TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/2837/2007 – SM[BR] & E/ CO / 148 / 2008-SM[BR] Date 04/11/2009

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 JINDAL STEEL & POWER LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1384 / 2009- SM[BR] dated 8.10.2009 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 JINDAL STEEL & POWER LTD.
   (MACHINERY DIVISION) 13 K.M. STONE, G.E.ROAD, N.H. NO. 6, RAIPUR (C.G.)
2. Adv. / Consult SHRI RAJINDRA GUPTA
   M/S RESPONDENT;----------------

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi-66
COURT-III

Date of hearing/decision: 8.10.2009

Excise Appeal No. 2837 of 2007-SM
& E/CO/148/2008-SM

[Arising out of Order-in-Appeal No.55(ST)/Rpr-I/2007 dated 26.7.2007 passed by the Commissioner (Appeals), 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.	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

Commissioner of Central Excise, Raipur — Appellants

Vs.

M/s. Jindal Steel & Power Ltd. — Respondents

Appearance:

Shri S.K. Bhaskar, SDR for the Appellants
Shri Rajindra Gupta, Representative for the Respondents

Coram: Hon'ble Shri P.K. Das, Member (Judicial)

Oral Order No. 1384/2009 SM(BR)

Per P.K. Das :

Revenue filed this appeal against the order of the Commissioner (Appeals) wherein the adjudication order was set aside.

2. After hearing both sides and on perusal of the records, it is seen that the dispute relates to as to whether the respondents was entitled to take credit of the service tax paid by them on GTA service. The contention of the learned DR is that the respondents cannot utilise the credit on payment of tax of the GTA service in terms of Rule 4(e) of Cenvat Credit Rules, 2004. He also submits that the respondents is paying the tax of GTA service and therefore, they are not entitled to take credit on services under Rule 2(p) of the Rules. He further, submits that the identical issue is pending before the Larger Bench as referred in the case of Panchmahal Steel Ltd. vs. CCE and Customs, Vadodara [2008 (12) STR 447 (Tri-Ahmd). He also relied upon the decision of the Tribunal in the case of CCE, Raigad vs. Santogen Exports [2009 (15) STR 341 (Tri-Mum)].

3. On the other hand, the Learned Representative of the respondent submits that they are manufacturer of excisable goods and they are also service provider registered under the Central Excise and Service Tax authorities. He submits that the Division Bench of the Tribunal in their own case in Jindal Steel and Power Ltd. vs. CCE, Raipur [2009 (14) STR 68 (Tri-Del)] in the matter of service tax paid on technical assistance from aboard, held that that the respondents are entitled to take credit on the tax paid by them. He also submits that the Tribunal in various decisions held

that that the assessee would be entitled to take credit on GTA service, as under:

(a) Paharpur Cooling Towers Ltd. vs. CST, Kolkata 2009 (15) STR 476 (Tri-Kol);

(b) Mahindra Ugine Steel Co. Ltd. vs. CCE, Raigad [2008 (12) STR 159 (Tri-Mum)];

(c) Bhushan Power and Steel Ltd. vs. CCE& ST. BBSR-II [2008 (10) STR 18 (Tri-Kol)].

4. I find that the identical issue was decided by the Division Bench of the Tribunal in various cases even after the reference to the Larger Bench. There is no dispute of the fact that the respondent is a manufacturer of the excisable goods and paid duty as well as they are also service provider registered under the Service Tax authorities on GTO service and have been utilising the credit paid by them on GTO service. I find that the issue has been decided by the Tribunal in the case of Mahindra Ugine Steel Co. Ltd. (supra) held that the service tax paid for GTS service as recipient of Cenvat credit account, credit cannot be denied. The relevant portion of the said decision is reproduced below:

> "It can be seen from the above reproduced provisions of Rule 2(p) and Rule 2(r) that the said rules defined the output services and provider of taxable services. It can be noticed from Rule 2(r) that the provider of taxable services include a person liable for paying Service tax. Provisions of Rule 2(p) defines output services, means any taxable services provided by the provider of taxable services. It can be noticed from both the definitions that the "provider of taxable services" is also covered under the output services.
>
> ....It can be noticed from the above reproduced rules that the Cenvat credit can be utilized by the assessee for the payment of Service tax on

any output services. As has been held, we are of the view that the output services definition includes the person liable for paying Service tax. The Service tax liability on the service receiver from goods transport agency has been fastened on the receiver of the services of the goods transport agency, which would mean that they are considered as provider of taxable services. If that be so, the utilization of Cenvat credit under the provisions of Rule 3(4) of the Cenvat Credit Rules, 2004 for discharge of Service tax liability on the services received from the goods transport agency cannot be objected to by the revenue. We also find that our above view has been fortified by the decisions of the Coordinate Bench in the case of *India Cements Ltd.* (supra)…"

5. In the case of Bhushan Power & Steel Ltd. (supra) it is held as under:

> **6.** After hearing both sides and on perusal of the case records as well as the cited decisions, we are of the view that the case of the appellants is squarely covered by the said decisions of the Tribunal. As such, we do not find any merit in the request of the Department to hear the regular appeal on another date. The appellants are clearly entitled to utilize the credit available to them in respect of the input service towards payment of the service tax on GTA services which is an output service by definition. Hence, applying the ratio of the cited decisions, we set aside the impugned order and allow the appeal.

6. It is seen that the appellants own case as reported in 2009 (14) STR 68 (Tri-Del), the respondent was paying service tax on the consulting engineer service as recipient of services from M/s. JFE Corpn. They have also taken

the credit paid by them on Consulting Engineer service which has held as under:

> "**5.2** They paid the service tax on the services received by them. Had the service tax been actually paid the actual service provider, the appellant was undoubtedly entitled to take the credit. Merely because the rule envisaged them to pay the tax on behalf of the provider, can their actual status as the recipient be denied? They have played the dual role as provider of deemed output service and as actual recipient of service. Merely because they were required to pay the tax on behalf of the supplier, they should not be denied the right as a recipient. Therefore, the credit taken by them cannot be denied on this ground."

7. In view of the above decision, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected. Cross objection also stands disposed of accordingly.

(P.K.Das)
Member(Judicial)

ss