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: **29/12/2014**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/54795/2014-CU[DB]** dated **02/12/2014**

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/MISC/54959/2014	ST/313/2012	**Gap International Sourcing (india) Pvt. Ltd.** Unit No 201, Dlf South Count, District Centre, Saket, N Delhi-17b-1/i-2, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi.
			Name and Address of Respondent
2			C.C.E.-Delhi-ii C R BUILDING,I P ESTATE, DELHI-110109

Copy To

3 Advocate(s) / Consultant(s):

Pricewaterhouse Cooper (P) Ltd
BUILDING NO.10, 18TH FLOOR,
TOWER C, DLF CYBER CITY,
GURGAON,
HARYANA
122002

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/Order : 2.12.2014

No. ST/Misc./54959/2014 and ST/313/2012-CU(DB)

[Arising out of Order-in-Appeal No. 438/S. Tax/D-II/2011 dated 1.12.2011 passed by the Commissioner (Appeals), Central Excise, Delhi]

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?	

M/s GAP International Sourcing (India) Pvt. Ltd. Appellant

Vs.

CST, Delhi Respondent

Appearance:

Shri N. Venkataraman, Sr. Advocate - for the Appellant
Shri Paresh Khandelwal, C.A.

Smt. Suchitra Sharma, A.R. - for the Respondent

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

F. Order No. 54795/2014

Per **R.K. Singh :**

The appellants have filed Misc. application for early hearing of their appeal against Order-in-Appeal No. 438/S.Tax/D-II/2011 dated 1.12.2011. The Misc. application for early hearing has been filed on the basis of a Circular dated 13.9.2013 in terms of which early hearing can be requested in those cases where the issue involved is covered by the judgement of CESTAT or the higher Courts. The appellants have stated that the issue involved in their case is covered by judgement of CESTAT in the case of ***Paul Merchant Ltd. Vs. CCE, Chandigarh*** – 2012-TIOL-1877--CESTAT-Del. The ld. DR also does not object to the request. Therefore the Misc. application is allowed.

2. The issue involved in this case is briefly stated as under :

The appellants filed 17 refund claims under Notification No. 5/2006-ST (NT) dated 14.3.2006 for refund of the input service credit. The same were rejected by the primary adjudicating authority [and the rejection was upheld by the Commissioner (Appeals)] on the ground that:

(i) The service provided did not qualify to be export of service under Export of Service Rules, 2005;

(ii) The services rendered was not Business Auxiliary Service;

(iii) The services in respect of which the Cenvat credit was taken did not qualify to be called input service within the definition of Cenvat Credit Rules 2004;

3. The appellants have contended that in their own case decided by CESTAT 2014-TIOL-465-CESTAT-Del., CESTAT has held the impugned service to be classifiable under Business Auxiliary Service. Also CESTAT

has held in the case of ***Paul Merchant Ltd.*** (supra) that in the given situation the service rendered by the appellants qualified to be export of service under Export of Service Rules, 2005. The appellants therefore contended that the impugned order is not sustainable.

4. We have considered the contentions of both sides. We find that the refund was rejected essentially on the ground that :

(1) The service rendered was not Business Auxiliary Service ;

(2) The service rendered did not tantamount to export of service.

(3) The input services in respect of which the refund of Cenvat credit was sought did not qualify to be input services.

5. We find that in the order in appeal the Commissioner (Appeals) while upholding the view of the adjudicating authority that the service rendered did not qualify to be Business Auxiliary Service or export of service has not given any finding as to whether the services in respect of which the credit was taken (the refund of which was sought) qualified to be input service in the light of the submissions of the appellants. In the appellant's own case CESTAT has held that in the given circumstances the service rendered by the appellants qualified to be covered under the Business Auxiliary Service and in the wake of the CESTAT judgement in case of ***Paul Merchant Ltd.*** (supra) it also amounted to export of service. However, as stated earlier, the Commissioner (Appeals) has not given any finding whether ~~that~~ the services in respect of which credit

was taken and the refund of which has been sought qualified to be input service. Accordingly, we set aside the impugned order and allow the appeal by way of remand to Commissioner (Appeals) to decide the matter afresh regarding the admissibility of refund taking into account the judgements of CESTAT in the case of ***Paul Merchant*** (supra) and in appellants own case referred to in para-3 above and giving a clear finding regarding the eligibility of the services in respect of which credit was taken to be called input services.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

RM