

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

To

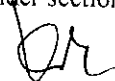
Dated: 29/04/2015

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/51396-51397/2015-CU[DB] dated 27/03/2015

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/COD/378/2011	ST/1518/2011	C.C.E & S. TAX (LTU), Delhi NBCC PLAZA, PUSHP VIHAR, SECTOR-III, SAKET, NEW DELHI-110017
2 ST/COD/380/2011	ST/1520/2011	C.C.E & S. TAX (LTU), Delhi NBCC PLAZA, PUSHP VIHAR, SECTOR-III, SAKET, NEW DELHI-110017
		Name and Address of Respondent
3		WHIRLPOOL OF INDIA LTD. A-4, M.I.D.C, RANJANGAON, TAL-SHIRUR, DISTT. PUNE, MAHARASHTRA. ,,
4		WHIRLPOOL OF INDIA LTD. 28, THIRUBHUWANAI VILLAGE-THIRUVANDAR KOVIL, PONDICHERRY.

Other Appellants and Respondents as per Annexure

Copy To

5 Advocate(s) / Consultant(s):

Shri.Tarun Gulati, advocate

6 Additional Party's Name & Address :

7 Bar Association, CESTAT, Delhi

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

9 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

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

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

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

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

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

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

16 C.D.R. 17 Office Copy 18 Guard File


Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 27.3.2015

Service Tax Appeal Nos.1518, 1520 of 2011

Arising out of the order in Original No.31/Commissioner/2011 and No.32/Commissioner/2011 both dated 31.3.2011 passed by the Commissioner of Central Excise and Service Tax, New Delhi.

For approval and signature:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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 Departmental authorities?	

C.C.E. & S.Tax (LTU), Delhi

.. Appellant

Vs.

Whirlpool of India Ltd.

.... Respondents

Appearance:

Present Shri Devender Singh, A.R. (Jt.CDR) for appellant/Revenue
Present Shri Tarun Gulati with Shri Kishore Kunal, Advocates for the respondent

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

Final Order No. 51396 - 51397/2015

Per R.K. Singh:

Revenue has filed these appeals against the Order-in-Original No.31/Comm/2011 dated 31.3.2011 and Order-in-Original No.32/Commr./2011 dated 31.3.2011 in terms of which demands of

(R)

Rs.42,46,743/- and Rs.21,73,119/- raised on the ground that Cenvat credit of the service tax under GTA paid by the respondents was not admissible to them were dropped on the ground that the GTA service (on which service tax was paid) was clearly an input service as it was in relation to transport of goods upto the respondent's depot and vide CBEC Circular No.97/8/2007-ST, dated 23.8.2007, the impugned credit was admissible.

2. Revenue has essentially contended that (i) in view of amendment to Rule 2(l) and 2(p) of Cenvat Credit Rules, 2004 as amended by Notification No.10/2008-CE(NT), dated 1.3.2008, credit of service tax paid on GTA service is admissible only upto the place of removal of final goods and that it is also obligated that payment of service tax on GTA services cannot be made through Cenvat Credit Account as GTA service has been taken out of specified services designated as 'output service' as per Notification No.13/2008-ST, dated 1.3.2008.

(ii) The order-in-original under reference does not reveal as to whether the adjudicating authority had caused any verification to ascertain that the respondents had availed credit in respect of finished goods only upto the place of removal and not beyond that point.

3. The respondents stated that show cause notice does not reveal as to on what basis the amount of cenvat credit of service tax paid on GTA service was sought to be denied and that they had consistently asserted that service tax on GTA was paid by them for transportation of their final product upto their depot which is the place of removal. They also referred to the judgment of C.C.E., LTU, Chennai vs. Areva T & D (I) Ltd. - 2011 (267) ELT 552 (Tri-Chennai) wherein it was essentially held that Committee of Chief Commissioners cannot authorize filing of appeal without coming to conclusion based on their verification that the order was not legal and proper and by merely noting that the grant of abatement was without verification.

