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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. E/669 /2008 – SM[BR] Date 16/03/2010

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

To :
C.C.E. LUDHIANA

CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)
C.C.E. LUDHIANA Appellant

Vs

M/S NAHAR SPINNING MILLS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 314 / 2010 –SM[BR] dated 11.3.2010 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 NAHAR SPINNING MILLS LTD.

G.T.ROAD,
DHANDARI KALAN,
FOCAL POINT, LUDHIANA.

2. Adv. / Consult SHRI RUPENDER SINGH ADV.
DSK LEGAL, 46 , ARADAHNA, CHANAKYA PURI
NEW DELHI

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 11.3.2010

Central Excise Appeal No.669 of 2008-SM

Arising out of the order in appeal No.392/CE/APPL/LDH/2007 dated 14.12.2007 passed by the Commissioner(Appeals), Central Excise, Chandigarh.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of 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

C.C.E., Ludhiana ... Appellant

Vs.

M/s Nahar Spinning Mills Ltd. ... Respondent

Appearance:

Shri V.K. Saxena, Authorized Departmental Representative (Jt.CDR) for the Revenue and Shri Rupender Singh, Advocate for the respondent

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 314/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal filed by the Department against the order of Commissioner (Appeals) No.392/CE/APPL/LDH/2007 dated 14.12.2007.

2. Heard both sides.

3. The respondent is a manufacturer of knitted fabrics and ready-made garments and were availing Cenvat credit of duty paid on inputs , capital goods, and credit of service tax paid by them on input services. They

particularly, availed the services of GTA and as recipient, they were treated as deemed service provider and paid the service tax and as recipient of the said service, they took credit of service tax which was paid by themselves. The original authority held that GTA services availed by them in relation to bringing the raw materials cannot be treated as output service and therefore, the tax payment on such service from cenvat credit account was not permissible. Commissioner (Appeals), following the decision of the Tribunal in the case of C.C.E., Chandigarh vs. M/s Nahar Industrial Enterprises Ltd. reported in 2007 (7) STR 26 allowed the appeal of the party.

4. I have carefully considered the submissions from both sides. The Department has filed appeal against the order of Commissioner (Appeals) on the ground that they have filed appeal against the order of the Tribunal in the Hon'ble Punjab & Haryana High Court and the same is pending decision. The other ground taken is that the respondents are not service provider. This very issue has been considered by the Tribunal in the case of C.C.E., Chandigarh vs. M/s Nahar Industrial Enterprises Ltd. wherein it was held that in respect of GTA service, the recipient who is treated as service provider are eligible to utilise the credit for payment of service tax. Learned Jt.CDR fairly concedes that there is no stay of the order of the Tribunal.

4. In view of the above, I do not find any reason to interfere with the order of the Commissioner (Appeals). The appeal is rejected.

(M. Veeraiyan)
Member (Technical)

scd/