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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/641 /2008 - CU[DB] Date **02/05/2012**

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

To :
M/S HINDUSTAN AERONAUTICS LIMITED
AVIONICS DIVISION, AMETHI DISTT, SULTANPUR,
KORWA(UP)
227412

M/S HINDUSTAN AERONAUTICS LIMITED Appellant
Vs
C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/S/351/ 2012 CU[DB]** dated 09.04.12 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. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult : Mr. Nikhil Agarwal, Adv
Building No 10, Tower-C
DLF C Cyber City
Gurgaon

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-3
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,

West Block No. 2, R.K. Puram, NEW DELHI

COURT No. III

Service Tax Appeal No.641 of 2008

Date of Hearing / Decision : 09.04.2012.

[Arising out of Order-In-Original No.02/Comm/Lko/CX/2008, dated 25.03.2008 issued by CCE, Lucknow]

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?	No
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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Hindustan Aeronautics Ltd. Appellants
Versus
CCE, Lucknow Respondent

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

Present for the Appellants - Shri Nikhil Agarwal, Adv.
Present for Respondents - Shri K.K.Jaiswal, DR

Final **Order No.** ST/A/351/12 Cu **Dated :**__________

Per Ms. Archana Wadhwa:

Applicant is a Govt. of India undertaking engaged in the manufacture, repair and overhaul of aircrafts of Indian Air Force, Army, Coast Guard and Navy under the Ministry of Defence, Govt. of India. Service Tax of Rs.3,77,09,729/- stands confirmed against them along with imposition of penalty of identical amount and penalties of various amounts under various sections of Finance Act, 1994 for the period July 2003 to September, 2005 on the ground that they have provided services to the Ministry of Defence falling under the category of 'maintenance or repair services'. The said demand stands confirmed against them by invoking longer period of limitation.

2. During the course of adjudication, the appellants contested the demand on limitation by submitting that they were into correspondence with the Ministry of Defence for exempting the said services being provided by them. For the same reason, they also contested that the penalties would not be imposable upon them.

3. The Commissioner, however, by noticing that noticees were well aware of their liabilities to pay service tax as they entered into a dialogue with the Ministry of Finance for exemption of the same and that non-registration and non-payment of service tax was with an intention to evade payment of service tax, he accordingly confirmed the demand and imposed the penalties, Hence the present appeal.

4. Ld. Advocate appearing for the appellants though contends that the demand in question is barred by limitation but submits that the appellants are not contesting the same in as much as the same is deposited by them. However, he submits that the only dispute in the present appeal is exemption of penalties imposed upon the appellants, By drawing our attention to the various correspondences exchanged by the appellants with the Ministry of Finance praying for exemption of above services and in question, he submits that in as much as the services were from one Govt. to another Govt., they were trying to procure the exemption for the same. However, the Ministry of Finance vide their letter dtd. 26.07.05 rejected the appellants' request.

5. Thereafter the appellants' voluntarily obtained the registration and also paid service tax. He also placed on records various decisions of the Tribunal.

6. After carefully considering the submissions made by both the sides, the demand is confirmed as we find that the appellants have not contested the same. As regards penalty we find that it is not disputed by the adjudicating authority that the appellants were in correspondence with the Ministry of Finance seeking exemption on the maintenance and repair services of aircrafts pertaining to Ministry of Defence. Such correspondence resulted in denial of said request for exemption by Ministry of Finance on 26.07.05. In as much as the appellants were bonafidely contesting the issue before the appropriate authority and the appellants being a Govt. of India unit, no malafide with intent to evade the payment of duty can be attributed to them so as to invoke penalties. We are of the view that provisions of section 80 of Finance Act, 1994 are required to be applied holding that there was a justifiable reason entertained by the appellants for non-payment of duty. As such while confirming the demand of duty, we set aside the penalties imposed upon the appellants.

(Pronounced in the open court)

(Archana Wadhwa)
Judicial Member

(Mathew John)
Technical Member

RK-I