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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 23/09/2009

Appeal No. E/2005/2007 – SM[BR]

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

To :
M/S BHIWANI MOULDERS (P) LTD.
URLA INDL. AREA, RAIPUR, C.G. Appellant

M/S BHIWANI MOULDERS (P) LTD.
Vs
Respondent

C.C.E. RAIPUR

I am directed to transmit herewith a certified copy of **Final order No.** 1152 / 2009 –SM[BR] dated 11.9.2009 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
   MR.SUSHIL KUMAR,CA
   2/1, 2ND FLOOR, APPRAJITA COMPLEX, AKASHGANGA, SUPELA, BHILAI(CG)
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

Appeal No.E/2005 of 2007-SM (BR)

[Arising out of common Order-in-Appeal No.22(ST)/RPR-I/2007 dated 23.03.2007 passed by the Commissioner of Central Excise (Appeals-I), Raipur]

Date of Hearing/ Decision:11.09.09

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.		No
2. Whether it should 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.Bhiwani Moulders Pvt. Ltd. ...Appellants

[Rep. by None.]

Vs.

CCE, Raipur ...Respondent

[Rep. by Shri S. Gautam, SDR]

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

Final Order No 1152/2009-SM(BR)/Dated:11.09.2009

Per P.K. Das:

None appeared on behalf of the appellant despite issue of notice. Heard the ld. SDR on behalf of the Revenue.

2. After hearing the ld. SDR and on perusal of the records, I find that the Original Authority disallowed Cenvat credit of Rs.57,684.00 taken on the strength of TR-6 Challan in respect of Goods Transport Agency Services. Ld. SDR submits that the TR-6 Challan is a valid document after insertion of Notification No.28/2005-CE (NT) dated 7.6.2005 . So, the credit taken on the basis of TR-6 Challan on Goods Transport Agency Services prior to 15.06.2005 is not admissible. He further submits that in this case, the transporters were not registered under the provisions of Service Tax and, therefore, the documents cannot be accepted.

3. It is revealed from the order of the Commissioner (Appeals) that the appellant availed Cenvat credit on the strength of TR-6 Challan on GTA Services prior to 15.06.2005. The payment of tax on TR-6 Challan was not disputed in the impugned order. I find that the Tribunal in the case of Gaurav Krishna Ispat (I) Pvt. Ltd. Vs. Commissioner of Central Excise, Raipur – 2009 (13) STR 629 (T-D) held that credit taken on the basis of TR-6 Challan on GTA Services would be admissible even prior to 15.06.2005. The Tribunal in the case of Commissioner of Central Excise, Goa Vs. Essel Pro-Pack Ltd.– 2007 (8) STR 609 (T-M) rejected the appeal filed by the Revenue on the identical issue. The relevant portion of the said decision is reproduced below:-

> "**2.** 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."

3. 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 also 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.

4. 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.

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

4. In view of the above decision of the Tribunal, I find that the impugned order is not sustainable. Accordingly, the impugned orders are set aside. The appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 11.09.2009.

(P.K. Das)
Member (Judicial)

ckp.