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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/1583/2010 – SM[BR] **Date 29/11/2011**

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

To :
M/S HIND SPINNERS,
PLOT NO. 2,3, & 4, INDUSTRIAL GROWTH CENTRE
PILLUKHEDI, DISTT. RAJGARH (M.P.)

M/S HIND SPINNERS, Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No. 838 / 2011-SM[BR]** dated 11.11.2011 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 BHOPAL
HOSHANGABAD ROAD, 48,
ADMINISTRATIVE AREA, AREA
HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult
MR.Z. U. ALVI
D-8,BDA COLONY, ADJACENT GARUDA TRAVELS. KOH-E-FIZA BHOPAL-01

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions 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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 1583 of 2010-SM

[Arising out of Order-in-Appeal No. 106/BPL/ 2010 dated 8.7.2010 passed by the Commissioner of Customs & Central Excise (Appeals), Bhopal]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

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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?	:	No
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. Hind Spinners — Appellants

Vs.

Commissioner of Central Excise
Bhopal — Respondent

Appearance:

Shri Z. U. Alvi, Advocate for the Appellants
Shri R.K. Verma, SDR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
~~Hon'ble Mr. Mathew John, Member (Technical)~~

Date of Hearing/decision : 11.11.2011

Final **ORAL ORDER NO. 838/2011 SM (BR)**

Per Archana Wadhwa (for the Bench):

After hearing both sides, I find that the appellant is a manufacturer of excisable goods and was availing services of goods transport agency. He was liable to pay the Service Tax on the said services received by him. The Service Tax stands paid by the appellants by utilising the Cenvat credit accumulated with him. The Revenue's objection is that the appellant ought to have discharged the tax liability in cash instead of utilising the Cenvat credit.

2. Both sides agree that the issue is no more res integra and stands settled by the Tribunal's decision in the case Commissioner of Central Excise, Chandigarh vs. Nahar Industrial Enterprises Ltd. as reported in 2007 (7) STR 26 (Tri-Del) as upheld by the Hon'ble High Court of Punjab and Haryana as reported in 2010 TIOL 868 HC (P&H). As such, the appellant was entitled to utilise the Cenvat credit for payment of Service Tax till 1.3.08.

3. However, after 1.3.08 the definition of 'output services' was amended by Notification No. 10/2008 CE(NT) dated 1.3.2008 so as to

exclude GTA services referred to in sub clause (zzp) of clause 105 of Section 65 of Finance Act, 1944.

4. Learned advocate appearing for the appellants fairly concedes that with effect from 1.3.08, the appellant was not entitled to utilise the Cenvat credit for payment of Service Tax on GTA service and such liability was required to be discharge through cash. He submits that since there was confusion in the filed at the relevant period, they originally paid the tax from accumulated Cenvat credit. Thereafter the payment of Rs.1,72,092/- was made in cash in respect of the demand for the period 1.3.08 to March, 2009. Inasmuch as they have subsequently deposited the tax in cash, he prays for re-crediting the said amount in their Cenvat account.

I find that the appellants have deposited the amount in cash, which was already paid by them through Cenvat credit. With such deposit in cash, they become entitled for reversal of the credit so utilised by them for payment of the same tax amount. As such, the appellants are allowed to re-credit the amount in their Cenvat credit account.

5. As regards the penalty imposed upon the appellant, I agree with the learned advocate that there was utter confusion in the field during the relevant period and as such imposition of penalty is not justified, the same is accordingly set aside.

6. In the nut shell, the demand upto 1.3.2008 is ~~stayed~~ set aside along with setting aside of penalties, the demand for the period subsequent to

1.3.2008 is not being challenged by the appellants and stands paid. As a consequence, the appellants are entitled to re-credit the amount in their Cenvat credit account.

7. The appeal is disposed of in the above manner.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

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