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
SINGLE MEMBER APPEAL BRANCH

Appeal No. ST/130 /2008-SM[BR] Date 22/08/2008

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

To :
M/S SCAN SYNTHETICS LTD.
E-1107, RIICO INDL AREA,PHASE-III, DISTT. ALWAR
RAJASTRHAN-301019
M/S SCAN SYNTHETICS LTD. Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1151 / 2008 -SM[BR] dated 18.8.2008 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.V.SWAMINATHAN
   G-50, 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. 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
(SM 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. 130 of 2008-SM

[Arising out of Order-in-Appeal No. 209(RKS) ST/JPR-I/2007 dated 5.12.2007 passed by the Commissioner (Appeals-I) Customs & Central Excise, Jaipur]

Date of Hearing/ decision: 18.08.2008

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, 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 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 Scan Synthetics Limited — Appellant

Vs.

Commissioner of Central Excise, Jaipur-I — Respondent

Appearance:

Mr. V. Swaminathan, Advocate for the Appellant
Mr. S. Gautam, Authhorized Representative (DR) for the Respondent

CORAM: Mr. Justice S.N. Jha, President

Final **ORDER** No. 1151/2008-SM(BR)

Per S.N. Jha:

This appeal by the assessee directed against the order-in-appeal of the Commissioner of Central Excise dated 28.11.2007 upholding the order-in-original of the Assistant Commissioner dated 27.6.2007. The dispute relates to utilization of cenvat credit by the appellant for the period from January to September 2005. The appellant is recipient of the goods transport agency (GTA) service. Rule 3 of the Cenvat Credit Rules 2004 deals with cenvat credit; sub-rule (4) thereof provides that cenvat credit may be utilized for payment of, among other things, service tax on any output service vide clause (e). The question is whether the appellant as a recipient of the GTA service can utilize the cenvat credit for payment of service tax.

2. Learned Counsel for the appellant submits that the question as to whether recipient of the taxable service, namely GTA service, is entitled to utilize cenvat credit for paying service tax on an 'output service' is no longer res-integra. He cited the decision in Bhushan Power & Steel Limited vs. Commr. of C.Ex. Cus. & Service tax, -2008 (10) S.T.R. 18 (Tri.- Kolkata) which was decided following the decision in CCE vs. Nahar Industrial Enterprises Ltd., -2007 (7) STR 26 (Tribunal-Del.) and other cases. Counsel also placed reliance on Andhra Pradesh Paper Mills Ltd., vs. CCE, Visakhapatnam-II -2007 (8) STR 166 (Tri.-Bang.).

3. As already mentioned above cenvat credit can be utilized for payment of service tax on output service in terms of rule 3(4)(e) of the Cenvat Credit Rules. 'Output service' has been defined in clause (p) of rule 2 of the said Rules. The explanation thereto lays down –

> "For the removal of doubts it is hereby clarified that if a person liable for paying service tax does not provide any taxable service…………………, the service tax for which he is liable to pay service tax shall be deemed to be the output service".

The term 'person liable for paying service tax' has been defined in rule 2(q) as having the same meaning as assigned to it in clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994. In the said Rules, in relation to taxable service provided by a goods transport agency, where the consignor or consignee of the goods is among other things a dealer of excisable goods, 'the person liable for paying service tax' means "any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage". It is not in dispute that the appellant is a dealer of excisable goods registered under the Act and by reason of being the person liable to pay freight for the transportation of goods, is the person liable to pay service tax in terms of rule 2(1)(d) of the Service Tax Rules. That being so, read with explanation to rule 2(p) of the Cenvat Credit Rules, referred to above, it is clear that the service for which he was liable to service tax must be treated to be an 'output service', by legal fiction, and that being the legal position, the appellant was entitled to utilize the cenvat credit for payment of service tax on such service. The reliance on Bhushan Power & Steel Ltd. (supra) and Andhra Pradesh Paper Mills Ltd. (supra) appears to be well-founded.

4. In the result, the appeal is allowed. Impugned orders of the authorities below stand set-aside.

[Dictated and pronounced in the open Court on 18.08.2008]

(Justice S.N. Jha)
President

[Pant]

TELEGRAM : CEGCANAL **REGISTERED / AI**

Website : www.cestat.gov.in **Email : delhi@cestat.gov.in**

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

(Principal Bench)

West Block No.2, R.K. Puram, New Delhi-110066

SINGLE MEMBER APPEAL BRANCH

Date :01/01/2009

MISC Order No. 351 / 2008 –SM[BR]

Application ST ROM/ 50 / 2008 –SM[BR]

Appeal ST/130/2008 - SM[BR]

1. Appellant
   M/S SCAN SYNTHETICS LTD.
   E-1107, RIICO INDL AREA,PHASE-III, DISTT.
   ALWAR RAJASTRHAN-301019
2. Respondent
   C.C.E. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C"
   SCHEME, JAIPUR 302005.
3. Adv / Consult :
   MR.V.SWAMINATHAN
   G-50, LAJPAT NAGAR-III, NEW DELHI-24
4. C.D.R
5. Bar Association, CESTAT, New Delhi.
6. M/s. Deeparchi Publications, M-93, Marg. 43, Saket, New Delhi.
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, Opp. Sachdeva P.T. College of Defence Colony, New Delhi - 110003
8. Excise & Customs cases, B-37, Sector -1, Noida - 201301 (U P)
9. R.Venkatraman, Constt. 44B, S. Suncity,Ghaziabad - 201010, U.P.
10. Director Publications, Customs, Excise. I.P. Estate, New Delhi
11. Taxmann Allied Service Pvt. Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026.
12. Co. Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 70
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
(SM 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 ROM Application No. 50 of 2008-SM (Br.) in
Service Tax Appeal No. 130 of 2008-SM (Br.)

Date of Hearing/Decision : 26.12.2008

M/s Scan Synthetics Limited — Appellant [None]

Versus

CCE, Jaipur — Respondent
[Rep. by Mr. R.K. Saini, DR for the Respondent]

CORAM: Ms. Jyoti Balasundaram, Vice President

Misc **Order** No. 351/08-SM(BR)

Per Jyoti Balasundaram:

I have heard learned DR on the application for rectification of mistake stated to be apparent from Tribunal's final order No. 1151/2008-SM(Br.) dated 18.08.2008. According to the applicants the obvious error is in holding that the appellant is a registered dealer registered under the Act, as the appellant is not a dealer but registered manufacturer.

2. Since it is clear that the appellant is registered manufacturer, I agree with the applicant's that there is an error apparent from the record and therefore correct the same by substituting the following words for the expression "it is not in dispute that the appellant is a dealer of excisable goods registered under the Act" by the following words "It is not in dispute that the appellant is a registered manufacturer having Central Excise registration".

3. ROM application is hereby allowed in the above terms.

[Dictated and pronounced in the open Court]

30/12

[Jyoti Balasundaram]
Vice President

[Pant]