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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/751 /2007& ST/ 49 /2008 –SM[BR] Date 12/06/2008

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

To :
(1-2) M/S BANSWARA SYNTEX LTD.
INDUSTRIAL AREA, DOHAD ROAD,BANSWARA
(RAJ)
M/S BANSWARA SYNTEX LTD. Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 918 -919 /2008 –SM[BR] dated 4.4.2008 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 II
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI
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)

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

ST/Appeal No. 751/07 & ST/A No49/08

(Arising out of order in appeal No.531-532/RKS/ST/JPR.II/07 dated 28.9.07 & No.568/RKS/ST/JPR.II/07 dated 20.11.07 passed by the Commissioner of Central Excise (Appeals), Jaipur)

For approval and signature:

Hon'ble Mr.P.K. Das, Member(Judicial))

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 should 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

M/s Banswara Syntex Ltd — Appellant
(Rep. by Shri Atul Gupta, Co. Secy.)

Vs

CCE, Jaipur-II — Respondent
(Rep. by Shri S.L. Meena, DR)

Coram: Hon'ble Mr P.K. Das, Member(Judicial)

Date of Hearing: 4.4.08

Final Order No. 918 – 919/08-SM/2008-SM(BR)

Per P.K. Das:

The Appellants are engaged in the manufacture of excisable goods and also registered under Rule 4 of Service Tax Rules, 1994. Tax was demanded on the ground that credit was availed by the appellants on the duty paid inputs, capital goods and the service tax paid on the inputs services as a manufacturer of excisable goods, cannot be utilized towards payment of service tax on services 'Goods Transport Agency.

2. After hearing both the sides and on perusal of the record, I find that the issue is settled by the Tribunal in a series of decisions, as under:-

a) CCE Nagpur Vs. Visaka Industries Ltd
2007 (8) STR 231 (Tri Mum)

b) CCE Chandigarh Vs Nahar Industries Enterprises Ltd
2007 (7) STR 26 (Tri. Del)

c) India Cements Ltd Vs. CCE Salem
2007 (7) STR 569

3. In the case of India Cements Ltd (Supra), 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 pay service tax shall be deemed to be the output service."*

Admittedly, the appellants did not provide any taxable service, through they 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 received by the appellants would have been covered under the definition of input 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 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 the tax *paid on the input 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'.*

4. In views of the above decision, I find that the impugned orders are not sustainable. Accordingly, the impugned orders are set aside and the appeals are allowed with consequential relief.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*