4. Ld. A.R. for Revenue reiterated the grounds of appeal.



5. We have considered the contentions of both sides. At the very outset, it must be stated that in the show cause notice or in the impugned order-in-original, the manner of payment of GTA service tax is not an issue at all. What is at issue is whether the GTA service tax paid by the respondents was admissible as cenvat credit in the given circumstances. The show cause notices contain only the following allegations with regard to raising of demand for the impugned cenvat credit:

"Whereas it appears that the service tax payable on GTA service shall be only 25% of the gross amount charged as freight. Amendment in the Cenvat Credit Rules, 2004 w.e.f. 1.3.2008 provides that the GTA service providers shall not be allowed to avail input credit under Cenvat Credit Rules, 2004 as Rule 2 has been amended to exclude goods transport agency from the scope of output service.

During the course of test check of the records of the notice by Audit, it was noticed that the notice has paid service tax on "Goods Transport Agency (GTA) on 25% of the gross amount charged as freight and took cenvat credit simultaneously. But as amendment in Cenvat Credit Rules, 2004 has been made w.e.f. 1.3.2008 the Cenvat Credit availed by the notice on GTA is not admissible. The notice vide their letter No. G.M. IAI A13 2009 has informed the amount of service tax availed by them on GTA during the period 2008-09 as Rs.42,46,743/- (Rs.41,23,052/- + E.C. Rs.82,460/- + HEC of Rs.41,231/-) which does not appear to be admissible to them and is recoverable under Rule 14 of Cenvat Credit Rules 2004 read with Section 73 of the Act.

Notwithstanding the vagueness of the basis of the allegation in the show cause notices, the show cause notices do not mention as to how the said amendment w.e.f. 1.3.2008 made the respondents ineligible for the impugned credit. Indeed the said amendment does not even remotely have any bearing on the issue of admissibility of the Cenvat credit of service tax paid on G.T.A. services. Further we find that CBEC Circular No. 97/8/2007-ST, dated 23.8.2007, clearly states as under:



It is therefore, clear that for a manufacturer/consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. (emphasis added).

Thus it is evident that even according to the aforesaid Circular of CBEC, service tax paid on GTA service by the respondents for transportation of goods upto their depot was eligible for cenvat credit taken by them. It has also been so held by the Punjab & Haryana High Court in the case of Ambuja Cements Ltd. v. UOI - 2009 (14) STR 3 (P & H).

6. One of the grounds in Revenue's appeals is that Orders-in-original under reference do not reveal as to whether the adjudicating authority had caused any verification to ascertain that the respondents had availed credit in respect of finished goods only upto the place of removal and not beyond that point. The said ground is not a tenable ground for filing of appeal as has been held in the case of C.C.E, LTU , Chennai vs. Areva T & D (I) Ltd. (supra); in para 5 of the said order, the Tribunal held as under:

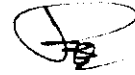
5. We find that two grounds have been taken by the Committee of Chief Commissioners. Firstly, the Committee has opined that giving the benefit of abatement based on the certificate given by the transporters for the period from 9/05 to 9/07 without seeking and verifying the connected documents is legally not tenable. However, we find that the Committee of Chief Commissioners has not verified any documents nor any material has been provided by it to show to what extent the abatement allowed by the adjudicating Commissioner has been wrongly allowed. Under the statutory provisions, only when the Committee of Chief Commissioners comes to a conclusion that an order is not legal or proper it can authorize filing an appeal against the same. To come to such a conclusion, the Committee must do its own fact finding and come to a firm conclusion regarding the order reviewed by it not being legal and proper. It cannot, in our view, authorize filing an appeal without coming to such a conclusion. There cannot be a ground for the Tribunal to interfere with an order passed by the adjudicating Commissioner unless the Committee of Chief Commissioners does its own home work and verification, and

points out the basis on which it finds the order under review to be not legal and proper. As such, we find that the ground of appeal taken in this case is vague and it does not provide any basis for holding any part of the relief granted by the Commissioner to be not legal or proper. It appears to us that the review undertaken by the Committee is rather superficial and the same has resulted in filing these avoidable appeals before the Tribunal. The adjudicating Commissioner has dropped a total demand of about Rs. 1.90 Crores but the Committee of Chief Commissioners has not provided any documentary evidence on the basis of which the Tribunal can either modify the adjudicating Commissioner's order or confirm any part of the said demand of Rs. 1.90 crores.

7. In the light of the foregoing, we find no merit in Revenue's appeals and the same are therefore dismissed.



(Justice G. Raghuram)
President



(R.K. Singh)
Technical Member

scd/