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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/750 /2009 – SM[BR] Date 15/03/2010

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

To :
C.C.E. MEERUT I

EXCISE CHOWK,OPPOSITE CHOUDHARY CHARAN
SINGH UNIVERSITY MANGAL PANDAY NAGAR,
MEERUT - 250005.

C.C.E. MEERUT I — Appellant

Vs

M/S H. L. PAPERS LTD., — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 303 / 2010 –SM[BR] dated 4.3.2010 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

M/S H. L. PAPERS LTD.,

D-2 TO 4 UPSIDC, INDUSTRIAL AREA, DHALWALA, RISHIKESH.

2. Adv. / Consult SHRI AALOK ARORA ADV.
OPP; TELEPHONE EXCHANGE
MISION COMPOND SARANPUR

3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

ST/750/09-SM

[Arising out of Order-in-Appeal No.76-CE/MRT-1/2009 dt.30.6.09 passed by Commissioner of Central Excise, Meerut)

For approval and signature

Hon'ble Mr. Rakesh Kumar, 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?

2.Whether it would 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: :

CCE, Meerut Appellant

Versus

M/s. H.L.Papers Ltd. Respondent

Appearance

Sh. V.K.Saxena, Jt.CDR for Appellant

Sh. Alok Arora, Adv. For Respondent

Final Date of decision: 4.3.2010
Order No. 303/2010 SM (Br)

Per Rakesh Kumar:

The facts leading to this appeal filed by the Revenue are, in brief, as under:

1.1 The Respondents are manufacturer of M.S.Ingots chargeable to Central Excise Duty. For receipt of various inputs, they had availed GTA Service in respect of which service tax was paid by them as service recipient during the period from March'08 to June'08. The Respondent paid service tax on the GTA on the gross amount, without any abatement while they were required to pay service tax only on the value equal to gross amount minus 75% abatement. Since after payment of service tax on GTA service on gross amount, they had taken full Cenvat credit, the Department objected that since they were required to pay service tax only on the net amount after deducting 75% abatement and since they had paid higher amount of service tax on the gross amount, then Cenvat credit eligibility would be limited only to the amount of tax actually payable and they must reverse the excess amount of Cenvat credit. The Respondent accordingly reversed the access credit. However, the Respondent, thereafter, applied for refund of the excess amount of service tax of Rs.2,64,509/- whose Cenvat credit had been reversed by them. The Asstt. Commissioner vide order-in-original dt.29.1.09 holding that the refund is admissible on merits, creditrf the same to the Consumer Welfare Fund on the ground that the Respondent have failed to produce the evidence that the incidence of the excess amount of service tax paid by them has not been passed on by them to their customers buying the final product. On appeal, the

Commissioner(Appeals)vide impugned order-in-appeal No.76/CE/APPL/MRT-1/09 dt.30.6.09 allowed the appeal and set aside the order-in-original on the ground that before the original adjudicating authority, the Respondent had produced the Chartered Accountant's certificate certifying that the incidence of service tax whose refund is sought had not been passed on to the customers but the adjudicating authority did not consider the same. The Commissioner(Appeals) also observed that from the Chartered Accountant's certificate and the book of accounts produced by the Respondent, it is clear that the incidence of service tax whose refund was claimed, has not been passed on by the Respondent to their customers. It is against this order of the Commissioner(Appeals) that the present appeal has been filed by the Revenue.

2. Heard both the sides.

2.1 Shri V.K. Saxena, Jt.CDR assailed impugned order reiterating the grounds of appeal and emphasised that the burden of proof that the incidence of service tax whose refund is sought by the respondent had not been passed on by them to their customers; that this burden cannot be treated as discharge just by production of Chartered Accountant's certificate; that the expenses on transportation of inputs alongwith service tax is part of the expenses incurred by the manufacturer towards manufacture of final product, which is realised by the manufacturer from the customers buying the final product; that since the service tax paid by them on the input service as per the provisions of Section 12B of the Central Excise Act,1944 burden of proving that incidence and the tax had not been passed on to the customers is on the Respondent that the evidence produced by the Respondent in this regard is not satisfactory and does not discharge this burden of proof and that in view of this, impugned order allowing the refund to the respondent by holding that the same is not hit by unjust enrichment is not correct.

2.2 Shri Alok Arora, Advocate, learned Counsel for the Respondent, defending the impugned order reiterating the Commissioner(Appeals)'s findings, emphasized that before the original adjudicating authority, the respondent had produced the certificate dt.20.12.08 of the Chartered Accountant firm named M/s. Agarwal Ajay & Associates, 655, Patel Nagar, New Mandi, Muzaffarnagar wherein it has been certified that the service tax whose refund has been claimed by the Respondent, was not part of the price realised by the Respondent of the final product from the customers; that in the books of accounts of the Respondent, the service tax is not included in the cost of raw-material and it was not booked to the profit and loss account, that the same did not form the part of over-heads of the cost of the final product, that the Commissioner(Appeals), with a view to check the veracity of the submissions of the Respondent, asked the jurisdictional Assistant Commissioner in writing with regard to the Chartered Accountant's certificate submitted by the

Respondent, but no comments in this regard were received from the Asstt. Commissioner and that in view of this, the Commissioner(Appeals)'s relying upon the Tribunal's judgment in the case of Birla Corpn. Ltd. vs CCE, Pune-1 reported in 2008(231)ELT.482 and M.R. Corporation vs CCE, Mumbai reported in 2007(220)ELT.257, wherein it was held that the certificate of Chartered Accountant should not be rejected summarily without any evidence to the contrary has rightly allowed the Respondent's appeal.

3. I have carefully considered the submissions from both the sides and perused the records. In this case, there is no dispute about the fact that initially the Respondent had paid the service tax on the gross amount without any abatement and subsequently when the Department insisted that they would be eligible for Cenvat credit of the service tax payable only on the net amount after deducting the abatement, after reversal of the Cenvat credit by paying the amount of excess Cenvat credit in cash, the Respondent applied for refund of the excess amount of service tax paid by them. The only point of dispute in this case is as to whether the claim is hit by principle of unjust enrichment. While the burden of proof in this regard would be on the Respondent, once the Respondent have produced evidence in form of Chartered Accountant's certificate and their books of accounts showing that the excess amount of service tax paid by them, whose refund is being claimed, was not part of the cost of

raw-material and, hence, not part of the price of finished goods sold, and has not been booked to the profit and loss account; the burden of proof that this plea is not be correct would be on the Department. The Department, therefore, should have produced evidence that the Chartered Accountant's certificate and the books of accounts produced by the respondent are not correct. But as reported by the Commissioner(Appeals) in the order, even though sufficient opportunity was given to the Department, in this regard, there was absolutely no response. I also find that the Tribunal in the cases of Birla Corpn. Ltd. vs CCE, Pune(supra) and M.R. Corpn. vs CCE, Mumbai (supra) has held that certificate produced by Chartered Accountant should not be rejected summarily without any evidence to the contrary while in this case it is found that the Chartered Accountant's certificate produced by the Respondent have just summarily rejected. In view of this, I do not find any infirmity in the impugned order. The Revenue's appeal is dismissed.

Order dictated in the open Court.

(Rakesh Kumar)
Member (Technical)

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