TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : cestat08@gmail.com

28

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/667 /2008,717 /2008,724 /2008-726 /2008 - CU[DB]   Date **29/03/2012**

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

a) CCE Ludhiana, Central Excise House 'F' Block, Rishi Nagar Ludhiana. (Pb)

C.C.E. CHANDIGARH Appellant

Vs

M/S NAHAR EXPORTS LTD. (100% EOU)., Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/256-261 2012 CU[DB]** dated 15.03.12 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
M/S NAHAR EXPORTS LTD. (100% EOU).,
VILLAGE-LEHLI, LALRU, DISTT.
MOHALI (PUNJAB)

2. Adv. / Consult M/S DSK LEGAL
21 UGF ANTRIKSH BHAWAN
K G MARG NEW DELHI – 01

2A) MR. VIKRANT KACKRIA, ADV
H NO 5, SECTO 10 -A
CHANDIGARH

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

M/S MALWA INDUSTRIES LTD.
HARIAN, MACHHIWARA, LUDHIANA.

M/S CHEEMA SPINTEX LIMITED,
VILLAGE-KAULIMAJRA, LALRU,
DISTT. MOHALI (PB)

Assistant Registrar
(Customs Appeal Branch)

M/S ARIHANT SPINNING MILLS .
MALERKOTLA . (Pb) - 23 .

M/S Nahar Fibre (100% EOU) Presently As M/S Nahar Fibre Malerkotla (Pb)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

ST/Appeal Nos.666/08

(Arising out of order in appeal No.94/CE/CHD/08 dated 10.9.08 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

Date of Hearing: 15.3.2012

For Approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member Judicial
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 would 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 Department Authorities? Yes

CCE, Chandigarh Appellants

Vs

M/s Nahar Exports Ltd Respondent

ST/Appeal Nos.667/08

CCE, Chandigarh Appellants

Vs

M/s Cheema Spintex Ltd Respondent

ST/Appeal Nos.717/08

CCE, Chandigarh Appellants

Vs

M/s Malwa Industries Ltd Respondent

ST/Appeal Nos.724/08

CCE, Ludhiana Appellants

Vs

M/s Nahar Fibre Respondent

ST/Appeal Nos.725/08

CCE, Ludhiana Appellants

Vs

M/s Arihant Spinning Mills Respondent

ST/Appeal Nos.726/08

CCE, Ludhiana Appellants

Vs

M/s Arihant Spinning Mills Respondent

Appeared for the Appellant: Shri K.P. Singh, DR
Appeared for the Respondent: Shri Vikrant Kackaria, Advocate

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

Final ORDER No. ST/A/256-261/12-Cus.

Per Archana Wadhwa:

All the appeals filed by the Revenue are being disposed of by a common order as an identical issue is involved. The point required to be addressed is as to whether the respondents are liable to pay service tax in respect of commission paid to foreign based commission agents during the period before 18.4.2006 on reverse charge basis.

2. The Commissioner (Appeals) by relying upon the decision in the case of Foster Wheeler Energy Ltd 2007 (7) STR 443 (Tri.) has allowed

the appeals filed by the respondents. He has also relied upon the subsequent decision of the Tribunal in the case of Commissioner Vs Jindal & Power Ltd 2008 11 STR 14 (Tri-Del). It stands held in the said decisions that amendment carried out in Rule 2(1) (d) was not enough and sufficient, Service recipient in India is liable to pay tax only when provision of section 66-A was inserted with effect from 18.4.2006.

3. We find that the issue is no more res-integra and stands settled by the Bombay High Court judgment in the case of Indian Shipowners Association 2009 (13) STR 235 Bom. The appeals filed by the Revenue before the Hon'ble Supreme Court stands dismissed. The CBEC vide its subsequent instruction F.No.276/8/2009-CX,8A dated 26.9.2011 has observed that service tax liability in respect of taxable service provided by an non-resident or a person located outside India, to a recipient in India would arise w.e.f. 18.4.2006 i.e. the date of enactment of Section 66A of the Finance Act, 1944. As the issue is covered, we find no merit in the Revenue's appeals. The same are accordingly rejected.

(Order dictated and pronounced in the open Court.)

(ARCHANA WADHWA)
Judicial Member

(MATHEW JOHN)
Technical Member

MPS*