

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

Appeal No. ST/459 /2007,465 /2007,558&560/2007-SM[BR]

Date 14/01/2008

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

To :  
C.C.E. KANPUR  
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E.JAIPUR-I  
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME  
JAIPUR-302005

C.C.E. KANPUR

Appellant  
Vs  
Respondent

M/S CARONA PLUS INDUSTRIES LTD.

I am directed to transmit herewith a certified copy of Final order No.70-73/2008-SM[BR] dated 7.1.2008  
passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax

  
Assistant Registrar  
(SM Appeal Branch)

**Copy to :**

1. Respondent

M/S CARONA PLUS INDUSTRIES LTD.  
118/585, KAUSHIPURI, KANPUR

M/S KAJARIA CERAMICA LTD.  
VILL. GAILPUR, THE. TIZARA, BHIWADI [RAJ.]

2. Adv. / Consult SHRI. ATUL GUPTAC.S.  
B-1/1289-A, VASANT KUNJ NEW DELHI-70 ,

2. SHRI. HEMANT BAJAJ ADV.  
A-5, BASEMENT LAJPAT NAGAR-III NEW DELHI-24.

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

M/S CARONA PLUS INDUSTRIES LTD.  
118/585, KAUSHALPURI, KANPUR

M/S PRACFHI LEATHERS PVT. LTD.  
C-3, UDYOG NAGAR NEAR CTI, KANPUR [U.P]

  
Assistant Registrar  
(SM Appeal Branch)

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IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL, NEW DELHI  
PRINCIPAL BENCH, NEW DELHI  
COURT NO. II

**Service Tax Appeal No. 459, 465, 558 & 560 of 2007-SM(BR)**

(Arising out of Order-in-Appeal No. 199-ST/APPL/KNP/2007 dated 31.5.07, 152 (GRM)ST/JPR-I/2007 dated 27.8.2007, 201-ST/AppI/KNP/2007 dated 30.5.2007 passed by the Commissioner (Appeals), Central Excise, Kanpur/Jaipur-I)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT

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 Carona Plus Industries Ltd. & Others

Appellant

Vs.

CCE, Kanpur/Jaipur-I & Vice Versa

Respondent

Appearance:

S/Shri Atul Gupta CS & Hemant Bajaj, Advocate  
Ms. Archana P. Tiwari, Jt. CDR

- For appellant  
- For respondent

CORAM:

HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 7.1.2008

FINAL Order No. .... 70-73/08-SM(BR) dated .....

Per S.S. Kang:

Common issue is involved in these appeals, therefore, are being taken up together.

2. The appellant filed these appeals against the impugned order whereby demand of Service Tax in respect of output service from Cenvat credit was disallowed.

3. In the case of M/s Karona plus Industries, the Revenue also filed appeal for imposition of penalty.

4. I find that this issue is covered by the decision of the Tribunal in the case of **India Cements Ltd. Vs. CCE** reported in 2007 (80) RLT 719. The Tribunal held as under :-

“After examining the provisions of the CENVAT credit Rules, 2004, we come across an Explanation to the definition of ‘output service’ under Rule 2(p), which reads as under :-

“Explanation :- For the removal of doubts it is hereby clarified that if a person liable for paying service tax does not provide any taxable service or does not manufacture final products, the service for which he is liable to service tax shall be deemed to be the output service.”

Admittedly, the appellants did not provide any taxable service, though they did manufacture an excisable product. Again, it is not in dispute that they were liable to pay service tax on GTA Service received by them in connection with clearance of their product from factory. But for the above Explanation, the GTA service so received by the appellants would have been covered under the definition of “output service” under Rule 2 (1) of the aforesaid Rules. By virtue of the Explanation, it shall be deemed to be “output service”. In other words, the appellants, while paying service tax on GTA Service availed in connection with removal of their final product from factory, were doing so on

an "output service" and, therefore, they were entitled to utilize, for payment of service tax on such service, credit of the tax paid on the inputs GTA service availed by them in connection with receipt of inputs into their factory. Apparently, learned Commissioner lost sight of the above Explanation to the definition of "output service".

The demand of service tax and the penalty imposed are set aside and this appeal is allowed."

5. In view of the above decision, ~~denial~~ denial of disallowance of payment of Service Tax in respect of output service from the Cenvat account is not sustainable hence set aside. The appeals are allowed.

6. In the appeal filed by the Revenue, the only submission is for enhancement of penalty. As the demand is not sustainable, therefore, the appeal filed by the Revenue is rejected.

(Dictated & pronounced in open Court)

(S.S. KANG)  
VICE PRESIDENT

RM