

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/1442/2009 – SM[BR]

Date **07/01/2011**

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

To :

C.C.E. MEERUT II

OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI
ROAD, MEERUT (UP)
C.C.E. MEERUT II

Appellant

Vs

Respondent

M/S HINDUSTAN COCO COLA BEVERAGES PVT. LTD.

I am directed to transmit herewith a certified copy of **Final order** No. 28 / 2011 –SM[BR] dated 3.1.2011

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 HINDUSTAN COCO COLA BEVERAGES PVT. LTD.

5TH KM, MILES STONE MASURI-

GULAOTI ROAD, GHAZIABAD

(U.P.)

2. Adv. / Consult **SHRI SANJEEV DAHIYA**

M/S RESPONDENT:-----

3. C.D.R

4. Bar association, CESTAT, New Delhi

5. Director Publications, Customs, Excise, I.P. Estate, New Delhi

6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

7. Company Law Institute of India Pvt Ltd., No.2 (Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005

10. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road,
Ahmedabad-15

11. LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)

12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070

13. Office Copy

14. Guard file


Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH

Excise Appeal No.E/1442/2009-SM

Date of Hearing: 03.01.2011
Date of Decision: 03.01.2011

(Arising out of Order-in-Appeal No.123-CE/MRT-II dated
25.2.2009 passed by the CCE(A), Meerut-II)

For approval and signature:

Hon'ble Mr.M.Veeraiyan 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?	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

CCE, Meerut-II

Appellant

Vs.

M/s.Hindustan Coco Cola Beverages (P) Ltd.

Respondent

Present for the Appellant: Shri K.P.Singh, SDR
Present for the Respondent: Shri Sanjeev Dahiya, AR

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

final ORDER NO. 28/2011 SM(BV)
PER: M.VEERAIYAN

This is an appeal by the department against the order of
the Commissioner (Appeals) No. No.123-CE/MRT-II dated
25.2.2009.

2. Heard both sides.

3. The respondents availed cenvat credit of service tax paid during the period from April, 2005 to March, 2006 based on the TR-6 challans under which the respondents themselves paid service tax as deemed service provider. The Original authority has held that prior to 16.6.2005, TR-6 challans are not prescribed documents for taking cenvat credit. The Commissioner (Appeals) set aside the order of the original authority.

4. Learned SDR reiterates the grounds of appeal and adds that the rule has been amended only from 16.6.2005 permitting TR-6 challan as a document based on which the cenvat credit can be taken, the benefit of amendment cannot be given for earlier period.

5. Learned Authorised Representative submits that respondents, in the present case, happen to be both deemed service provider and service recipient. The service tax has been paid under TR-6 challan and the credit taken is permissible in the light of the decision of the Tribunal in the case of Gaurav Krishna Ispat (I) Ltd. vs. CCE, Raipur reported in 2009 (13) STR 629 which has been followed by the Tribunal in several cases for example the case of Hira Steels Ltd. Vs. CCE, Raipur reported in 2009-TIOL-2153-CESTAT-DEL.

6. I have carefully considered the submissions and perused the records. The respondents as deemed service provider paid service tax under TR-6 challan and the same is not in dispute. The decisions relied upon by the Authorised Representative fully supports the order of the Commissioner

(Appeals). Generally, the person who pays the service tax is different from the person who takes the cenvat credit and therefore credit is being taken based on such third party documents. In the present, case, TR-6 challan has been used for paying service tax by the respondents themselves. There is no dispute about payment of service tax by the respondents and that as recipient they are entitled to the credit. There can be no difficulty for the department in verifying the correctness of the credit taken as ^{the} deemed service provider and the person who has taken the credit are one and the same person.

7. Therefore, I do not find any merit in the appeal of the department and the same is rejected.

(Pronounced in the open court)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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