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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/236 /2007 – SM[BR] Date 30/10/2009

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

To :
M/S WIRES & FABRIKS (SA) LTD.
INDUSTRIAL AREA, JHOTWARA, JAIPUR.

M/S WIRES & FABRIKS (SA) LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 1347 / 2009 –SM[BR] dated 29.9.2009 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

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
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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. IV

Service Tax Appeal No. 236 of 2007-SM(BR)

[Arising out of Order-in-Appeal No. 29(GRM)ST/JPR-I/2007 dated 20.2.2007 passed by Commissioner (Appeals), Customs & Central Excise, Jaipur I]

For approval and signature:

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

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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?	:	No
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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M/s. Wires & Fabriks (SA) Ltd. — Appellants

Vs.

Commissioner of Central Excise
Jaipur I — Respondent

Appearance:

Shri Hemant Bajaj, Advocate for the Appellant
Shri Sunil Kumar, SDR for the Respondent

Date of Hearing/decision : 29.9.2009

ORAL ORDER NO. 1347/2009 SM (BR)

Per M. Veeraiyan:

This appeal is against the order of the Commissioner (Appeals) No. 29(GRM)ST/JPR-I/2007 dated 7.2.07 by which, the order of the original authority denying Cenvat credit on "inputs services" namely, goods transport services (Rs. 22,851/-), courier services (Rs.27,168/-) and Customs House Agents Services (Rs. 67,094/-) has been upheld.

2. Heard both sides.

3. Learned advocate for the appellants submits that in respect of goods transport agency services, they are disputing the denial of credit amounting to Rs.11,283/- which related to transportation of inputs. The submission in this regard made in reply to show cause notice and the evidence produced before the original authority have not been considered. Commissioner (Appeals) has also erroneously held that the entire amount of credit denied related to output transportation. Regarding credit of courier services, he submits that the credit has been denied both in respect of service tax paid on courier received by the Company as well as courier sent by the Company. Their claim for admissibility of credit in respect of these services has not been correctly appreciated. As regards credit on CHA services, learned Advocate relies on the decision of the Tribunal in the case of CCE Rajkot Vs. Adani Pharmachem P. Ltd. & others reported in [2008 (88) RLT 651 (CESTAT-Ahmd.] wherein it has been held that the place of removal in so far as the export on FOB basis is load port only. He also submits that the

said decision has been followed by the Tribunal in the case of CCE, Ahmdabad vs. M/s. ADF Foods Ltd. [2009-TIOL-1363-CESTAT -Ahm] and in the case of Rajasthan Textile Mills vs. CCE Jaipur vide Final Order No. 1098-1099/09-SM(Br) dated 21.7.09 in Service Tax Appeal Nos. 114/07 and E/2411/07.

4. Learned SDR submits that if the appellant is able to produce evidence regarding the bifurcation of services relating to inward transportation and inward courier and actual payment of service tax thereon, the same shall be considered and he has no objection for remanding the matter for this purpose. As regards the CHA services, he reiterates the reasoning of the Commissioner (Appeals).

5. I have carefully considered the submissions from both sides. I find that in respect of goods transport agency service used for transportation of inputs, there can be no dispute about the eligibility of the credit. Though the appellant has raised this issue in their reply to the show cause notice, the same has not been dealt with by the original authority and the Commissioner (Appeals) has not specifically commented upon the documents produced by the appellant before him. Similar is the position in respect of courier services. Therefore, the issue relating to eligibility of Cenvat credit on these two items requires to be reconsidered by the original authority.

6. As regards the Cenvat credit in respect of CHA services, I find that Tribunal has already decided that in respect of FOR basis exports, the port of export has to be treated as the place of removal. The appellants claim that

their export is on FOB basis and this fact is not clear from the records. In view of this, this matter also deserves to be remanded for fresh consideration.

7. In view of the above, I set aside the order of the lower authorities and remand the matter to the original authority for considering all the issues afresh taking into considerations the observations as above and after granting a reasonable opportunity of hearing to the party.

8. Appeal is allowed by way of remand on the above terms.

(M. Veeraiyan)
Member(Technical)

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