

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/1170/2009 – SM[BR]

Date 03/08/2011

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

To :
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.
C.C.E. JAIPUR II

Appellant
Vs
Respondent

M/S RAJASTHAN SPINNING & WEAVING MILLS LTD.

I am directed to transmit herewith a certified copy of **Final order No. 450 / 2011-SM[BR]**
passed by the Tribunal under **Section 35-C(1) of Central Excises Act, 1944**

dated 28.7.2011

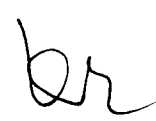

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S RAJASTHAN SPINNING & WEAVING MILLS LTD.
RISHABDEV, DISTT. UDAIPUR
(RAJASTHAN)

2. Adv. / Consult **SHRI BIPIN GARG ADV.**
B-1/1289-A, VASANT KUNJ NEW DELHI

3. C.D.R
4. Bar association. CESTAT, New Delhi
5. Director Publications. Customs, Excise. I.P. Estate, New
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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. 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
Court-IV
Excise Appeal No.1170 of 2009-SM

Date of Hearing/Decision: 28.07.2010

(Arising out of Order-in-Appeal No.76(DK)/CE/JPR-II/2009 dated
23402.08 passed by the CCE(A), Jaipur)

For approval and signature:

Hon'ble Mr.Sahab Singh, 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?	No
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?	yes
4	Whether Order is to be circulated to the Departmental authorities?	yes

CCE, Jaipur-II

Appellant

Vs.

M/s.Rajasthan Spinning & Weaving Mills Ltd.

Respondent

Present for the Appellant: Ms. R.K.Jagdev, SDR

Present for the Respondent: Ms.Sukriti Das, Advocate

Coram: Hon'ble Mr.Sahab Singh, Member (Technical)

Final ORDER NO. 450/2011 SM (B)

PER: SAHAB SINGH

This is an appeal filed by the Revenue against the Order-in-Appeal No.76(DK)/CE/JPR-II/2009 dated 24.02.08 passed by the Commissioner of Central Excise, (Appeals), Jaipur in which the Commissioner (Appeals) has set aside the order in original passed by the lower authority.

2. The brief facts of the case are that the respondents are engaged in the manufacture of man made yarn of synthetic and artificial staple fibre falling under chapter 55 of the First Schedule to the Central Excise Tariff Act, 1985 and the respondents are also registered for service tax registration under the category of Goods Transport Agency service. The respondents were receivers of GTA service on the services received in terms of Rule 2(1) (d) (v) of Service Tax Rules, 1994. The respondents paid service tax on GTA service received for inward transport through cenvat credit account by their manufacturing unit by making a debit entry in the cenvat credit account. The respondents have taken the credit of service tax of Rs.2,87,663/- so paid for payment of Central Excise duty during the period from November, 2006 to June, 2007 by making a debit entry in the cenvat credit account. It was alleged by the department that the assessee has taken the credit without any cenvat documents mentioned under Rule 9(1) of Cenvat Credit Rules, 2004. Accordingly a show cause notice was issued to the respondents proposing the disallowance of credit and demanding of interest leviable thereon and proposing imposition of penalty. The said show cause notice was adjudicated by the lower authority who has disallowed credit amounting to Rs.2,86,663/- and ordered to be recovered alongwith interest in terms of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A and Section 11AB of Central Excise Act, 1944 and penalty of Rs.2,87,663/- was imposed on the respondents under Section 11AC ibid read with Rule 15 of Cenvat Credit Rules. Against the order in original of the original authority,

the assessee has filed appeal before the Commissioner (Appeals) who vide the impugned order has allowed the appeal of the respondents. Hence, this appeal is filed by the department before this Tribunal.

3. Learned SDR appearing for the Revenue submitted that the only issue is to be decided in this case is whether the credit can be allowed on the basis of debit entry in the cenvat credit account. She submitted that the documents on the basis of which the credit was to be allowed are mentioned under Rule 9(1) of Cenvat Credit Rules, 2004. Since there was no document available with the respondents for the credit claim, the credit is not admissible to the respondents and the Commissioner (Appeals) has wrongly allowed their appeal.

4. On the other hand, learned Advocate appearing for the respondents submitted that the respondents have taken credit of service tax paid on GTA service received for inward transport which is allowable to the respondents. To support her contention, she relied on the decision of Hon'ble Punjab & Haryana High Court in the case of CCE, Chandigarh vs. Nahar Industrial Enterprises Ltd. reported in 2011 (104) RLTONLINE 3 (P&H), CCE vs. Nahar Spinning Mills Ltd.-2011-TIOL-413-HC-P&H-ST, the decision of the Tribunal in the case of National Engineering Inds.Ltd. vs. CCE, Jaipur-I vide Final order No.ST/64/11 dated 22.2.2011, CST, Mumbai vs. Phills Engineering Corporation reported in 2010 (20) STR 692, the decision of the Tribunal in the case of CCE, Indore vs. M/s.Unipatch Rubber Ltd. vide Final order No.ST/62/11 dated 17.2.2011.

6. As regards the decisions cited by the learned Advocate for the respondents, it is found that a person who is liable to pay tax on goods transport agent service in terms of Section 68(2) of Finance Act, 1994 and is not actual service provider, he can utilize credit for payment of tax on such service. In the present case, the issue involved is whether in the absence of any documents, the credit is admissible on the basis of debit entry in the cenvat credit account and that can be utilized for payment of duty of excisable goods. It is admitted fact that the service tax paid by the respondents on the GTA service for inward transport of the goods through cenvat credit account by their manufacturing unit by making debit entry in the cenvat credit account. The debit entry in the cenvat credit account is a proof of payment of service tax by the respondents for inward transport of the goods. In the Rule 9(1) of Cenvat Credit Rules, 2004, the following documents are prescribed for taking credit-

- (a) an invoice by a manufacturer, importer or dealer
- (b) a supplementary invoice issued by manufacturer or importer
- (c) a bill of entry
- (d) a certificate issued by an appraiser of Customs
- (e) a challan evidencing payment of Service Tax by the person liable to pay service tax
- (f) an invoice, bill or challan issued by provider of input service evidencing payment of Service Tax
- (g) an invoice, bill or challan issued by input service distributor for distributing Service Tax credit received.

7. From the perusal of the above Rule 9(1) *ibid*, I find that the credit can be taken on the basis of documents evidencing payment

of service tax. In the present case, the payment of service tax was not made thorough challan intead the payment was made thorough debit entry in the cenvat credit account and the debit entry in the cenvat credit account was made on the basis of LR i.e. Lorry receipt received by the respondents from the transporter. I also find that the LR has all the details showing the name of consignor and consignee, serial number and in the note below it is stated that the service tax to be paid by the consignee. Therefore, the details mentioned in the LR provided all the required information. I therefore, do not find any infirmity in the impugned order passed by the Commissioner (Appeals). Hence, the departmental appeal is dismissed.

(The operative part of this already pronounced in the court)

(SAHAB SINGH)
MEMBER (TECHNICAL)

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