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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/423 /2008 - CU[DB] WITH ST/CO/294/2008 Date **23/01/2012**

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

To :
C.C.E. JAIPUR I

N.C.R.BUILDING, STATUE CIRCLE,
"C" SCHEME, JAIPUR 302005.
**C.C.E. JAIPUR I** Appellant

Vs

**M/S MUNDIPHARMA LABORATORIES GAMBH,** Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/72/ 2012 CU[DB]** dated 20.01.2012 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 MUNDIPHARMA LABORATORIES GAMBH,**
P.O.BOX. ST. ALBAN,
VORSRTADT-94, CH-4006, BASEL
SWITZERLAND.

2. Adv. / Consult SHRI VIVEK SHARMA, S.R. BATLIBOI & CO.
C/O. **M/S MUNDIPHARMA LABORATORIES GAMBH,**
P.O.BOX. ST. ALBAN, VORSRTADT-94, CH-4006, BASEL
SWITZERLAND.

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.

DIVISION BENCH
Court No.3
Service Tax Appeal No.ST/423/08 with ST/CO/294/08

(Arising out of Order-in-Appeal No.66(RKS)ST/JPR-I/2008 dt.17.4.08 passed by the CCE(A), Jaipur)

Date of Hearing: 07.09.2011
Date of Decision: 20/1/12

For approval and signature:
**Hon'ble Mrs.Archana Wadhwa, Member (Judicial)**
**Hon'ble Mr.Rakesh Kumar, Member (Technical)**

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|---|---|---|
| 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 |

CCE, Jaipur — Appellant
Vs
M/s.Mundipharma Laboratories GmbH — Respondent

Present for the Appellant: Shri Sunil Kumar, SDR
Present for the Respondent: Shri Vivek Sharma, Advocate

**Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)**
**Hon'ble Mr.Rakesh Kumar, Member (Technical)**

Final **ORDER NO.** ST/A/172/12 - Cus

**PER: ARCHANA WADHWA**

Being aggrieved with the order of the Commissioner (Appeals), the Revenue has filed the present appeal. We have heard Shri Sunil Kumar, learned SDR appearing for the Revenue and Shri Vivek Sharma, learned Advocate appearing for the respondents.

2. Without detailing the facts of the case, we note that the respondent which is Switzerland based company, provided the services to one M/s.G.S.Pharmabutors Pvt.Ltd. as regards technical know-how. The Revenue by considering the said service as falling under the category of "Consulting Engineers" raised the demand against the said respondent and confirmed the same. However, on appeal against the above order, the Commissioner (Appeals) has held in favour of the respondent. Hence, the present appeal.

3. For better appreciation of the reasoning adopted by the Commissioner (Appeals) for setting aside the order of the Commissioner confirming the service tax demand, we reproduce the relevant para 6 of the order:-

*"I find that the adjudicating authority has demanded the Service tax from a non resident having any office in India which is not sustainable in view of the clear provisions of the law as stated above. As is evident from the said Rule, regardless of categorization of the impugned service, the liability to pay Service Tax in the instant case is on the recipient and not on the provider. I further observe that Chapter V of the Finance Act, 1994 contained the provisions relating to imposition and collection of Service Tax and Section 64 of the said Chapter V contained the extent, commencement and application of the said Chapter V relating to Service Tax which says that "This Chapter extends to the whole of India except the State of Jammu and Kashmir." Thus the provisions of Service Tax are clearly not applicable beyond Indian Territory. Further the Hon'ble Cestat in the case of Relax Safety Industries & Ors. Vs. Commissioner of Customs, Mumbai reported at 2002 (53) RLT 1100 (CEGAT-Mum) has held hat the Finance Act, 1994 does not prescribe payment of Service Tax by a person who is non resident or is from outside India and does not have an office in India. Similar view was expressed by*

*the Hon'ble CESTAT in the case of Philcorp Pte. Ltd. Vs. CCE, Goa, 2007 (7) STR 266 (Tri.-Mum) (quoted in para 3(v) earlier) holding that 'Service Tax was not applicable to person or company situated outside India having no business establishment in India and it is possible that for this purpose only an amendment was made in 2002 making the recipient liable to pay service tax in such situations."*

4. As is clear from the above order, the ground on which the demand has been set aside by the Commissioner (Appeals) is that the provisions of Finance Act, 1994 are not applicable to the Foreign Service provider. We find that the issue is no more rest ingtera and stands settled by the various decisions of the Tribunal, the reference to the same is made as under:-

(i) Philcorp Pte Ltd. vs. CCE, Goa-2007 (7) STR 266 (Tri.-Mumbai)

(ii) Shore to Shore Mis Private Limited vs. CCE, Chennai-2007 (5) STR 109 (Tri.-Cehnnai)

(iii) CCE, Bangalore vs. Bharat Electronics Ltd.-2010 (20) STR 307 (Kar.)

(iv) CST, Bangalore vs. Toyota Iron Works Co.Ltd.-2010 (19) STR 802(Kar.)

(v) CST, Corporation vs.Araco Corporation-2010 (19) STR 169 (Kar.)

5. The ratio the above decision is to the effect that the Foreign Service provider, who ~~has~~ does not have any office in India, is under no liability to pay service tax. We find that the provisos in this regards were specifically made for payment of service tax by service recipient in India i.e. after 18.4.2006. As such, we find no merit in the Revenue appeal.

6. Otherwise also, we note that the transfer of technical know-how has been held to be as not falling under the category of consulting engineering service by the Tribunal in the case of Schott Glass (I) Pvt.Ltd. vs. CCE, Vadodara-2008 (12) STR 484 (Tri.-Ahmd.) as also in the case of Telco Construction Equip.Co.Ltd. vs. CST, Bangalore-2010 (19) STR 67 (Tri.-Bang.)

7. On this issue also, we find no merit in the Revenue's appeal and the same is rejected.

(Pronounced in the open court on 20/1/12)

**(ARCHANA WADHWA)**
**MEMBER (JUDICIAL)**

**(RAKESH KUMAR)**
**MEMBER (TECHNICAL)**

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