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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/323 /2011 – SM[BR] **Date 19/12/2011**

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

To :
M/S G.R. CORPORATION,
18-C-2, POKHARPUR, KANPUR (U.P.)

M/S G.R. CORPORATION, Appellant
Vs
C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. 881 / 2011-SM[BR]** Dated 16.11.2011 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. KANPUR
117/7, SARVODAYA NAGAR,
KANPUR 208005.

2. Adv. / Consult
MR.AMIT AWASTHI
H-1, IST FLOOR, RADHEY APPARTMENT PLOT NO. 7/116A, SWAROOP NAGAR, KANPUR-208002

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

Date of Hearing:16.11.2011
Date of Decision:16.11.2011.

Service Tax Appeal No.323 of 2011-SM

[(Arising out of common Order-in-Appeal No.508/ST/APPL/KNP/2010 dated 30.09.2010 passed by the Commissioner of Central Excise & Service Tax (Appeals), Kanpur]

For Approval and signature:

Hon'ble Shri Rakesh Kumar, 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?

2. Whether it would 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 Department Authorities?

M/s.G.R. Corporation Appellants

Vs

CCE, Kanpur Respondent

Appeared for the Appellant: Rep. by Shri A.K. Dixit, Advocate
Appeared for the Respondent: Rep. by Shri R.K. Verma, DR

Coram: **Hon'ble Shri Rakesh Kumar, Member (Technical)**

Final ORDER.....881/2011 SM (Br).....Dated:16.11.2011

Per Rakesh Kumar:

The only point of dispute in this case is as to whether during the period from 19.04.2006 onwards, the GTA services received by the appellant and in respect of which they had paid the service tax as service recipient would be treated as their output service and whether the GTA services received would be paid through GTA services.

2. Heard both the sides.

3. During the period prior to 19.04.2006, there was an explanation appended to Rule 2(p) of the Cenvat Credit Rules, 2004 giving the definition of 'output service' which provided that for removal of the doubts, it is clarified that if a person liable to pay service tax does not provide any taxable service or does not manufacture final products, the service for which he is liable to pay service tax shall deemed to be the output service. It is by virtue of this explanation that prior to 19.04.2006, the GTA services received by a person in respect of which he was liable to pay service tax as service recipient could be treated as his output service and on this basis, he could pay the service tax through Cenvat credit. During period w.e.f. 19.04.2006, in absence of the deeming provisions, the service received by a

manufacturer cannot be treated as his output service, as in terms of Rule 2(p) of the Cenvat Credit Rules, 'output service' means any taxable service provided by the provider of taxable service, to a customer, client, subscriber, policy-holder or any other person, as the case may be and in case, the GTA service received by an assessee, there is no customer or client and hence, the GTA service received could not be treated as the output service.

4. In view of the above, during the period of dispute, the appellant could not discharge service tax liability in respect of the GTA service received by them through Cenvat ~~credit.~~ credit and the service tax liability was to be discharged through PLA only. In view of this, there is no infirmity in the impugned order. The appeal is dismissed.

[Order dictated & pronounced in open court]

(Rakesh Kumar)
Member (Technical)

Ckp.