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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/2978/2007 – SM[BR] Date 15/01/2010

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S RISHI BAKERS PVT LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 79 / 2010 –SM[BR] dated 12.1.2010 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 RISHI BAKERS PVT LTD
   25-B,CO-OPERATIVE INDUSTRIAL ESTATE, DADA NAGAR, KANPUR.
2. Adv. / Consult
   NONE;-----------------

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, COURT NO. III

Excise Appeal No. 2978 of 2007-SM(BR)

[Arising out of Order-in-Appeal No. 333-CE/APPL/KNP/2007 dated 17.10.2007 passed by Commissioner of Customs & Central Excise (Appeals), Kanpur]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical) M. Veeraiyan

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether Their Lordships wish to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes

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Commissioner of Customs & Central Excise, Kanpur — Appellants

Vs.

M/s. Rishi Bakers Pvt. Ltd. — Respondent

Appearance:

Shri S.N. Srivastava, SDR for the Appellants
None for the Respondent

Date of Hearing/decision : 12.1.2010

ORAL ORDER NO. 79/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No.333-CE/APPL/KNP/2007 dated 17.10.2007.

2. Heard the learned SDR.

3. The issue involved is taking credit of service tax paid under TR 6 challans in respect of services of goods transport operators which was paid by the recipient. According to the original authority, such credit was available only from 16.6.2005 consequent to amendment by Notification No. 28/05-CE(NT) dated 7.6.05. Commissioner (Appeals) set aside the order of the original authority with the following findings:-

> "The adjudicating authority has held that Notification No. 28/05-CE(NT) dated 07.06.05 bears no retrospective effect and credit availed prior to 16.06.05 on TR-6 are not a valid document for availing credit.
>
> It is observed that under the provisions of clause (1)(ix) of Rule 3 of Cenvat Credit Rules, a manufacturer or producer of final products or a provider of services is allowed to take credit of the Service Tax leviable under Section 66 of the Finance Act and Rule 9 of Cenvat Credit Rules, 2004 specifies documents on which credit was to be taken. Thus Rule 3 of Cenvat Credit Rules, which allows the right of taking credit of Service Tax paid, is of substantive character in nature and one of fundamental to the policy whereas, prescribing document under Rule 9 ibid merely belong to the area of procedure. Thus the very basic question whether a subsequent notification, prescribing document, by amending the provisions of Rule 9, could undo the eligibility of availing credit as stipulated under the statutory provisions of Rule 3 of Cenvat Credit Rules, 2004 is to be kept in mind before disallowing the benefits extended by the legislature.

Therefore, I am of the considered opinion that substantial benefits cannot be denied on procedural lapses. Accordingly, I allow credit of Service Tax to the appellants."

4. It is not in dispute that the service tax stands paid. It is also not in dispute that the appellants are eligible for the Cenvat credit on the service tax paid on inputs services. Under these circumstances, no valid grounds have been adduced to interfere with the order of the Commissioner (Appeals). In this connection, the decision of the Tribunal in the case of Gaurav Krishna Ispat (I) Pvt. Ltd. reported in [2009 (13) STR 629 (Tri-Del)] supports the view taken by the Commissioner (Appeals).

5. Accordingly, the appeal is rejected.

(M. Veeraiyan)
Member(Technical)

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