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REGISTERED / AD

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

Dated: **10/11/2015**

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

Final Order No. **ST/A/53381/2015-CU[DB]** dated **27/10/2015**

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/Stay/51287/2014	ST/51108/2014	**Hsr Re Rollers Pvt Ltd** 234 And 237 Urla Industrial Area RAIPUR C.G
			Name and Address of Respondent
2			C.C.E. & S.T.-Raipur CENTRAL EXCISE BUILDING,DHAMTARI ROAD, TIKRAPARA, RAIPUR, CHHATTISGARH-492001

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

Bipin Garg
B-1/1289, A - Vasant Kunj,
New Delhi
Delhi

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 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
15 C.D.R. **16** Office Copy **17** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
R.K. PURAM, WEST BLOCK NO.2, NEW DELHI-110066
COURT NO. I

Date of hearing: 27.10.2015

Service Tax Stay application No. 51287 of 2014 in
Service Tax Appeal No. 51108 of 2014
[Arising out of Order-in-Appeal No. 199 (ST)/RPR-1/2013 dated 21/11/2013 passed by The Commissioner (Appeal) Custom & Central Excise, Raipur]

For Approval and Signature:
Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Shri C.J., Mathew, 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?	

HSR Re-Rollers Pvt. Ltd. **Appellant**

Vs.

C.C.E., Raipur (C.G) **Respondent**

Appearance: Shri Bipin Garg, Advocate for the appellant.
Shri K. Poddar, DR for the respondent.

Coram: Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Shri C.J., Mathew, Member (Technical)

Final Order No. 53381/2015

Per: Per: C.J. Mathew

This application seeks stay of recovery of tax of Rs. 76,202/- and penalties under section 76, 77 and 78 in order-in-appeal no. 199(ST)/RPR/APPL-I/2013 dated 21/11/2013 of Commissioner Customs and Central Excise (Appeals), Raipur-I.

2. The appellant, registered as provider of "business auxiliary service" and as recipient of "goods transport agency" services, had installed a weighbridge which was also allowed for use by other entities. On the basis of accounting entries, a notice was issued for recovery of tax on amounts alleged to have been received from such outside entities for use of the weighbridge for rendition of "support services of business of commerce" as defined in section 65(104) of Finance Act, 1994. The original authority has confirmed the demand for the period 2006-2007 to 2008-2009. The appellate authority concurred with this finding on the basis of records as the appellant did not respond to notices. It is noted that the appellant did not appear before the original authority too.

3. The main contention of the appellant is that they had not had an opportunity to present evidence in their defence as their accountant had absconded with relevant documents. Learned Counsel for appellant reiterated that the first appellate

authority had not considered their claim on merit and had, by recourse to Rule 5 of Central Excise (Appeals) Rules, 2001, refused to entertain grounds not raised in original proceedings.

4. Learned Counsel for applicant contends that the weighbridge was not provided to or used by their customers or clients, that the receipts of appellant had not exceeded the limits laid down in notification no. 6/05-ST dated 1st March, 2005 for the year 2006-07 and that receipts of Rs. 3.15 lakhs during 2007-2008 was also exempt by notification no. 4/2007-ST dated 1st March, 2007.

5. We have gone through the relevant provisions of the Finance Act, 1994 and the Central Excise (Appeals) Rules, 2001. The claim of the learned Counsel regarding inapplicability of the Central Excise (Appeals) Rules, 2011 is not tenable. However, the interests of justice require affording of opportunity for representation before the appropriate authority. While the appellant may have been less than diligent in defending its position before the original authority, its claims against leviability of tax should not be brushed aside without examination. The appellate authority is, therefore, directed to consider and decide on each of the pleas raised by the

appellant. Accordingly, the stay application is allowed by way of remand.

6. At the same time, negligence on the part of the appellant having caused an additional and unnecessary burden, we impose costs of Rs. 5,000/-.

[Operative portion of the order has already been pronounced in the open court.]

(Justice G Raghuram)
President

(C.J.Mathew)
Member (Technical)

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