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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/6 & 7 /2008 -SM[BR] Date 02/06/2008

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

To :
M/S AKSH OPTIFIBRES LTD
F-1080, INDUSTRIAL AREA, BHIWADI.

[2] M./SAKSH OPTIFIBERS LTD.
A- 315 [B], PHASE-I RIICO INDUSTRIAL AREA, BHIWADI

M/S AKSH OPTIFIBRES LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 843 -844 /2008 -SM[BR] Dated 27.5.2008 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
   C.C.E. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR. BIPIN GARG ADV.
   B-1 /1289 -A, VASANT KUNJ NEW DELHI-110070
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. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

SERVICE TAX APPEAL NO. 6 & 7 OF 2008-SM

[Arising out of Order-in-Appeal No. 165-166(RKS)ST/JPR-I/2007 dated 28.9.2007 passed by the Commissioner (Appeals), Central Excise, Jaipur]

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?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Lordships wish to see the fair copy of the order?	Yes
4.	Whether order is to be circulated to the Departmental authorities?	No

M/s. Aksh Optifibres Ltd., Appellants

Vs.

CCE, Jaipur-I Respondent

Appearance:

Shri Atul Gupta, Co. Secretary for the Appellants,
Smt. Archana Pandey Tiwari, Jt.CDR, Departmental Representative, for the Revenue,

Coram:

Hon'ble Mr. S.S. Kang, Vice President

Date of Hearing: 27th May, 2008

FINAL ORDER NO. 843-44/08-SM(BR) **dated** 28.5.08

Per S.S. Kang:

Heard both sides.

2. Appellants filed these appeals against impugned order whereby demand was confirmed in respect of service tax paid from Cenvat account on the ground that the appellants are provider of output service only for the limited purpose as per provision of Rule 2((1) (d) (v) of Service Tax Rules, 1994 and cannot be considered as service provider.

3. Appellants are engaged in the manufacture of wire & cable. They discharged service tax liability for inward/outward service from the Cenvat Account. This was objected by the Revenue. Case of the Revenue is that as the appellants are not transporter, therefore, being recipient of inward/outward transportation are liable to pay service tax but the same cannot be paid from Cenvat account.

4.This issue is now settled by the following decisions of the Tribunal in favour of the assessee:-

a) CCE, Chandigarh vs. Nahar Industrial Enterprises, reported in 2007 (7) STR 26 (Tribunal);

b) CCE, Nagpur vs. Visaka Industries, reported in 2007 (8) STR 231 (Tri.-Mumbai)

c) Andhra Pradesh Paper Mills Ltd. Vs. CCE, Visakhapatnam-II, reported in 2007 (8) STR 166 (Tri.-Bang.)

In the case of Nahar Industrial Enterprises (supra) the Tribunal held that there is no restriction of utilization of Cenvat Credit by the manufacturing unit towards payment of service tax as service provider. In view of the above decisions the impugned order is set aside and appeals are allowed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 28th May, 2008-05-28
RK