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. E/2112 -2113 / 2007 –SM[BR] Date 19/05/2009

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

To :
(12) GANESH BAKERS PRIVATE LTD.
VILLAGE-KACHANA, AMASEONI ROAD, RAIPUR,
C.G.
493111

GANESH BAKERS PRIVATE LTD. Appellant
Vs
C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 399 -400 / 2009 –SM[BR] dated 15.4.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E. RAIPUR
   CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.

2. Adv. / Consult MS. GEETIKA KHANNAREP.
   M/S APPELLANT;--------------------

3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeals Nos.2112-2113 of 2007-SM

Arising out of Orders-in-Appeal No.29(ST)/RPR-1/2007 dated 30.03.2007 and Order-in-Appeal No.30(ST)/RPR-I/2007 dated 30.03.2007 passed by the Commissioner of Central Excise (Appeals-I), Raipur (C.G.)]

Date of Hearing/ Decision:15.04.2009

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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?	:	No
3. Whether Their Lordships wish to see the fair copy of the Order?	:	
4. Whether Order is to be circulated to the Departmental authorities?	:	yes

M/s. Ganesh Bakers Private Limited .....Appellants
[Rep. by Ms. Geetika Khanna, Representative]

Vs.

CCE, Raipur ...Respondent
[Rep. by Shri S. Gautam, DR]

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

Final Order No.399-400/09-SM(BR)/Dated:15.04.2009

<u>Per P.K. Das:</u>

Heard both sides and perused the records.

2. It is the finding of the Commissioner (Appeals) that the appellants availed inadmissible credit of Service Tax of Rs.1,47,490.00 paid on

Goods Transport Agency Service received from various transport agencies on the basis of TR-6 Challan in the month of May, 2005 and June, 2005. I find that the Tribunal in the case of Commissioner of Central Excise, Meerut Vs. Shri Sidhvali Steels Ltd. reported in 2009 (235) ELT 182 (Tribunal-Delhi) held that Service Tax paid on transport service on T.R. 6 challan, Credit is admissible. In the case of Commissioner of Central Excise Vs. Crompton Greaves Ltd. reported in 2008 (226) ELT 117 (T-M), it has been held that TR-6 challan to be considered as proper documents for availing Cenvat Credit of Service Tax. The relevant portion in the case of Crompton Greaves Ltd. (supra) is reproduced below:-

> "**6.** I have examined the position. I find that the reliance placed by the J.D.R. on the Larger Bench decision of the Tribunal in the case of *CCE, New Delhi* v. *Avis Electronics Pvt. Ltd.* - 2000 (117) E.L.T. 571 (Tri. - L.B) is misplaced. In the instant case, the Rules do not prescribe any document for availment of Service Tax Credit during the impugned period in respect of the Service Tax paid on the Goods Transport Agency Services. Therefore, this judgment is not applicable at all to the facts of the present case. I further find that the issue involved in the instant appeal filed by the Revenue is no longer *res integra.* The Hon'ble Tribunal in Order Nos. A-1358 to 3561/WZB/MUM/2007C-IV/SMB dated 25-9-2007 [2007 (8) S.T.R. 609 (T)] has held as under :
>
> > "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."

3. In view of the above discussions and respectfully following the decision of the Tribunal as above, I find that the impugned orders are not

sustainable. Accordingly, the impugned orders are set aside. Both the appeals are allowed with consequential relief.

Order dictated & pronounced in open court on 15.04.2009.

(P.K. Das)
Member (Technical)

Ckp.