

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/267 /2006 - CU[DB]

Date 14/07/2011

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

To :
THE COMMISSIONER OF SERVICE TAX,
COMMISSIONERATE,
17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI

**THE COMMISSIONER OF SERVICE TAX,
COMMISSIONERATE,**

Appellant

V S INFRASTRUCTURE CAPITAL LIMITED

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. ST/281/ 2011 CU[DB] dated 07.07.11
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
V S INFRASTRUCTURE CAPITAL LIMITED
B-2/60, SAFDARJUNG ENCLAVE,
NEW DELHI

110029

2. Adv. / Consult *Sh. Y.S. Kapoor*
for Respondent

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
6. M/s Centax Publications 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 (Harvana)
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.
COURT NO. IV**

Date of Hearing : 7.7.2011

Service Tax Appeal No. 267 of 2006

[Arising out of Order-in-Appeal No. 37/ST/DLH/2006 dated 3.4.2006 passed by the Commissioner (Appeals), Central Excise, Delhi-I]

Coram:

Hon'ble Shri S.S. Kang, Vice President

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?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Scan
4.	Whether order is to be circulated to the Department Authorities?	Yes

CST, Delhi

Appellant

Vs.

V.S. Infrastructure Capital Limited

Respondent

Appearance:

Appeared for Appellant : Shri Sonal Bajaj, SDR

Appeared for Respondent : Shri B.L. Narasimhan, Advocate

Coram:

Hon'ble Shri S.S. Kang, Vice President

Hon'ble Shri Mathew John, Member (Technical)

Final Order No. ST/281/11 dated 7.7.11

Per Mathew John:

The Respondent acted as agent for distribution of Mutual Fund units of various Asset Management Companies. The Asset Management Companies paid them commission for rendering service as their agents.

The Ministry of Finance vide Circular No. 66/15/2003-ST dated 5.11.2003 issued a clarification that such commission is liable to service tax under heading of Business Auxiliary Service and the Respondent was asked to pay Service Tax. However, the Respondent filed a writ petition before the Delhi High Court challenging the said circular issued by the Ministry of Finance. The Delhi High Court struck down the circular vide orders in WP (C) ~~SWP~~ No. 8552/04. Consequently, the Respondent filed refund claim for the service tax paid by it. The Deputy Commissioner of Central Excise processing the refund claim was of the view that the Respondent had passed on the Service Tax to the Asset Management Companies and, it had not discharged the burden of proof that it was not getting unjust enrichment through the refund of duties paid and proposed to reject the refund claim of such grounds. After considering the reply of the Respondent, the Deputy Commissioner rejected the refund claim of the Respondent on the ground that it had passed on the incidence to the Asset Management Companies. Aggrieved by the order, the Respondent filed an Appeal with the Commissioner (Appeals). They produced copies of letters issued by the following Asset Management Companies :-

- (i) M/s Templeton Asset Management (India) Pvt. Ltd.
- (ii) M/s Prudential ICICI Asset Management Company Limited.
- (iii) M/s J.M. Capital Management Limited
- (iv) M/s Deutsche Asset Management.
- (v) M/s Kotak Mahindra Asset Management Company Ltd.

2. The above Companies certified that the amounts of commission paid to the Respondent was inclusive of all statutory levies and they were under no obligation to pay Service Tax over and above the amount paid as commission. It is the argument of the Respondent that it had borne the incidence from the total amount paid by Asset Management companies and, therefore, there was no question of passing on the incidence of Service Tax. The Commissioner (Appeals) agreed with the contention of the Respondent and ordered refund of the amount claimed by the Respondent. Aggrieved by the order of the Commissioner (Appeals), Revenue has filed this Appeal. The main argument on behalf of the department is that since the letters from the Asset Management Companies indicate that the amount paid by them was inclusive of all taxes and levies including Service Tax, it has to be understood that the incidence of Service Tax has been passed on to the Asset Management Companies and refunding such tax paid could result in unjust enrichment to the Respondent.

3. The Id. Advocate on behalf of the Respondent submits that similar issue was considered by the Tribunal in the case of **Panihati Rubber Limited Vs. CCE** reported in 2001 (127) ELT 742 (Tri.-Cal.). This was a case where the assessee was to supply material to the Indian railways. The contract was for supply of the items at a particular rate inclusive of all duties. The question whether Central Excise duties were leviable was

under dispute. Pending decision in the dispute, the assessee cleared the goods showing excise duty as applicable. Finally, it was decided that the excise duty was not payable. Then the assessee applied for refund and the issue of unjust enrichment was to be decided. The Tribunal decided that in that case there was no unjust enrichment because the total price was fixed and the assessee had to pay disputed excise duty from the total consideration offered to them by the buyer. The Revenue challenged this decision before the High Court of Calcutta and the Hon'ble High Court affirmed the decision of the Tribunal. Revenue took the matter to the Supreme Court and the Supreme Court in **CCE Vs. Panihati Rubber Ltd.** reported in 2006 (202) ELT 41 (SC) affirmed the decision of the Tribunal and the High Court in the matter.

4. We have considered these decisions and other decisions like that in **Subah Engineers Pvt. Ltd. Vs. CCE** reported in 2005 (183) ELT 362. It is very clear that this matter is no longer res integra and the Respondent is eligible for the refund claim and, therefore, we order that the refund amount should be paid to the Respondent forthwith. The Appeal filed by the department is rejected.

(Pronounced in open Court)

(S.S. Kang)
Vice President

(Mathew John)
Member (Technical)

RM