

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Appeal No. : ST/654/2008-CU[DB]

Dated: 20/07/2012

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

To,

H.R.INTERNATIONAL
Model House Road, Basti Sheikh,
Jalandhar.

H.R.INTERNATIONAL

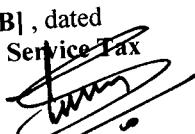
(Appellant)

VS

(Respondent)

C.C.E. JALLANDHAR(Hq. at Chandigarh)

I am directed to transmit herewith a certified copy of Final Order No. ST/A/532/2012-CU[DB] , dated 13/07/2012 passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.


Assistant Registrar
CUSTOMS Appeal Branch

Copy To,

1. Respondent

C.C.E. JALLANDHAR(Hq. at Chandigarh)
C.R.Building, Plot No. 19, Sector 17-C,
Chandigarh.

2. Advocate(s) / Consultant(s):

SUDHIR MALHOTRA.
13-R, Hukam Chand Colony, Near D.A.V
College, Jalandhar

3. C.D.R

4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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. Gaurd 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.**

**Date of Hearing : 25.6.2012
Date of Pronouncement : 13.7.2012**

Service Tax Appeal No. 654 of 2008

[Arising out of the Order-in-Appeal No. 356-358/CE/Jal/08 dated 19.8.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh)

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?	Yes
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?	No

M/s H.R. International

Appellants

Vs.

CCE, Jalandhar

Respondent

Appearance:

Appeared for Appellant : Shri Sudhir Malhotra, Advocate &
Shri Poojan Malhotra, Advocate

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

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

Final Order No. ST/A/S.32/12-Cus. dated 13.7.12

Per Mathew John :

The appellants are engaged in manufacture of excisable goods part of which is exported. During the period 09-07-2004 to

30-09-2006 they received services of agents located abroad to promote sale of their goods abroad.

2. As per Rule 2 (1) (d) (iv) of Service Tax Rules 1994, in force at that time, the appellants were expected to pay service tax on services received from persons located abroad. However they were not paying tax on such services.

3. The officers of Revenue verified the records of the Appellant and found that such tax was not being paid. When the issue was pointed out to them they paid the tax involved. They also took credit of the tax paid in their Cenvat account for the reason that the impugned services were input services for them.

4. Revenue issued Show Cause Notice for demanding the service tax which was initially short paid along with interest and penalty and also for denying the Cenvat credit taken on such services for the reason that these services could not be considered as input services.

5. After adjudication and first appeal the disputes now remaining are,-

- (i) demand for tax from 01-01-2005, the date on which notification 36/2004-ST dated 31-12-2004 took effect; and
- (ii) the demand on account of wrong Cenvat credit to Rs. 6,72,290/- in respect of services availed prior to 10-09-2004, that is the date on which Cenvat Credit Rules, 2004 were notified;
- (iii) Corresponding Interest and penalties were also agitated in this appeal.

6. The Counsel for appellants submit that Bombay High Court, in the case of Indian National Ship Owners Association Vs. UOI-2009 (13) S.T.R. 235 (Bom) has held that prior to 18-04-2006 service tax could not have been demanded in the hands of service

recipient because the provisions of Rule 2 (1) (d) (iv) was ultra virus the provisions of Finance Act, 1994. So the demand prior to that date is not maintainable and the tax paid by the appellants is refundable to them. He concedes that the appellants have taken credit of such tax paid and question of refund arises only if Cenvat credit is proposed to be denied.

7. In the case of Cenvat credit denied his submission is that Revenue has taken the dates of purchase order (which were between 09-07-2004 and 09-09-2004) as date of providing of service and since these dates were prior to 10-09-2004 Revenue is denying credit. His plea is that the service of the foreign agent is not just for procuring orders but such service extends to collection of sale proceeds and attending to customer queries and complaints after sale also. So denial of credit with reference to date of purchase order is not legally maintainable. Thus it is his submission that Cenvat credit taken by the appellants is proper and that cannot be denied to them.

8. Opposing the prayer of the Appellants the Ld. A. R. submits that the provision for allowing Cenvat credit on input services came into force for the first time from 10-09-2004 and hence no credit could have been taken for services received prior to that date for such services. Since purchase orders were procured prior to 10-09-2004 credit cannot be taken.

9. We have considered arguments on both sides. It is no longer res integra that service tax could not have been demanded from service recipient prior to 18-04-2006. So demand for service tax in this case is not maintainable.

10. Further the argument adopted for denying Cenvat credit also is not correct for the reason that the relevant provision in Cenvat Credit Rules, 2004 as provided in Rule 9(1) is as under:

"9. Documents and accounts. - (1) The CENVAT credit shall be taken by the manufacturer or the provider of output

service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a) —

(f) *an invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004; or"*

11. The criterion prescribed was with reference to date of the invoice and not with reference to date on which service was provided. It is also relevant that Revenue has not been able to prove that the service was in fact provided prior to 10-09-2004. It is very difficult to decide the point at which any service is provided. That is very evident in this case from the argument raised by the appellant. So we do not find any reason to deny the credit claimed.

12. On the whole we find that the demand confirmed in the impugned order is without authority of law and is not for recovering any loss of Revenue that has occurred. It is based on "heads I win tails you lose" type of argument adopted by Revenue in matters which are already decided against Revenue. So we do not see any merits of the argument of Revenue and hence the appeal is allowed by setting aside the impugned orders of the lower authorities.

(Pronounced on 13/7/12)

(Archa Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM