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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. ST/196 /2007, AND E/ 1424/2007 – SM[BR] Date 12/10/2009

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR Appellant
Vs
M/S COAL CHEM Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1220 - 1221 / 2009-SM[BR]** dated 12.8.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S COAL CHEM
   101, LIGHT INDUSTRIAL AREA, BHILAI, DISTT. DURG (C.G.)
2. Adv. / Consult SHRI A.K. MISHRA CON.
   B-25, LAJPAT NAGAR –III, NEW DELHI

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)
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2. M/S COAL CHEM
101, LIGHT INDUSTRIAL AREA, BHILAI (CHHATTISGARH)

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. 1424 OF 2007-SM AND SERVICE TAX APPEAL NO. 196 OF 2007-SM

[Both appeals arising out of Order-in-Appeal No. 22-ST/RPR-II/2006 dated 19.10.2006 passed by the Commissioner (Appeals-II), 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?	
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

M/s. Coal Chem — Appellants

Vs.

CCE, Raipur — Respondent
& Vice versa

Appearance:

Shri A.K. Mishra, Consultant for the assessee;
Shri S. Gautam, DR for the Revenue

Coram:

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

Date of hearing/decision: 12th August, 2009

FINAL ORDER NO. 1220 - 1221 / 2009 SM (BR) **dated** __________

Per P.K. Das:

Heard both sides and perused the records.

2. Commissioner (Appeals) upheld the inadmissibility of the credit of Rs. 94,768/- taken on the basis of TR6 challan on GTA service prior to 16.6.2005, against which the assessee filed appeal. Commissioner (Appeals) set aside denial of credit of Rs. 1,81,264/- on outward transport service, against which Revenue filed the appeal.

3. Regarding denial of credit of Rs. 94,768/-, learned Counsel on behalf of the assessee submits that Sub-clause (v) of clause (a) of Sub-rule (1) of Rule 2 of Cenvat Credit Rules, 2004 allowed the credit on the basis of TR6 challan on GTA service even prior to 16.6.2005.. He submits that the Tribunal in series of decisions allowed the credit on TR6 challan in respect of service tax paid on GTA. He relied upon the decisions of the Tribunal as under:-

(1) CCE, Goa vs. Crompton Greaves Ltd. –
2008 (226) ELT 117 (Tri. – Mumbai);

(2) CCE, Goa vs. Essel Pro-Pack Ltd. –
2007 (8) STR 609 (Tri. – Mumbai);

(3) CCE, Goa vs. Automobile Corporation of Goa Ltd. –

4. The Tribunal in the case of Essel Pro-Pack Ltd. (supra) 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."

5. I find that the Tribunal consistently viewed that TR-6 challan is valid duty paying document in respect of tax paid on GTA even prior to 16.6.2005. So, the denial of credit of Rs. 94,768/- is not justified.

6. Regarding credit of Rs. 1,81,264/- on outward transport service the learned D.R. submits that it is beyond place of removal and not covered within the definition of "input service" of Cenvat Credit Rules. Learned Counsel on behalf of assessee relied upon the Larger Bench decision of the Tribunal in the case of ABB Ltd. vs. CCE & ST, Bangalore, reported in 2009 (15) STR 23 (Tri.-LB). Learned D.R. submits that definition of input service provides "outward transportation up to place of removal". According to the learned D.R. the word "transportation up to the place of removal" include only factory gate. It is seen from the reply to the show

cause notice that the assessee contended the service used by the manufacturer for clearance of final product from the place of removal are also specified for the purpose of availing Cenvat credit. Larger Bench of the Tribunal in the case of ABB Ltd. (supra) held as under:-

"24. In the light of the discussion, we hold that the definition of "input service" has to be interpreted in the light of the requirements of business and it cannot be read restrictively so as to confine only upto the factory or upto the depot of manufacturers.

25. In the result, we answer the reference by holding that the services availed by a manufacturer for outward transportation of final products from the place of removal should be treated as an input service in terms of Rule 2(1)(ii) of the CENVAT Credit Rules, 2004 and thereby enabling the manufacturer to take credit of the service tax paid on the value of such services."

7. In view of the decision of the Larger Bench of the Tribunal, the assessee is eligible to avail credit of Rs. 1,81,264/- on outward transport service.

8. In view of the above discussion appeal filed by the assessee is allowed. Appeal filed by the Revenue is rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)