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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

Dated: **17/06/2015**

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. **ST/A/51901/2015-CU[DB]** dated **14/05/2015**

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(CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	ST/CROSS/83/2009,	ST/174/2009	C.C.E. RAIPUR Central Excise Building, Dhamtari Road, Tikrapara, Raipur 492001.
			Name and Address of Respondent
2			SUPREME WAREHOUSING CORPORATION, MALVIYA ROAD, RAIPUR, (C.G.),,

Copy To
3 Advocate(s) / Consultant(s):

Shri. V.K.Puri, Advocate

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. 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 : 14.5.2015

Appeal No. ST/174/2009-CU(DB) with CO/83/2009

(Arising out of Order-in-Appeal No. 33(ST)/RPR-I/2008 dated 15.12.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur)

For Approval & Signature :

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, 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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

CCE, Raipur — Appellant

Vs.

M/s Supreme Warehousing Corporation — Respondent

Appearance:

Shri B.B. Sharma, D.R. - for the Appellant

Shri V.K. Puri, Advocate - for the Respondent

Coram : **Hon'ble Mr. Justice G. Raghuram, President**
Hon'ble Mr. R.K. Singh, Member (Technical)

F. Order No. 51901/2015

Per **R.K. Singh :**

Revenue has filed this appeal against order-in-appeal dated 15.212.208 which held that transportation charges reimbursed by M/s Grasim Industries Ltd. to its C&F agent (respondent in the present case) was not includible in the assessable value of the C&F agent service and having thus held allowed the respondent's appeal before it, [(i.e. Commissioner (Appeals)] and set aside the related order-in-original with consequential relief subject to verification of documents relating to the reimbursement of freight mentioned in para-4 of the impugned order-in-appeal. Revenue is in appeal on the following grounds :

(i) The amount shown in the balance sheet of the respondent is the value of service received in exchange of providing C&F Agent Service. The service tax amount of Rs.10,66,912/- + Ed. Cess Rs.13,256/- has been rightly demanded by the adjudicating authority on the suppressed amount of Rs.1,32,66,415/-.

(ii) The Commissioner (Appeals) has held in his OIA that the amount which has been shown by the Revenue is related to freight paid by the Respondent to the GTAs in which they claim that M/s Grasim Industries, Rawan has already paid service tax on Goods Transport Agency (in short GTA) Service. This payment of service tax on 'GTA' service is not legal and proper as per the provisions of service tax law.

(iii) In the instant case, the Respondent as a consignee has paid fright to the GTAs in terms of Rule 2(1) (d)(v) of

Service Tax Rules, 1994 read with Notification No. 35/2004 dated 3.12.2004 (as amended). So, the respondent is required to pay service tax on Goods Transport Agency service, not M/s Grasim Industries Ltd., Rawan. The respondent is covered as person in this category of 'GTA' service and by no agreement and by no arrangement like reimbursement of the freight, the responsibility of payment of service tax assigned by Service Tax Law, can be shifted from the respondent to another person M/s Grasim Industries, Rawan.

(iv) The transportation charges are related to the C&F service and are includible in the assessable value .

(v) In term of amended Section 35A (as amended with effect from 11.5.2001) the Commissioner (Appeals) has no power to remand.

2. The respondent has contended that as per C&F agent of M/s Grasim Industries, it was providing C&F agent service and in terms of the agreement entered into with M/s Grasim Industries in this regard the freight for transportation of goods whenever paid by C&F agent was to be reimbursed by M/s Grasim Industries and therefore the same was not includible in the assessable value of C&F. It also stated that Grasim Industries had actually been paying service tax under GTA service on such transport charges. It cited a few

judgement to the effect that the transportation charges so reimbursed are not includible in the assessable value of C&F Agent Services.

3. We have considered the contentions of both sides. We find that in terms of agreement between Grasim Industries and the respondent, it is clearly stated that "You (the respondent) shall paid freight in the case of "to pay" consignments on our behalf to the transporter. The same shall be reimbursed to you from time to time on production of proof of payment". It is thus evident that freight was paid by the respondent on reimbursable basis. In the case of ***J.N. Traders Vs. CCE*** - 2007 (7) STR 216 (Tri.-Chennai), it has been held that re-imbursement of expenses on actual basis towards freight is not liable to be included in the value of taxable C&F agent service. Similar view has been held in the case of ***Bhagyanagar Services Vs. CCE, Hyderabad*** - 2006 (4) STR 22. Thus the Commissioner (Appeals) order holding that transportation charges reimbursed by M/s Grasim Industries are not includible in the assessable value for charging service tax under the C&F agent service provided by the respondent is legal and proper. However, the Revenue's contention that the Commissioner (Appeals) does not have any power of remand after amendment to Section 35A of the Central Excise Act, 1944 with effect from 11.5.2001, has been upheld by various judicial pronouncements. In the case of ***CC, Amritsar Vs.***

Enkay (India) Rubber Co. Pvt. Ltd. - 2008 (224) ELT 303 (P&H), the Punjab & Haryana High Court held that once power of remand has been expressly taken way by the Finance Act, 2001, which came into operation with effect from 11.5.2001, the Commissioner (Appeals) is divested of power to remand the case back to the adjudicating authority. Similar view was reiterated in the case of ***CCE, Jalandhar Vs. B.C. Kataria*** – 2008 (221) ELT 508 (P&H). Thus, Commissioner (Appeals) was debarred from referring the matter back to the original adjudicating authority for verification in terms of para 9 & 10 of the impugned order-in-appeal.

4. In the light of the foregoing discussions, we hold that transportation charges reimbursed by M/s Grasim Industries are not includible in the assessable value of C&F agent service rendered by the respondent. However, we remand the case to the Commissioner (Appeals) with direction that the required verification in terms of paras 9 & 10 of the impugned order-in-appeal shall be conducted at his end and appropriate orders passed. The appeal and the cross-objections stand also disposed of accordingly.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

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