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/455 /2009 – SM[BR] E/ CO/ 85 / 2009-SM[BR] **Date 20/12/2011**

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

To :
C.C.E. GHAZIABAD
C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR,
GHAZIABAD 201302

C.C.E. GHAZIABAD Appellant

Vs

M/S ARUN ENTERPRISES, Respondent

I am directed to transmit herewith a certified copy of **Final order No. 893 / 2011-SM[BR]** dated 30.11.2011 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 ARUN ENTERPRISES,
B-48, SITE-IV, INDUSTRIAL AREA,
SAHIBABAD, GHAZIABAD.

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 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,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

Central Excise appeal No. 455/2009-SM
With CO/85 of 2009

[Arising out of Order-in-Appeal No. 262-CE/GZB/2008 dated 24.11.2008 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Ghaziabad].

Date of Hearing: 30th November, 2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member

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 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?	

CCE, Ghaziabad — Appellant

Vs.

M/s. Arun Enterprises — Respondent

Present for the Appellant : Shri Fateh Singh, D.R.
Present for the Respondent : Shri Bipin Garg, Advocate

Coram: Hon'ble Shri D.N. Panda, Judicial Member

FINAL ORDER NO. 893/2011 SM (BR)

Per D.N. Panda:

Revenue is unable to show whether any prejudice is possible to be caused to it by the action of the Respondent when the Respondent transferred the impugned amount from its PLA account to Cenvat Credit account for discharge of service tax liability. There is no dispute about deposit of money to the impugned extent by the respondent into treasury while making entry in the PLA. Malafide of the respondent is not brought on record. So also, transfer of amount in question is not proved to be malafide.

2. Learned Counsel for the respondent submits that Service Tax Rules, 2004 in terms of Rule 3 permits credit arising out service tax payment or excise duty can be utilized for discharge of liability of either description.

3. Learned D.R. on the other hand, submits that learned Commissioner (Appeals) is incorrect to hold that transfer of amount from PLA to Cenvat Credit account was proper. He supports the penal aspect levied by the first appellate authority.

4. In the course of cross objection the respondent submits that they have objected to the levy of penalty of Rs. 25,000/- by the Commissioner (Appeals).

5. Heard both sides and also gone through rivalry submissions. When the malafide of the respondent or far reaching consequences are not brought on record, order of the learned Commissioner (Appeals) granting relief to the respondent cannot be impeached. However, when there is no knowable breach of law on record, levy of penalty of Rs. 25,000/- was unwarranted since levy is not sanctioned by Rule 15 of Cenvat Credit Rules, 2004 in absence of intention

to evade payment of duty or to make any willful contravention of any provision of law.

6. In the result, Revenue's appeal fails but Cross Objection succeeds. Respondent gets relief on the penalty imposed by the first appellate authority.

(Pronounced in the open Court)

(D.N.PANDA)
JUDICIAL MEMBER

RK