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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/1456/2007 – SM[BR]   Date 17/12/2009

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

To :
M/S NAV BHARAT TUBES LTD.
94-D, INDUSTRIAL AREA, JHOTWARA, JAIPUR.

M/S NAV BHARAT TUBES LTD.   Appellant
Vs
C.C.E. JAIPUR I   Respondent

I am directed to transmit herewith a certified copy of **Final orderNo.** 1535/2009 –SM[BR] dated 10.12.2009 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. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
SHRI HEMANT BAJAJ Adv.
A-5, BASMENT 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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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram,
NEW DELHI

COURT No. IV

EXCISE APPEAL NO. 1456 of 2007-SM

[Arising out of Order-in-Appeal No. 35 (GRM)CE/JPR-I/2007 dated 23.2.2007 passed by the Commissioner, Central Excise (Appeals-I), Jaipur]

Dated of hearing/decision: 10th December, 2009

For approval and signature:

Hon'ble Mr. Rakesh Kumar, Member (Technical)

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?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	

M/s. Nav Bharat Tubes Ltd. Appellants

Vs.

CCE, Jaipur-I Respondent

Appearance:

Shri Hemant Bajaj, Advocate for the appellants;
Shri V.K. Saxena, Departmental Representative (Jt. CDR) for the Revenue

Coram:

Hon'ble Mr. Rakesh Kumar, Member (Technical)

FINAL ORDER NO. 1535/2009 SM(BR) **dated**

Per RAKESH KUMAR:

The appellants manufacture stainless steel tubes and pipes and avail Cenvat credit of input services during the period May, 2005. The appellants took Cenvat credit of Rs. 1,59,249/- on the basis of 4 invoices of various persons who had provided the service of collection of payment from various consignees. The department issued a show cause notice dated 10.3.2006 to the appellants seeking denial of Cenvat credit and recovery of the same along with interest on the ground that services of collection of payment are not covered by the definition of input services. Invoices of the service provider on the basis of which Cenvat credit had been taken, mentioned the service provider's registration number from which it is clear that service tax had been paid under Business Auxiliary Services head. The department's view is that this service is not covered by the definition of input services. The Asst. Commissioner vide Order-in-Original No. 22/06/Demand dated 31.7.2006 disallowed the credit and confirmed the demand along with interest and besides this, imposed penalty of Rs. 25,000/- on the appellants under Rule 15 of Cenvat Credit Rules, 2004. On appeal to the Commissioner (Appeals) against order of the Asst. Commissioner, the Commissioner (Appeals) vide impugned Order-in-Appeal NO. 35(GRM)ST/JPR-I/2007 dated 15.2.2007 upheld the order of the Asst. Commissioner but reduced the penalty to Rs. 10,000/- . It is this order of the Commissioner (Appeals) against which the appellants filed appeal before this Tribunal.

2. Learned Advocate for the appellants pleaded that the service was being provided by M/s. A. Kumar & Co., M/s. Rajasthan Engg. Enerprises, M/s. Aniket Associates and M/s. Electromach Engineers for procuring sale orders and collecting payment from the customers; that on the basis of invoices of these service providers, Cenvat credit of Rs. 1,59,249/- had been taken; that for collection of bills and procurement of orders they were being paid commission by the appellants on which services service tax was being paid under Business Auxiliary services head; that service bill of collection and procurement of sale orders is very much covered by the definition of 'input service' as given under Rule 2(l) of the Cenvat Credit Rules, 2004 and that in this regard he relies upon the following decisions:-

(1) CST, Delhi vs. Convergys India Pvt. Ltd. – 2009 (16) S.T.R. 198 (Tri. – Del.);

(2)Coca Cola India Pvt. Ltd. vs. CCE, Pune-III – 2009 (15) S.T.R. 657 (Bom.);

(3) CCE, Raipur vs. Bhillai Auxiliary Industries – 2009 (92) RLT 97 (CESTAT – Del.);

(4) CCE, Mumbai – V vs. GTC Industries Ltd. – 2008 (12) STR 468 (Tri. – LB);

(5) CCE, Jaipur-II vs. J.K. Cement Works – 2009 (92) RLT 929 (CESTAT-Del.)

He emphasized that in the case of G.T.C. Industries Ltd. (supra) Larger Bench of the Tribunal has held that expenditure on all the services which have a bearing on the cost of production would have to be treated as input service relating to business; that the ground on which Cenvat credit is denied is that service received by the appellant is not input service, is not correct in view of the above mentioned decisions of the Tribuinal and the Hon'ble Bombay High Court and that in view of this the impugned order is not correct.

3. Shri V.K. Saxena, learned Jt. CDR pleaded that the Cenvat credit has been taken in respect of service tax paid on the commission for bill collection charges; that bill collection service was not taxable service during that period and, hence, Cenvat credit of tax, if any, paid on the commission for such service was not admissible. He, however, does not dispute that service providers were registered under Business Auxiliary Service.

4. In rejoinder, Shri Hemant Bajaj, learned, Advocate, pleaded that since the ground raised by learned Jt. CDR has not been taken in the show cause notice, the same cannot be raised at this stage and in this regard he relied upon the following judgements of Hon'ble Supreme Court:-

(1) CCE, vs. Tata Tech Ltd., reported in 2008 (11) S.T.R. 449 (S.C.);

(2) CCE, Nagpur vs. Ballarpur Industries Ltd., reported in 2007 (215) ELT 489 (S.C.);

(3) CCE, Bangaloe vs. Brindavan Beverages (P) Ltd., reported in 2007 (213) ELT 487 (S.C.)

wherein it has been held that the show cause notice is foundation in the matter of levy and recovery of duty, penalty and interest, and if the point is not raise in the show cause notice, it cannot be raise at the appellate stage.

5. I have carefully considered the submissions from both sides and perused the records. On going through the show cause notice, I find that the only ground on which Cenvat credit has been denied is that the service, in question, is not covered by the definition of 'input service' and it is only this point which has been discussed in the order in original and the impugned order passed by the Commissioner (Appeals). Therefore, at the stage of appeal before Tribunal, the department cannot plead that service in respect of which service tax was paid by the service provider and of which service credit was taken by the appellants, was not taxable. It is settled law that while considering the Cenvat credit on the basis of invoices of input service provider or input goods supplier the assessment at the end of service provider or input goods manufacturer cannot be re-opened.

6. Coming to the question, as to whether bill collection services on which service tax was paid under business Auxiliary Service head are

covered by the definition of input service, I am of the view that in view of the Larger Bench decision of the Tribunal in the case of CCE, Bombay vs. G.T.C. Industries Ltd. (supra) and also in view of the judgement Hon'ble Bombay High Court in the case of Coca Cola India Ltd. (supra) service 'in question' will have to be treated as service in relation to business of the appellants and, hence, would be covered by the definition of input service as given in Rule 2(l) of Service Tax Rules, 2004. In view of this, impugned order is not sustainable. The appeal is allowed.

(Dictated & pronounced in the Open Court.)

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RK