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: **30/12/2014**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/54813/2014-CU[DB]** dated **18/12/2014**

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/412/2009	N.C.R.Building, Statue Circle, "C" Scheme, Jaipur 302005.
		Name and Address of Respondent
2		NIRMA LIMITED, C-128, MADRI INDUSTRIAL AREA, MADRI, UDAIPUR (RAJASTHAN),,,

Copy To

3Advocate(s) / Consultant(s):

Shri.Pritam Singh Jhola, (AGM)

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 : 18.12.2014

Appeal No. ST/412/2009-CU(DB)

[Arising out of Order-in-Appeal No.16-17(DK)ST/JPR-II/2009 dated 26.2.2009 passed by the Commissioner, Central Excise, Jaipur]

For Approval & Signature :

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. R.K. Singh, Member (Technical)

Ashok Jindal

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, Jaipur-II — Appellant

Vs.

M/s Nirma Ltd. — Respondent

Appearance:

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

Shri Pritam Singh Jhola, (AGM) - for the Respondent

Coram : **Hon'ble Mr. Ashok Jindal, Member (Judicial)**
Hon'ble Mr. R.K. Singh, Member (Technical)

F. Order No. 54813/2014.

Per **Ashok Jindal :**

Revenue is in appeal against the impugned order wherein ld. Commissioner (Appeals) has set aside the adjudication order by holding that the respondent is not liable to pay service tax under the category of Good Transport Agency Services.

Ashok Jindal

2. The brief facts of the case are that the respondent procured Dolomite and Limestone from the mines of M/s Sohan Singh Joginder Singh & Co. and M/s Gurpreet Minerals & Chemicals, Udaipur. The goods are purchased by the respondent on FOR basis and did not pay any transportation charges. Invoices also does not mention any transportation charges. But Revenue is of the view that the goods transported from the mines by the transporter to the respondent's factory, the respondent is liable to pay service tax on transportation charges. Therefore, impugned proceedings were initiated against the respondent and a Show Cause Notice was issued on 15.5.2007 for the period 1.1.2005 to 30.9.2006 for demanding service tax on transportation charges along with interest and penalties under Sections 76, 77 and 78 of Finance Act were also imposed. The adjudicating authority confirmed the demand as proposed in the Show Cause Notice. On appeal preferred by the ld. Commissioner (Appeals), the adjudication order was set aside. Aggrieved from the said order, Revenue is in appeal before us.

3. Shri B.B. Sharma, ld. AR submits that the impugned order is not sustainable in the eyes of law as the ld. Commissioner (Appeals) held that in this case the extended period of limitation is not invokable therefore set aside the demand. Moreover, he also observed that as whatever service tax is to be paid by the respondent the same is available as Cenvat credit to them.

Therefore, it is a situation of Revenue neutrality. The observation made by the ld. Commissioner (Appeals) is not correct. Therefore, the Revenue is in appeal and the same is to be allowed.

4. Heard the ld. AR and perused the record.

5. On perusal of the record, we find that in this case respondent has not paid any transportation charges to the supplier of the goods, as the goods were received by them on FOR basis. As the respondent has not paid any transportation charges, the question of paying service tax does not arise. In these circumstances, the ld. Commissioner (Appeals) has rightly held that extended period of limitation is also not invokable. In these terms, we do not find any infirmity in the impugned order and the same is upheld. The appeal filed by Revenue is dismissed.

(Dictated & pronounced in open Court)

23.12.14

(Ashok Jindal)
Member (Judicial)

(R.K. Singh)
Member (Technical)

RM