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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. E/862 /2007 – SM[BR] Date 11/06/2009

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

To :
C.C.E. INDORE
P.B. NO. 10, MANIK BAGH PALACE, INDORE M.P.

C.C.E. INDORE Appellant
Vs
M/S HOTLINE CPT LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 552 / 2009 –SM[BR] dated 5.5.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
M/S HOTLINE CPT LTD.
GBA-3, GHIRONGI, INDUSTRIAL AREA, MALANPUR DISTT. BHIND (M.P.)
2. Adv. / Consult SHRI RAMESH NAIR ADV.
"LAKSHMI VIHAR", AG-192
SCHME NO. 54, VIJAY NAGAR INDORE[M.P]

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
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Assistant Registrar
(SM Appeal Branch)

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

COURT – III

CENTRAL EXCISE APPEAL NO. 862 OF 2007-SM

[Arising out of Order-in-Appeal No. IND-I/01/2007 dated 04.01.2007 passed by the Commissioner (Appeals-I), Customs & Central Excise, Indore]

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 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?	
4.	Whether order is to be circulated to the Departmental authorities?	yes.

C.C. E., Indore Appellant

Vs.

M/s. Hotline CPT Ltd., Respondents

Appearance:

Shri R.K. Saini, D.R. for the Revenue;
Shri Alok Barthwal, Advocates for the respondent

Coram:

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

Date of hearing/decision: 5th May, 2009

FINAL ORDER NO. 552/09 - SM(BR) **dated** 5.5.09

Per P.K. Das:

Relevant facts of the case, in brief, are that the by show cause notice dated 7.3.2006 it has been alleged that the respondents availed irregular Cenvat Credit of service tax paid on outward freight. It has further been alleged that the goods were sold by the respondents at factory gate and, hence, place of removal is the factory and, therefore, outward transportation from factory does not appear to be input service and they are not eligible to avail credit thereon. There was proposal for denial of credit of Rs. 6,48,184/- and imposition of penalty for the period from February, 2005 to December, 2005. The original authority disallowed the credit and imposed penalty. The Commissioner (Appeals) set aside the adjudication order. Hence, Revenue filed this appeal.

2. Learned D.R. on behalf of the Revenue reiterates the grounds of Appeal. He submits that the respondents sold the goods from factory gate and, therefore, they are not eligible to avail credit of GTA service.

3. Learned advocate on behalf of the respondents submits that the issue has already been decided by the Punjab & Haryana High Court in the case of Ambuja Cement Ltd. vs. UOI, reported in 2009 (14) STR 3 (P&H). He also submits that the goods were sold at customers place which is place of removal.

3. After hearing both sides and on perusal of the records, I find from the order of the original authority that the issue involved before him is whether the manufacturer of goods can avail credit of service tax paid by the manufacturer under Rule 2(d) of the Service Tax Rules. GTA service is received by the manufacturer for transportation of goods from his factory to the buyers premises as goods was sold on F.O.R basis. The original authority held that in view of Section 4 of Central Excise Act, 1944 'Place of removal would be treated as factory gate and not buyers premises'. I find that the identical issue was before the Hon'ble Punjab & Haryana High Court in the case of Ambuja Cement Ltd. (supra) as under:-

"1. Whether the service of transportation up to the customer's doorstep, in the case of "FOR destination" sales where the entire cost of freight is paid and borne by the manufacturer, would be "input service" within the meaning of Rule 2(1) of the CC Rules?

The answer of the Hon'ble High Court is as under:-

"The third condition that the freight charges were integral part of the excisable goods also stand fulfilled as the delivery of the goods is "FOR destination" price. This aspect has been specifically pointed out in para 2.2 of the reply dated 12.4.2006 given to the show cause notice. Therefore, we are of the view that the first question is liable to be answered in favour of the assessee and against the revenue."

4. Learned D.R. on behalf of the revenue submits that in this case, the dispute is, as to whether the goods delivered at buyers premises. Hence, he submits that the matter should be remanded to the original authority for verification.

5. I am unable to accept the contention of the learned D.R. for the reason that the issue formulated by the original authority is similar to the question decided by the Hon'ble High Court of Punjab & Haryana in the case of Ambuja Cement Ltd. (supra). Further in reply dated 17.4.2006 to the show cause notice at para 9, the respondents contended as under:-

"Without prejudice to the above submission, the noticee further submits that in the instant case the noticee is paying Central Excise duty on the assessable value which includes the outward transport freight that means the price is FOR customer's place. Therefore, the goods is sold at customer's place where the goods is sold, hence the said place is the place of removal. The outward transportation charges is borne by the noticee, therefore the sale price of the final product is including the outward freight also. For this reason the outward transportation is admissible services for allowing the Cenvat credit. The noticee's sample sale invoices alongwith relevant LRs are annexed hereto and are collectively marked as Annexure-'A'. Form these documents it can be seen that the freight is billed to the noticeee, at the same time the freight amount is not collected from the customer as the same is not reflected in the sale invoice over and above the sale price."

6. I have noticed that the issue formulated by the original authority was also not disputed by the revenue in their grounds of appeal. Hon'ble Punjab & Haryana High Court in the case of Ambuja Cement Ltd. (supra) after considering the averment in reply to the show cause notice answered in favour of the assessee.

7. In view of the above discussion and after considering High Court decision, I hold that the respondents are entitled to avail credit on service tax paid by them on GTA services. There is no reason to interfere with the order of the Commissioner (Appeals). Accordingly, appeal filed by the revenue is dismissed.

(P.K. DAS)
MEMBER (JUDICIAL)

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