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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/2780/2007 – SM[BR] Date 27/08/2009

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

To :
M/S G.R.SPONG & POWER LTD
PHASE-II, SILTARA INDUSTRIAL AREA, RAIPUR(CG)

M/S G.R.SPONG & POWER LTD Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1089 / 2009 –SM[BR] dated 19.8.2009 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 BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ NEW DEELHI
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 Appeal No.2780 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.47(ST)/RPR-I/2007 dated 03.07.2007 passed by the Commissioner of Central Excise (Appeals), Raipur]

Date of Hearing/ Decision:19.08.2009

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? : NA
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. G.R. Sponge & Power Ltd. ...Appellants
(Rep. by Shri Atul Gupta, Co. Secretary)

Vs.

CCE, Raipur ....Respondents
(Rep. by Shri I.K. Baig, SDR)

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

Final Order No...1089/2009 SM(BR)/Dated:19.08.2009

Per P.K. Das:

After hearing both the sides and on perusal of the records, it is seen that the issue involved in this case is as to whether TR-6 Challan was prescribed as a valid document for availment of Cenvat credit on GTA services during the period April, 2005 to March, 2005. It is seen that the Notification No.28/2005-CE (NT) dated 17.06.2005 allowed to avail credit on TR-6 challan w.e.f. 16.06.2005 by virtue of amendment in Rule 9(1)(e) of the Cenvat Credit Rules, 2004. The Tribunal in the case of Gaurav Krishna Ispat (I) Pvt. Ltd. Vs. Commissioner of Central Excise, Raipur reported in 2009 (13) S.T.R. 629 (Tribunal-Delhi) held that credit of Service Tax paid on Goods Transport Agency Service availed on the basis of TR-6 Challan prior to 16.06.2005 is admissible document.

2. The relevant portion of the decision of the Tribunal in the case of Gaurav Krishna Ispat (I) Pvt. Ltd. (supra) is as under:-

> **5.** We find that the Tribunal in two cases relied upon by the respondent allowed the credit on the basis which was availed on TR-6 challans in respect of Service Tax paid in respect of service received by the manufacturer. The Tribunal in the case *CCE* v. *Essel Pro-Pack Ltd.* (supra) held as under :-
>
> The Commissioner (Appeals) vide his impugned order has held the said documents to be proper for the purpose of availing credit by observing as under :-
>
> "TR-6 challan is the most primary document evidencing payment of duty/tax. No doubt the TR-6 challan was not included in the list of specified documents. It was included by virtue of Notification No. 28/2005-CE (NT) dated 7-6-2005. I find that this is an inadvertent omission which was rectified by issuing the said Notification. This is so because any duty payment documents is related to, and based on TR-6 challan which is the source document. Similar view has been taken up by the Hon'ble Tribunal in the case of *National Organics Chemical India Ltd.* reported in 2004 (178) E.L.T. 331 (Tribunal). The appellant's case is squarely covered by this judgment. I, therefore, hold that disallowance of Cenvat credit

is not correct. Consequently interest and penalty also do not sustain. Order-in-original is liable to be set aside.

Revenue in the Memo of appeal has again reiterated the same stand. Shri Prakash Shah, learned Advocate appearing for the Respondents submit that during the relevant time there was no list of specified documents on the basis of which credit could be taken. I have heard Shri C.S. Biradar and Shri S.R. Savant appearing for other appellants. As such, the appellate authority was right in holding TR-6 challan as the basis for availing service tax credit.

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.

In view of the matter, I do not find any infirmity in the Commissioner (Appeals) order. The Revenue's appeals are therefore rejected."

6. Further, we find that with effect from 16-6-2005 the TR-6 challan was included in the list of valid document for taking credit by Notification No. 28/2005-C.E. In these circumstances, we agree with the contention of the appellant. The impugned order is set aside and appeal is allowed.

3. In view of the above, the impugned order is set aside. The appeal filed by the appellant is allowed with consequential relief.

Order dictated & pronounced in open court on 19.08.2009.

(P.K. Das)
Member (Judicial)

Ckp.