CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, AHMEDABAD
O/20, New Mental Hospital Compound, Meghani Nagar, AHMEDABAD -380016
TELEPHONE NO. 079- 22683202 FAX NO 079- 22683276

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File NO. ---- ST/437/2010

Date: 10TH April, 2012

From: THE ASSISTANT REGISTRAR, CESTAT, AHMEDABAD
In the matter of

M/S GUJARAT NRE COKE LTD.
VILLAGE-DHARAMPUR,
TALUKA- JAM KHAMBHALIA,
DIST-JAMNAGAR.

APPELLANT

Vs

CCE,RAJKOT
CCE, RAJKOT - Commissioner of Customs, Central Excise & Service Tax, Central Exice Bhavan, Race Cource Ring Road, Rajkot - 360001

आयुक्त (अपील) कार्यालय, सीमा शुल्क, उत्पाद शुल्क, सेवा कर, अपीलीय न्यायाधिकरण, अहमदाबाद
23 APR 2012
आवक क्रमांक नं.

RESPONDENT

I am directed to transmit herewith a certified copy of **Order No. A/419/WZB/AHD/2012** **Dated 15.03.2012/10.04.2012** passed by the Tribunal under Section 35(1) of the Central Excise Act, 1944, Section 129(B) of the Customs Act, 1962 and Finance Act, 1944.

ASSISTANT REGISTRAR

Copy to :
(1). Chief Commissioner Customs & Central Excise: AHMEDABAD
(2). Commissioner Customs & Central Excise (Appeal): RAJKOT
(3). Jt. CDR CESTAT, Ahmedabad
(4).CESTAT Bar Association, Ahmedabad
(5). CESTAT Bar Association, New Delhi
(6). Master File.
(7). Centax Publication (P) ltd.
(8). M/S Taxmann Allied Allied Service P.Ltd
(9). M/S Company Law Institute of India Pvt Ltd.
(10). Easy Service Tax Online Dot Com P Ltd
(11). Lawcrux Advisors Pvt. Ltd. Ltd
(12). Taxindiaonline.com Pvt Ltd
(13). Advocate/ Consultant

SH SH B N CHATTOPADHAYAY, CONSLT
7-C, KIRAN SHANKAR ROY ROAD
HASTINGS CHAMBERS, ROOM NO. B/G,
KOLKATA-700001

ASSISTANT REGISTRAR

SMC—D----15

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Zonal Bench, Ahmedabad

COURT-II

Appeal No.ST/437/10

Arising out of OIA No.279/2010/COMMR(A)/CMC/RAJ, dt.5.6.10

Passed by Commissioner of Central Excise & Customs (Appeals), Rajkot

For approval and signature :

Hon'ble Mr. M.V. Ravindran, Member (Judicial)

1	Whether Press Reporter 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 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

Appellant (s) : **M/s. Gujarat NRE Coke Ltd.**

Represented by : Shri B.N. Chattopadhayay, Cons.

Respondent (s) : **CCE Rajkot**

Represented by : Shri J.S. Negi, A.R.

CORAM :

Hon'ble Mr. M.V. Ravindran, Member (Judicial)

Date of Hearing : 15.03.12
Date of Decision : 10.04.2012

ORDER No. A/419 /WZB/AHD/2012

Per : Mr. M.V. Ravindran;

This appeal is directed against order-in-appeal No. 279/2010/COMMR(A)/CMC/RAJ, dt.5.6.10. The relevant facts that arise for consideration are that the appellant have paid excess Service Tax in May, 2006, Sept., 2006, Nov., 2006, Dec., 2006 and Jan., 2007 against their Service Tax liability and adjusted in the subsequent period i.e. October, 2006 to March, 2007 by taking benefit of Rule 6 (4A) of Service Tax Rules, 1994 which was not in accordance in as much as they did not have centralized registration. Show Cause Notice No: V.ST/AR-JMR/JC/16/2008 dated: 21.04.2008 was issued to the appellant by the Joint Commissioner, Customs and Central Excise, Rajkot proposing to recover the short paid amount of Rs.6,15,364/- under Section 73 of the Finance Act,1994 adjusted towards excess payment of service tax earlier; to recover the short paid interest of Rs.852/-; and to impose penalty under Section 76 of Finance Act, 1994 f or late payment of Service Tax.

2. The said Show Cause Notice dated: 21.04.7008 was adjudicated by the Joint Commissioner, Customs and Central Excise, Rajkot (hereinafter referred to as the Lower Authority) vide his Order-in-Original No: 20/Joint Commissioner/2009 dated : 25.09.2009 (hereinafter referred to as the impugned order) wherein he held that since the appellant have not sought the registration indicating that the centralized billing would be done from Khambhalia premises therefore the they are not eligible for adjustment of excess paid Service Tax under Rule 6 (4A). Further, he confirmed the demand of snort paid service tax of Rs. 852/- on the grounds that the appellants have not given any convincing explanation for non payment of remaining amount. The Lower Authority further imposed a penalty of

Rs.790/- and Rs. 4,000/- under Section 76 of the Finance Act, 1994 for late payment of the amount. Apart from above, the Lower Authority also imposed penalty @ 2% per month on the said amount of Service Tax of Rs. 6,15,364/- under Section 76 of the Finance Act, 1994 starting with the first day after the due date till actual payment of the outstanding amount of service tax.

