FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: **23/08/2016**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/70636/2016-SM[BR]** dated **11/03/2016**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

	Application	Appeal	Name and Address of Appellant
1	ST/CROSS/52825/2014	ST/51713/2014	**COMMISSIONER OF CUSTOMS, CENTRAL EXCISE AND SERVICE TAX-ALLAHABAD** 38...M G MARG... CIVIL LINES,ALLAHABAD, UTTAR PRADESH 211001
			Name and Address of Respondent
2			KESARWANI ZARDA BHANDAR SAHSON,,ALLAHABAD ,UTTAR PRADESH

Copy To

3Advocate(s) / Consultant(s):

S. P. OJHA
299, BAGHAMBARI HOUSING SCHEME,
ALLAHPUR,
ALLAHABAD,

4 Bar Association, CESTAT, Allahabad

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

ST Appeal No. : ST/51713/2014 &
Cross Objection No. : ST/CROSS/52825/2014

Arising out of O/A No. 105/ST/ALLD/2013 dated 07.11.2013, passed by Commr. (Appeals) of Customs, Central Excise & Service Tax, Allahabad

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

---

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? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

---

Commissioner of Customs, Central Excise & Service Tax,
Allahabad.

...APPELLANT(S)

VERSUS

M/s Kesarwani Zarda Bhandar, ...RESPONDENT(S)

APPEARANCE

Shri Rajeev Ranjan (Joint Commr.) A.R., for the Department
Shri Bipin Garg (Adv.) &
Ms. Rinki Arora (Adv.) for the Respondent(s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 11.03.2016

FINAL ORDER NO. 70636/2016

Per Mr. Anil Choudhary :

The Appellant, Revenue, is in appeal against Order-in-Appeal No. 105/ST/ALLD/2013 dated 07-11-2013, passed by ld. Commissioner (Appeals), Customs, Central Excise & Service Tax, Allahabad.

2. Brief fact of the case is that M/s Kesarwani Zarda Bhandar, Sahson, (Respondent) are engaged in the manufacture of Branded Chewing Tobacco classified under Tariff Item No. 24039910 to the First Schedule of the Central Excise Tariff Act, 1985. They are also availing Cenvat credit facility on the inputs as well as the input services in terms of the Cenvat Credit Rules, 2004. The GTA is one of the Services on which the appellant is paying Service Tax as recipient of service.

3. During the course of scrutiny of records, it was observed that the appellant had received goods from various manufacturer/supplier on which freight is being paid by the manufacturer/supplier but the Service Tax on the freight is not being paid by the Supplier/Consignor but the same is being paid by the respondent/purchaser i.e. M/s. Kesarwani Zarda Bhandar, Sahson, Allahabad who are availing credit of the same as GTA Service, which is not correct in view of the fact the CENVAT Credit of input service is allowed only after payments towards value of service and service tax both are made as per the provisions contained in Rule 4(7) of CENVAT Credit Rules, 2004 which stipulates that the CENVAT Credit in respect of input service shall be allowed on or after the day on which payment is made of the value of input service and the service tax paid or payable as is indicated in invoice, bill or, as the case may be, Challan referred to in Rule 9. Whereas in

the case of the appellant, only service tax component has been paid by the appellant and not the value of the input service.

4. Heard the parties.

5. Having considered the rival contentions, we find that as the Service Tax is to be paid under Rule 4(7) and challan is a document for taking credit under Rule 9 of CCR, and the Service Tax is payable for GTA Services under Rule 2 (1) (d) (v) of the Service Tax Rules,1994 by consignor/consignee being manufacturer. Thus, Cenvat credit has rightly been availed. Thus, the Appeal filed by the Revenue, is dismissed. C.O. stands allowed.

(Pronounced in the open Court)

-Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(Ansari)

प्रमाणित प्रति / Certified True Copy

सहायक पंजीयक / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001