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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/453 /2008, ST/M/195/12 - CU[DB]
ST/452/08

Date **25/05/2012**

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

To : a) M/S LURGI METALLURGIE GMBH b) AUSMELT LTD
C/O SH. V.V. NANDAWAT, AGM (F),
HINDUSTAN ZINC LTD. YASHAD
BHAWAN,UDAIPUR-313004. (RAJ.)

M/S LURGI METALLURGIE GMBH C/O SH. V.V. NANDAWAT, AGM (F), Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/393-94/ 2012 CU[DB]** dated 15.05.12 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Along with Misc Order No ST/M/197/12

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.B.L.NARSIMHAN, ADV
b-6/10, SAFDARJUNG ENCLAVE 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-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)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

15-05-12
Date of Hearing :

For Approval & Signature :

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

Service Tax Appeal No. 452 of 2008

[Arising out of Order-in-Original No. 2/2008/ST/JP-II-COMM. dated 12.3.2008 passed by the Commissioner, Customs & Central Excise, Jaipur]

M/s Ausmelt Limited — Appellants

Vs.

CCE, Jaipur — Respondent

Service Tax Appeal NO. 453 of 2008 with Misc. No. 195 of 2012

[Arising out of Order-in-Original No. 3/2008/ST/JP-II-COMM. dated 12.3.2008 passed by the Commissioner, Customs & Central Excise, Jaipur]

M/s Lurgi Metallurgie GmbH — Appellants

Vs.

CCE, Jaipur — Respondent

Appearance:

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

Appeared for Respondent : Shri P.K. Sharma, A.R.

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

Misc Order No. ST/M/197/12-Cus
Final Order No. ST/A/393-394/12-Cus dated............

Per **Mathew John :**

There are two appeals being considered in this proceeding. Both the appeals involve common issue and hence are being decided together.

2. Revenue has filed application No. ST-195/2012 for early hearing of appeal ST-453/2008. The application for Early Hearing is allowed and the appeal is taken up for hearing today itself.

3. The first appellant M/s Ausmelt Ltd is a public Limited company incorporated in Australia. The second Appellant is a company incorporated in Germany. These companies had provided services which were classifiable under the entry in Finance Act 1994 for services of Consulting Engineer. Such services were rendered to M/s Hindustan Zinc Ltd during the period 01-04-03 to 31-12-2004. These companies or M/s Hindustan Zinc had not paid any service tax on such services. Revenue issued Show Cause notices to these appellants, based abroad demanding service tax on the value of such services. The notices have been adjudicated confirming the tax demanded along with interest and penalties. Aggrieved by the orders, the appellants have filed these appeals before the Tribunal.

4. The Counsel for appellant submits that the Appellants did not have any office or any establishment in India and therefore, the provisions of service tax levy were not applicable to them because the provisions of Finance Act, 1994 cannot have any jurisdiction on persons located outside India and therefore the demand confirmed is without jurisdiction.

5. The Counsel further points out that provisions have been made in section 66A of the Finance Act 1994 from 18-04-2006 for demanding service tax from the recipient of service in cases where the provider of service is located outside India and recipient is located in India. However he points out there is no demand from the recipient of the service and further the demand relates to a period prior to 18-04-2006. The Counsel also raises the issue that the demand is time barred.

6. The counsel relies on the following decisions in support of his argument:

(a) **CCE Jaipur-I Vs. Federal Mogul Sintered Products-** Final Order No. ST/501/11 of Delhi Bench of the Tribunal;

(b) **CCE Vs. Arco Corporation** 2010 (19) STR 169 (Kar)

(c) **Philcorp Pte Ltd Vs. CCE**-2007 (7) STR 266.

(d) **Stone & Webster Intl Inc Vs. CCE** -2011 (22) STR 467.

7. The Ld. AR for Revenue submits that the service was provided in India an therefore the provisions of Finance Act, 1994 is applicable for such service.

8. We find that this issue is no longer res integra in view of the decisions quoted above and liability to service under Finance Act, 1994 cannot be demanded from a person not located in India and having no permanent establishment in India. Therefore the

impugned orders are not maintainable and are accordingly set aside.

9. The appeals are allowed.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM