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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

Appeal No. ST/345 /2007 - CU[DB] Date 06/11/2008

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

To :
M/S GAURAV KRISHNA ISPAT (I) PVT. LTD.

URLA INDL. AREA, RAIPUR, C.G.

M/S GAURAV KRISHNA ISPAT (I) PVT. LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/325/08 **CU[DB]** dated 17.10.08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   C.C.E. RAIPUR
   CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.
2. Adv. / Consult
   MR.BIPIN GARG,
   B-1/1289-A VASANT KUNJ, NEW DELHI - 70
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 - 3
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
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 & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Service Tax Appeal No. 345 of 2007

(Arising out of Order-in-Appeal No. 18(ST)/RPR-I/2007 dated 12.3.2007 passed by the Commissioner (Appeals), Central Excise & Customs, Raipur)

For approval and signature

HON'BLE MR. S.S. KANG, VICE 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 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 Departmental authorities.	

M/s Gaurav Krishna Ispat (I) Pvt. Ltd. — Appellant

Vs.

CCE, Raipur — Respondent

Appearance:
Shri Atul Gupta, C.S. - For appellant
Shri Fateh Singh, DR - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 17.10.2008

Final Order No....ST/325/08..................dated...17/10/08

Per S.S. Kang:

Heard both sides.

2. The appellant filed this appeal against the impugned order whereby Cenvat credit was denied in respect of input service relating to GTA service only on the ground that the credit has been availed on the strength of TR-6 challan during the period in dispute.

3. The contention of the appellant is that by Notification No. 28/2005-CE dated 7.6.2005 with effect from 16.6.2005 the TR-6 challan is made a valid duty paying documents for the purpose of Cenvat credit. The credit was denied only on the ground that prior to 16.6.2005 as the TR-6 challan was not valid duty paying documents for the purpose of taking credit.

4. The appellant relied upon the decision of Tribunal in the case of **CCE Vs. Crompton Greaves Ltd.** reported in 2008 (226) ELT 117 and in the case of **CCE Vs. Essel Pro-Pack Ltd.** reported in 2007 (8) STR 609 whereby the credit was allowed on the strength of TR-6 challan even

prior to Notification No. 28/2005. The contention of the Revenue is that during the relevant period TR-6 challan was not valid duty paying documents for taking credit, therefore, as the credit has been availed on the document other than prescribed under the Central Excise Rules, therefore, credit was rightly denied.

5. We find that the Tribunal in two cases relied upon by the respondent allowed the credit on the basis which was availed on TR-6 challans in respect of Service Tax paid in respect of service received by the manufacturer. The Tribunal in the case **CCE Vs. Essel Pro-Pack Ltd.** (supra) held as under :-

> The Commissioner (Appeals) vide his impugned order has held the said documents to be proper for the purpose of availing credit by observing as under :-
>
> "TR-6 challan is the most primary document evidencing payment of duty/tax. No doubt the TR-6 challan was not included in the list of specified documents. It was included by virtue of Notification No. 28/2005-CE (NT)

dated 7.6.2005. I find that this is an inadvertent omission which was rectified by issuing the said Notification. This is so because any duty payment documents is related to, and based on TR-6 challan which is the source document. Similar view has been taken up by the Hon'ble Tribunal in the case of National Organics Chemical India Ltd. reported in 2004 (178) ELT 331 (Tribunal). The appellant's case is squarely covered by this judgment. I, therefore, hold that disallowance of Cenvat credit is not correct. Consequently interest and penalty also do not sustain. Order-in-original is liable to be set aside.

Revenue in the Memo of appeal has again reiterated the same stand. Shri Prakash Shah, learned Advocate appearing for the Respondents submit that during the relevant time there was no list of specified documents on the basis of which credit could be taken. I have heard Shri C.S. Biradar and Shri S.R. Savant appearing for other appellants. As such, the appellate authority was right in holding TR-6 challan as the basis for availing service tax credit.

I agree with the reason adopted by the Commissioner (Appeals). The Revenue in their appeal has nowhere contended as to what was the specified document for availing credit during the relevant time. If no document was mentioned, TR-6 challan has to be considered as the proper document reflecting payment of duties. Further, it is also not the Revenue's case that the service tax was not paid by the Respondents or they were otherwise not entitled to the credit of the same.

In view of the matter, I do not find any infirmity in the Commissioner (Appeals) order. The Revenue's appeals are therefore rejected."

6. Further, we find that with effect from 16.6.2005 the TR-6 challan was included in the list of valid document for taking credit by Notification No. 28/2005-CE. In these circumstances, we agree with the contention of the appellant. The impugned order is set aside and appeal is allowed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RM