FAX : 011-26108426 **REGISTERED / AD**

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

Dated: **27/11/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/53514/2015-CU[DB]** dated **05/11/2015**

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/105/2009,	ST/293/2009	C.C.E. INDORE Central Excise Building, Dhamtari Road, Tikrapara, Raipur 492001.
			Name and Address of Respondent
2			DROLIA ELECTORSTEELS PVT. LTD.UNIT-II,VILLAGE SILTARA, (DHARSINWA),DISTT. RAIPUR (C.G.)

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

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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order : 5.11.2015

Appeal No. ST/293/2009-CU(DB) with CO/105/2009

(Arising out of Order-in-Appeal No. 23/RPR-I/2009 dated 18.2.2009 passed by the Commissioner (Appeals), 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 Drolia Electrosteels (P) Ltd. — Respondent

Appearance:

Shri Amresh Jain, D.R. - for the Appellant

Shri Manish Saharan, Advocate - for the Respondent

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

F. Order No. 53514/2015

Per **R.K. Singh :**

Revenue is in appeal against order-in-appeal dated 19.2.2009 which set aside the order-in-original dated 29.12.2008 in terms of which Cenvat credit of Rs.80,618/- was disallowed and ordered to be recovered along with interest and penalty of Rs.80,618/- was also imposed.

2. The primary adjudicating authority had held that the appellant had taken Cenvat credit of service tax paid by it as service recipient under GTA service with reference to the consolidated bills raised in respect of transportation, loading and unloading charges paid to M/s Hira Industries as transportation charges, while the service was covered under cargo handling service and therefore service tax was to be paid by service provider and ~~therefore~~ so the amount paid by the appellant on the service provided by the service provider cannot be treated as payment of service tax. Thus observing the credit of Rs.80,618/- was disallowed. The Commissioner (Appeals) observed that the description on the relevant invoices was "recovery of transportation, loading and unloading charges" and cited clarification of CBEC issued vide Circular No. 104/07/2008-ST dated 6.8.2008 that in such a situation the entire service was to be treated as GTA service and not cargo handling service, holding that the said clarification was squarely applicable to the present case.

3. Revenue has contended that CBEC circular cited by Commissioner (Appeals) was issued in response to the representation of All India Motor Transport Congress. The essential point in that circular was that this facility was provided to Goods

Transport Agencies which issued consignment notes ~~and~~ providing composite service including GTA service as the principal service, while in the present case M/s Hira Industries is not a Goods Transport Agency and did not issue consignment notes.

4. In the cross objections filed by the respondent it contended that the service was GTA service because that was the essential character thereof though it did include loading and unloading. ~~packing and unpacking~~.

5. We have considered the contentions of both sides. The essential issue in the present case is whether the service for which M/s Hira Industries were paid fell within the scope of GTA service even though the charges recovered pertained not only to transport of goods but also for loading and unloading. We find that the Commissioner (Appeals) has taken into account the nature of service to arrive at the classification of service as GTA service. It cited the clarification issued by CBEC vide Circular No. 104/7/2008 –ST dated 6.8.2008 the relevant paras of which are reproduced below :

> *"Issue 2 : GTA providing service in relation to transportation of goods by road in a goods carriage also undertakes packing as an integral part of the service provided. It may be clarified whether in such cases service provided is to be classified under GTA service.*
>
> *Clarification : Cargo handling service [Section 65(105)(zr)] means loading, unloading, packing or unpacking of*

cargo and includes the service of packing together with transportation of cargo with or without loading, unloading and unpacking. Transportation is not the essential character of cargo handling service but only incidental to the cargo handling service. Where service is provided by a person who is registered as GTA service provider and issues consignment note for transportation of goods by road in a goods carriage and the amount charged for the service provided is inclusive of packing, then the service shall be treated as GTA service and not cargo handling service."

We are of the view that in the given circumstances Commissioner (Appeals) was justified in holding that the said CBEC clarification was squarely applicable to the facts of the present case also and therefore the impugned service was GTA service and not cargo handling service.

6. In the light of the forgoing analysis, we do not find any such infirmity in the impugned order as to warrant appellate intervention and therefore the appeal is dismissed.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

RM