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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

Date 12/06/2009

Appeal No. E/2088 – 2090 / 2007-SM[BR]

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

To :

MOHINI INDS.
9A, INDL. AREA, RAWABHATA, RAIPUR
493221

[2]M/S AMBATTUR PETROCHEM LTD.
17 & 19, INDUSTRIAL AREA RAWABHATA, RAIPUR
[3] M/S PRAKRITI INDUSTRIES
9B, INDUSTRIAL AREA RAWABHATA RAIPUR

MOHINI INDS. Appellant
Vs
C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 555 – 557 / 2009 –SM[BR] dated 22.5.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. RAIPUR
   CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.
2. Adv. / Consult SHRI T.P.S. KANG ADV.
   V-5[LGF], GREEN PARK [MAIN]
   NEW DELHI-16.

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-1
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 & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

<u>COURT – III</u>

<u>EXCISE APPEAL NO. 2088-90 OF 2007-SM</u>

[Arising out of Order-in-Appeal No. 35(ST)/RPR-I/2007 dated 20.4.2007, 33(ST)/RPR-I/2007 dated 16.4.2007 & 26(ST)/RPR-I/2007 dated 20.4.2007 all passed by the Commissioner (Appeals-I), Customs & Central Excise, Raipur]

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?	No
2.	Whether it would 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?	Yes

M/s. Mohini Industries,
M/s. Ambattur Petrochem Ltd.,
M/s. Prakriti Industries — Appellants

Vs.

CCE, Raipur — Respondent

Appearance:

Shri T.P.S. Kang, Advocate for the appellants;
Shri M.M. Singh, D.R. for the Revenue

Coram:

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

Date of hearing/decision: 22nd May, 2009

FINAL ORDER NO. 555-557/09-SM(BR) **dated** 22.5.09

Per P.K. Das:

Since common issue is involved in these appeals, therefore, all are being taken up together for disposal.

2. After hearing both sides and on perusal of the records, I find that the appellants utilized Cenvat Credit for payment of service tax on GTA service. Commissioner (Appeals) observed that utilization of Cenvat credit towards payment of service tax to GTA service is clearly in contravention of provisions of Rule 3(4) of Cenvat Credit Rules, 2004. Learned Advocate placed reliance on the decision of the Tribunal in the case of Ambattur Petrochem Ltd. vs. CCE, Raipru vide Final Order No. 1042-1044/2007-SM(BR) dated 22.6.2007. Relevant portion of the said order is reproduced below:-

"Sub-Rule 4 of Rule 3 of Cenvat Credit Rules 2004 relate to utilization of Cenvat credit. That sub-Rule makes it clear that credit can be utilized for payment of excise duty as well as service tax on any output service. Thus, payment of service tax is a specifically authorized item in regard to service tax credit. In the present case, the appellant is treated as a service provider when he it service tax on transport service. Corollary of it is that the transport involved is an output service.

Therefore, the finding of the Commissioner that since the appellants are manufacturers of excisable goods they cannot be treated as provider of output service is not sustainable. This Tribunal's decision in the case of Nahar Industrial Enterprises Ltd. also supports the appellant's case."

In the case of Nahar Industrial Enterprises Ltd., reported in 2007 (80) RLT 482 (CESTAT-Mum.) it has been held that in view of Rule 3(4) of Cenvat Credit Rules of Cenvat Credit can be utilized by the manufacturer for payment of service tax on GTA service.

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

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK