TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. ST/475 /2008 . ST/STAY/1486/2008- CU[DB] Date 18/09/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S AREVA T & D INDIA LTD.
NAINI,ALLAHABAD.
M/S AREVA T & D INDIA LTD. Appellant
Vs
C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of Final order No. ST/236/08 CU[BR] dated 6/8/08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax alongwith Stay order No. St/374/08

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD
2. Adv. / Consult
MR.L.P. ASTHANA & MS REENA KHAIR
R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.
3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO.I

Service Tax Appeal No. 475 of 2008 with Stay No. 1486 of 2008

[Arising out of Order-in-Original No. MP (ST-34/2007) 35/2008 dated 11.04.2008 passed by the Commissioner of Central Excise Allahabad]

Date of Hearing/ decision: 06.08.2008

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, 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.	NO
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Areva T&D India Limited — Appellant

Vs.

C\CE, Allahabad — Respondent

Appearance:

Ms. Reena Khair, Advocate for the Appellant
Mr. Vijay Kumar, Authhorized Representative (DR) for the Respondent

CORAM: Mr. Justice S.N. Jha, President
Mr. M. Veeraiyan, Member (Technical)

Final **ORDER** No ST/236/08
Stay Order No ST/374/08

Per M. Veeraiyan:

We heard both sides on the stay petition for a while and thereafter felt that the appeal can be finally disposed of on a short point and accordingly, we waive pre-deposit of the dues and proceed to dispose of the appeal finally.

2. The relevant facts, in brief, are as follows-

a) The appellant is a manufacturer of transformers, switchgear and parts and they are availing the services of GTA. They have claimed the benefit of Notification No. 32/2004-ST dated 03.12.2004 and were paying service tax on 25% of value of freight charges on 100% of the value of the freight paid by them.

b) Notification No. 32/2004-ST dated 3.12.2004 is subject to fulfilment of the conditions that the GTA did not avail the credit of duty paid on inputs or capital goods used for rendering such taxable service. A show cause notice was issued that the appellant has not produced evidence in the form of declaration in each of the consignment indicating that the GTA has not availed the said credit and accordingly confirmed demand of Rs. 1,31,73,173/- as service tax alongwith interest and imposed equal penalty under section 78 of the Finance Act.

3.1. Learned Advocate for the appellant submits that the exemption notification is subject to conditions which are required to be fulfilled not by the appellant personally but by third parties namely GTAs. He admitted that in these cases the required endorsement has not been made in the concerned consignment notes. However, he claimed that in certain cases, such endorsements were given by the GTAs on the bills /invoices raised by them. In cases, where such endorsements were not there in the bills / invoices, they have produced certificate from the concerned GTA that they have not availed such credit. She also submitted that these GTAs were not even registered for providing services of the GTA with the excise Department.

3.2 Denial of the benefit of notification No. 30/2004 for not following the procedure prescribed by the Board vide clarification dated 27th July 2005 may not be warranted. The conditions of Notification No. 30/2004 has been substantially complied with as per the evidence produced by them before the adjudicating authority. She also relies on the latest clarification issued in F. No. 137/154/2008-CX-4 dated 21.08.2008 modifying the circular dated 27.7.2005 and containing direction for deciding the past cases.

4. Learned DR submits that to avail the benefit of Notification No. 32/2004 the conditions stipulates thereunder require to be fulfilled; as the appellant are availing the benefit, responsibilities is on them to prove that the conditions are fulfilled. The manner of fulfilling the condition has been prescribed by the instructions dated 27th July 2005 the latest instructions dated 21.8.2008 relaxing the conditions of endorsement in the consignment note should be applied for the period from January 2005 to July/August 2005 only.

5.1. We have carefully considered the submissions from both sides. In respect of GTA services, the liability to pay tax could be on the consignee or consigner or GTA. The benefit of Notification No. 32/2004 is subject to the condition mentioned therein regarding non availability of cenvat credit by the concerned GTA. There is neither any allegations in the show cause notice and nor finding in the order-in-original that the GTA have availed cenvat credit on inputs and capital goods and therefore the recipients are not eligible to avail the benefit of Notification No. 32/2004. In other words, only a doubt has been raised that the GTAs concerned might have availed credit on inputs and capital goods. The said charges are denied vehemently by the appellant. They have also produced evidence in the form of endorsements in the bills and in the form of declarations from concerned GTAs.

5.2. We find that no verification has been made by the Department to test the veracity of the claim by the appellant. The Commissioner was not right in brushing aside the certificate without causing any verification. In the interest of justice, we feel that this should have been undertaken before alleging and confirming such a huge demand.

6. To enable the above, we set-aside the impugned order of the Commissioner and remand the matter to the original authority for conducting necessary verification and also considering the applicability of the clarification dated 21.8.2008 by the Board. The appeal is allowed by way of remand. The stay petition is also disposed of.

[Dictated and pronounced in the open Court on 05.09.2008]

(Justice S.N. Jha)
President

[M. Veeraiyan]
Member [Technical]

[Pant]