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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/301 /2008 - CU[DB] Date **07/04/2011**

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

To :
M/S WOOLWAYS (INDIA) LTD.
217, INDUSTRIAL AREA-A,LUDHIANA (PB)

**M/S WOOLWAYS (INDIA) LTD.** Appellant

Vs

**C.C.E. LUDHIANA** Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/116/ 2011 CU[DB]** dated 22.03.11 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.G.S.BHANGOO**
H.NO. 5, SECTOR-10A, CHANDIGARH.

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. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

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

## COURT NO. IV

**Service Tax appeal No. 301/08**

[Arising out of Order-in-Appeal No. 161/CE/Ldh/CHD/2008 dated 20.02.2008 passed by the Commissioner (Appeals), Central Excise, Chandigarh].

**Date of Hearing: 15th March, 2011**

**For approval and signature:**

Hon'ble Shri D.N. Panda, Member (Judicial);
Hon'ble Shri Mathew John, 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? | |
| 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? | |

M/s. Woolways (India) Ltd., Appellants

Vs.

CCE, Ludhiana Respondent

Present for the Appellant :Shri Vikrant Kakria, Advocate
Present for the Respondent :Shri Amrish Jain, SDR

**Coram: Hon'ble Shri D.N. Panda, Member (Judicial)**
**Hon'ble Shri Mathew John, Member (Technical)**

**FINAL ORDER NO.** ST/116/11

**Per D.N. PANDA:**

This appeal arises out of levy of service tax on the recipient of service during the period when there was no recovery provision for recovery from service recipient, in the ~~law~~ Act. There were some payment of consideration after the ~~law~~ Act prescribed recovery of tax from the service recipient. Learned Counsel relying on annexure to show cause notice states that an amount of Rs. 5,93,594/- became realisable as soon as the ~~law~~ Act incorporated provision relating to recovery of the service tax from the service recipient. The appellants have discharged liability to the above extent according to Appellant. Once there is no recovery following the decision of Hon'ble Bombay High Court in the case of Indian National Shipowners Association vs. UOI, reported in 2009 (13)STR 235 (Bom.) and confirmed by the Hon'ble Supreme Court in UOI vs. Indian National Shipowners Association, reported in 2010 (17) STR J57 (SC) there is no scope to deny relief to the present appellants in respect of payment made to foreign parties providing service from abroad. Hon'ble Punjab & Haryana High Court following the decision of Hon'ble Bombay High Court in Indian National Shipowners case (supra) held the same view for no recovery from the service recipient when there was no prescription of law. The said judgment of the Hon'ble High Court of Punjab & Haryana also came to conclusion by the dismissal of SLP of Revenue as reported in 2010 (20) STR j99.

2. On the other hand, learned D.R's contention is that they are guided by the decision of the Hon'ble Apex Court in the case of Kerala State Electricity Board vs. CCE,Thiruvananthapuram, reported in 2008 (9) STR 3 (SC). We have perused that decision. In that decision there was understanding between the parties to

discharge tax liability arising out of the contract and when the tax was paid, interest remained in dispute for levy, that was directed to be paid by the Hon'ble Apex Court. The present case is not on that footing but on different footings as has been argued by learned Counsel following Indian National Shipowners case.

3. Following the judgement in the case of Indian National Shipowners Association (supra), the Tribunal in the past in several cases has allowed relief holding no liability for the period prior to prescription of recovery by ~~law~~ Act. Therefore, we are unable to depart from our decision. Consequently, appeal is allowed subject to the recovery of tax element arising out of annexure to the show cause notice as averred by the learned D.R. for the period 18.4.2006 to 30.6.2006.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RK