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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/200 /2008 - CU[DB] Date **23/02/2011**

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

To :
M/S DABUR INDIA LTD.
5/1, SITE-IV INDUSTRIAL AREA,SAHIBABAD.

M/S DABUR INDIA LTD. Appellant

Vs

C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/45/ 2011 CU[DB]** dated 17.02.11 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. GHAZIABAD
C.G. O. COMPLEX-II, KAMLA
NEHRU NAGAR, GHAZIABAD
201302
2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW
DELHI-110029
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. 200 of 2008

[Arising out of Order-in-Appeal No. 03-CE/GZD/2007 dated 18.01.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-I, Ghaziabad].

Date of Hearing: 15th February, 2011

For approval and signature:

Hon'ble Shri Ashok ~~Kumar~~ Jindal, Judicial Member;
Hon'ble Shri 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 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?	No
4	Whether Order is to be circulated to the Departmental authorities?	No

M/s. Dabur India Ltd.,, Appellants

Vs.

CCE, Ghaziabad Respondent

Present for the Appellant :Shri B.L. Narasimhan, Advocate
Present for the Respondent :Shri Sonal Bajaj, SDR

Coram: Hon'ble Shri Ashok ~~Kumar~~ Jindal, Judicial Member
Hon'ble Shri Mathew John, Technical Member

FINAL ORDER NO. ST/45/11

Per Ashok ~~Kumar~~ Jindal:

A service tax demand is confirmed against the appellants. The facts of the case are that during the course of scrutiny of balance sheet, profit & loss account of the appellants for the period September, 2004 to March, 2005 it was pointed out that the appellants have paid a sum of Rs. 30.65 lakhs and 4.3 lakhs in foreign currency to foreign consultant for the period 2003 to 2005. On pointing out the appellants submitted that they have paid the amount in foreign currency to the foreign consultant in foreign country for registration of trade mark and patent. As per the provision of Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 a person who is non-resident or is from outside India and does not have any office in India, the person receiving taxable services in India will pay service tax on payment made to foreign consultants. Holding that the said service falls under the category of "Scientific and Technical services" a show cause notice was issued to the appellants and the same was adjudicated by confirming the demand of service tax imposing equivalent amount of penalty and various penalties under the Finance Act. Same was confirmed by the lower appellate authority. Aggrieved from the said order the appellants are in appeal before this Tribunal.

2. Learned Advocate for the appellants submits that admittedly the period involved in this case is 2003 to 2005 and as held by the Hon'ble High Court of Bombay in the case of Indian National Shipowners Association vs. UOI, reported in 2009 (13) STR 235 (Bom), service tax is not leviable under Rule 2(1)(d)(iv) on the petitioner prior to 18.4.2006. Same was confirmed by the Hon'ble Apex Court as reported in 2010 (17) STR J57 (SC). Hence, the impugned order be set aside.

3. Learned D.R. reiterated the impugned order.

4. Heard and considered.

5. We find that the issue is no more res integra in the light of the decision of the Hon'ble Bombay High Court in the case of Indian National Shipowners Association (supra) which was confirmed by the Hon'ble Apex Court in a case where the service recipient is in India who has received the services from abroad is not liable to pay service tax for the period prior to 18.4.2006. In this case, admittedly, the appellants have received the services from a foreign supplier of service and who has been paid in the foreign currency prior to 18.4.2006 i.e. between 2003 to 2005, hence, following the decision of the Hon'ble High Court of Bombay in the case of Indian National Shipowners Association (supra), we find that the appellants are not liable to pay service tax on the services received by them from the foreign supplier during the impugned period. Accordingly, impugned order is set aside. Appeal is allowed with consequential relief, if any.

(ASHOK JINDAL)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RK