service and they had paid the tax on the services involved. This submission is not supported by any documentary evidence.

4. Heard arguments of both the sides.

5. The Revenue has not explained how the services rendered by the Respondent who is situated abroad are covered under tax levied under Finance Act, 1994. They have not explained how the provision of Section 70 was applicable to the Respondent. Since the Respondent, as a person situated outside India, was not under obligation to take out registration or file any return, the allegation regarding suppression is not maintainable against the Respondent and the appeal is liable to be rejected on this issue itself.

Therefore, we do not find it necessary to go into the merits of the other issues. The appeal field by the Revenue is rejected.

(Order dictated and pronounced in the open Court.)

(ARCHANA WADHWA)
Judicial Member

(MATHEW JOHN)
Technical Member

MPS*