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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: **04/04/2014**

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

Final Order No. **ST/A/51317/2014-CU[DB]** dated **27/02/2014**

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/13/2009	ST/616/2008	**C.C.E Bhopal** Hoshangabad Road, 48, Administrative Area, Area Hills,Bhopal (M.P.) 462011
			Name and Address of Respondent
1		ST/616/2008	**ROHIT SURFACTANTS PVT. LTD.** PLOT NO. 11-24, SECTOR-B, MPAKVN GROWTH CENTRE, SIDHGAWAN, DISTRICT SAGAR (M.P.) PIN-470004.

Other Appellants and Respondents as per Annexure

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

A.P.Mathur, Advocate
167, Tagore Town
(Near Kamla Nehru Hospital)
Allahabad-211 002

4 Bar Association, CESTAT, Delhi
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 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH NEW DELHI
COURT NO. I

Date of Hearing/decision:27.02.2014

Appeal No. ST/616/2008 along with
Cross Application No. ST/Cross/13/2009-CU[DB]

[Arising out of Order-In-Appeal No. 98/BPL/2008, dated 15.07.2008, passed by Commissioner (Appeals),Central Excise, Bhopal]

For approval and signature:
Hon'ble Mr. Justice G.Raghuram, President
Hon'ble Mr. Rakesh Kumar, Member(Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should 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 Departmental authorities?	

C.C.E. - Bhopal

Appellant

Vs.

Rohit Surfactants Pvt. Ltd.

Respondent

Appearance:
Sh. Amresh Jain, DR – for the Appellant
Sh. A.R.Mathur, Advocate– for the Respondent

CORAM :
Hon'ble Mr. Justice G.Raghuram, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

FINAL ORDER: 51317/2014

Per Rakesh Kumar:-

The facts leading to this appeal by the Revenue are in brief as under:-

1.1 The Respondent are a unit located at Plot No. 11-24, Sector B,MP AKVN, Growth Centre, Sidhgaon, Sagar (M.P.). They are engaged in the manufacture of Soap and Detergent Powder. Their head office is situated at Kanpur and there are other units of the Respondent Company engaged in the manufacture of soap and detergent powder which are located at Alwar (Rajasthan), Bhogonipur(Kanpur), Rania (Kanpur), Sahibabad (UP), Dhar (Pithampur), Chowbeypur (Kanpur), Sagar (M.P.) etc. All these units including the Respondent Company are using Ghari Brand on the soap and detergent powder manufactured by them. The Ghari Brand being used by the Respondent Company belongs to M/s. Ghari Industries Pvt. Ltd., Kanpur who charge royalty from the Respondent Company for using their brand name. M/s. Ghari Industries Pvt. Ltd. have paid service tax on the royalty received from the Respondent Company for using their brand name and in this regard, they have issued invoices to the Respondent Company at the address of their head office. The head office of the Respondent Unit during the period of dispute distributed the service tax credit for which they have registration and issue invoices to the various manufacturing units including the Respondent unit. The total Cenvat Credit of service tax paid by M/s. Ghari Industries Pvt. Ltd. on IPR Service, passed on by the Respondent Company to the Respondent Unit during the period 2006-2007 ~~for~~ is Rs. 2,25,470/-.

1.2 The Department examined the records of IPR service provider— M/s. Ghari Industries Pvt. Ltd. and found that they had paid service tax by utilizing the Cenvat Credit of GTA service and according to the Department, the credit of the GTA service received by them could not be utilized towards the payment of service tax on the IPR service, as GTA services cannot be input for 'Intellectual Property Right" service. Accordingly the Additional Commissioner vide order-in-original No.02/ Addl. Commr./ST/2007 dt. 12.10.2007 confirmed the service tax demand of Rs. 20,16,879/- and Ed. Cess of Rs. 40,338/- against M/s. Ghari Industries Pvt. Ltd. for the period of Oct.'05 to March'06 on the ground that this much amount of service tax was wrongly paid by M/s. Ghari Industries Pvt. Ltd. by utilizing the Cenvat Credit of GTA service received. The Department accordingly took the view that to the extent the service tax on IPR service was wrongly paid by M/s. Ghari Industries Pvt. Ltd, the Respondent would not be eligible for Cenvat Credit. It is on this basis that Jurisdictional Assistant Commissioner vide order-in-original dt. 22.04.08 confirmed Cenvat Credit demand of Rs. 2,25,470/- against the Respondent Unit along with interest thereon and imposed penalty of equal amount on them under section 15 of the Cenvat Credit Rules, 2004.

1.3 On appeal being filed to the Commissioner (Appeals) against this order, the Commissioner (Appeals) vide order-in-appeal dt.15.07.08 set aside the Assistant Commissioner's Order against which this appeal has been filed by the Revenue.

2. Heard both the sides.

3. Sh. Amresh Jain, learned DR, assailed the impugned order by reiterating the findings of the Commissioner. He pleaded that when service tax has been wrongly paid by M/s. Ghari Industries Pvt. Ltd. on IPR service provided by them to the Respondent in as much as the same was wrongly paid by utilizing the GTA service Credit, the Respondent Unit would not be eligible for Cenvat Credit, as the service tax wrongly paid by utilizing the Cenvat Credit have to be treated as no payment of service tax, and that in view of this, the impugned order is not correct.

4. Sh. A.K.Mathur, Advocate, the learned counsel for the Respondent, pleaded that just because there is dispute over mode of payment of service tax by M/s. Ghari Industries Pvt. Ltd., whether through Cenvat Credit or through PLA, the Cenvat Credit of the Service tax paid by M/s. Ghari Industries Pvt. Ltd. and which is reflected in the invoices issued by them, cannot be denied to the Respondent, that this is not a case of where service tax paid by M/s. Ghari Industries Pvt. Ltd. has been refunded to them, that when there is no variation in the quantum of service tax paid by M/s. Ghari Industries Pvt. Ltd.,. the Cenvat Credit available to the Respondent cannot be varied and that in view of this there is no infirmity in the impugned order.

5. We have considered the submissions from both the sides and perused the records. There is no dispute that Respondent Company had availed the service of "Intellectual Property Rights" from M/s. Ghari Industries Pvt. Ltd. by using their brand name "Ghari" on the detergent and soap manufactured by them, for which they had paid royalty to M/s. Ghari

Industries Pvt. Ltd. and M/s. Ghari Industries have paid service tax on that amount and have reflected the same in the invoices issued by them. The dispute is over the mode of payment of service tax by M/s. Ghari Industries Pvt. Ltd.-whether through Cenvat Credit of GTA service or through PLA. In our view so long as the service tax payment by the service provider has not changed and no part of the service tax paid by him has been refunded to him, the Cenvat Credit on the basis of the invoices issued by the service provider cannot be denied to the service recipient. Even if there is dispute over the mode of payment of service tax by the service provider alleging that the service tax has been paid by wrong utilization of Cenvat Credit, this is not the ground on which the Cenvat Credit can be denied to the service recipient who had availed the Cenvat Credit on the basis of the invoices issued by service provider. The only situation in which the Cenvat Credit could be denied to the service recipient is when the service tax paid by the service provider and whose Cenvat Credit taken by the service recipient, has been refunded to the service provider. But this is not the situation in this case. In view of this, we do not find an infirmity in the impugned order. The Revenue's appeal is dismissed.

(Justice G.Raghuram)
President

(Rakesh Kumar)
Member (Technical)

S.Kaur