3. Being aggrieved by the order-in-original that confirmed the demand of service tax liability, interest thereof and penalties being imposed by the adjudicating authority, appellant preferred an appeal before the first appellate authority. The first appellate authority after following the due process of law, held the order-in-original and reject the appeal filed by the appellant. Hence this appeal.

4. Ld. counsel appearing on behalf of the appellant submits that there is no dispute as to the fact that the appellant had in fact paid excess service tax during the month of May, September, November, December 2006 and January 2007 as against their service tax liability. It is also his submission that the amount so excess paid by them was adjusted in the subsequent period i.e. between the period October 2006 to March 2007 as per the benefits under provisions of Rule 6(4A) of Service Tax Rules, 1994. It is his submission that the appellants had wrongly mentioned the provisions of Rule 6 (4A) but in fact the provisions of Rule 6(3) will be applicable in this case. It is his submission that in the following cases the law is now squarely decided in favour of the assessee.

1. Powercell Battery India Ltd. – 2010 (19) STR 400 (Tri. – Bang.)
2. Nirma Architects & Valuers – 2006 (1) STR 305 (Tri. – Del.)
3. Aurore Trust – 2010 (17) STR 376 (Tri. – Chennai)
4. Agrimas Chemicals Ltd. – 2008 (10) STR 424 (Tri. – Del.)
5. Narnolia Securities Pvt. Ltd. – 2008 (10) STR 619 (Tri. – Kolkata)
6. Bharti Cellular Ltd. – 2006 (1) STR 39 (Tri. –Del.)

7. Bayer Diagnostics India Ltd. – 2007 (8) STR 367 (Tri. – Ahmd.)
8. Prachar Communications Ltd. – 2006 (2) STR 492 (Tri. – Mumbai)
9. BBC World (I) Pvt. Ltd. – 2009 (14) STR 152 (Tri. – Del.)

5. Ld. SDR on the other hand would submit that the appellant is in eligible to adjust the excess amount of service tax paid and the provisions of Rule 6 of the Service Tax Rules for two reasons. One that he had not taken the central excise registration and secondly he has not complied with the condition i.e. enumerated in sub rule 3 of Rule 6 of the Service Tax Rules.

6. On careful consideration of the submissions made by both sides, I find that the issue involved in this case is regarding the adjustment of excess service tax paid by the appellant for the discharge of service tax liability for the subsequent period.

7. There is no dispute as to the fact that the appellant had paid excess amount as service tax during the relevant period. If that be so, the excess amount paid by the appellant should have been adjusted automatically.

8. In the case in hand, the appellant has explained that the amount of service tax paid excess by them was due to the reason that they were under the impression that they had a centralised registration and submitted photocopy of their application for registration. It is undisputed that there was a registration from the appellants Khambhalia premises. Both the lower authorities have held that the appellant making an adjustment of the excess paid under the provisions of Rule 6(4A) of the Service Tax Rules seems to be erroneous on the ground that they did not have the centralised registration facility. Both the lower authorities have held that there is no mention regarding the application being sought by the appellant seeking centralised

registration. In my considered view, these are all higher technical views, as there is no dispute to the excess payment of the amount towards the service tax liability during the period as indicated hereinabove. I find that when there is an excess payment of service tax, the same could be adjusted against the subsequent service tax liability is the law settled by the following decisions:

1. Powercell Battery India Ltd. – 2010 (19) STR 400 (Tri. – Bang.)
2. Nirma Architects & Valuers – 2006 (1) STR 305 (Tri. – Del.)
3. Aurore Trust – 2010 (17) STR 376 (Tri. – Chennai)
4. Agrimas Chemicals Ltd. – 2008 (10) STR 424 (Tri. – Del.)
5. Narnolia Securities Pvt. Ltd. – 2008 (10) STR 619 (Tri. – Kolkata)
6. Bharti Cellular Ltd. – 2006 (1) STR 39 (Tri. –Del.)
7. Bayer Diagnostics India Ltd. – 2007 (8) STR 367 (Tri. – Ahmd.)
8. Prachar Communications Ltd. – 2006 (2) STR 492 (Tri. – Mumbai)

9. In view of the ratio laid down by the foregoing series of judgments, I find that orders of both the lower authorities are liable to be set aside and I do so. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Pronounced in the Court on 10/04/2012)

Sd/-

10/4/2012

(M.V. Ravindran)
Member (Judicial)

....JK

आदेश का प्रति निम्न आवदित
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कर दाता/कमि... ...विभागीय प्रतिनिधी
The Assessee The Commissioner/The
DR., C.E.S.T.A.T.
सत्यापित प्रतिलिपि
TRUE COPY

सहायक रजिस्ट्रार
Assistant Registrar
सीमाशुल्क उत्पाद शुल्क और सेवा
कर अपील अधिकरण
Customs, Excise & Service Tax
Appellate Tribunal

12 APR 2012