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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/509, 553 /2008 - CU[DB]   Date **13/03/2012**

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

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

C.C.E. LUCKNOW Appellant

Vs

M/S HINDUSTAN AERONAUTICS LTD. (ACCESSORIES DIVISION), Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/164-165 2012 CU[DB]** dated 27.02.2012 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
M/S HINDUSTAN AERONAUTICS LTD. (ACCESSORIES DIVISION),
LUCKNOW-226016. (U.P.)

2. Adv. / Consult MR. NIKHIL AGARWAL,
C/O. **M/S HINDUSTAN AERONAUTICS LTD. (ACCESSORIES DIVISION),** LUCKNOW-226016. (U.P.)

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.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

SERVICE TAX appeal No. 509 & 553 of 2008

[Both arising out of Order-in-Original No. 01-Commr/LKO/CX/08 dated 24.03.2008 passed by the Commissioner, Central Excise & Service Tax, Lucknow].

Date of Hearing/decision: 21st February, 2012

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, 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?	
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?	

ST/509/2008

CCE, Lucknow — Appellant

Versus

M/s. Hindustan Aeronautics Ltd. — Respondent

ST/553/2008

M/s. Hindustan Aeronautics Ltd., — Appellant

Versus

CCE, Lucknow — Respondent

Present for the Appellant : Shri P.K. Gupta, D.R.
Present for the respondents : Shri Nikhil Agarwal, Advocate

Coram: Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL ORDER NO. ST/A/164-165/12-Cus.

Per D.N. Panda:

Learned Counsel says that there is very short point involved in this appeal as to whether date of providing service shall be decisive for applicability of rate of tax on that date. He draws our attention to page 78 to 84 of appeal folder to summarily show that invoices were raised much before 10.9.2004 and receipts were made thereafter. Such receipts should not be taxed since services were provided on a particular day in terms of invoice. He has no material to demonstrate elaborately about date of provision of service provided and the details. Therefore, he prays that if remand is made for a decision as to how liability has been worked out, there may not be any grievance of the appellant.

2. Learned D.R. appreciates the proposal above and prays to entertain the remand on limited count.

3. Heard both sides and perused the record.

4. The documents relied upon by the appellant may enable the appellant to demonstrate before the learned Adjudicating Authority as to the date of providing service. Legislative provision makes clear that liability to service tax is determinable on the date of providing of taxable service. Accordingly the rate of tax in force on the date of providing of service shall be applicable to compute tax liability.. Such proposition of law

requires re-computation of liability of the appellant with its assistance and on the basis of evidence demonstrating the date of providing of service.

5. For the limited reason aforesaid, appeal is remand to the learned Adjudicating Authority to grant fair opportunity to the appellant for re-computation of liability and determination of penalty, if any payable, afresh. Learned Counsel also prays that the limitation aspect may be considered by that Authority while considering penalty aspect.

6. Due to difficulty of the appellant as expressed herein before us to lead evidence showing date of providing of taxable service, the matter is remanded to the Adjudicating Authority to consider grievance of the appellant, both on determination of tax liability and penalty as well as on limitation.

7. In the result, appeal is disposed by way of remand. Revenue appeal also gets disposed on the ground that penalty aspect is remanded.

(Pronounced in the open Court)

(D.N.PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RK