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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/856 /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.** 324 / 2010 –SM[BR] dated 10.3.2010 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

NONE;------------------------

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)
16 Office Copy
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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 No. IV

CENTRAL EXCISE APPEAL NO. 856 OF 2008-SM

[Arising out of Order-in-Appeal No. 26/CE/LDH/08 dated 17.01.2008 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

Dated of hearing/decision: 10th March, 2010

For approval and signature:

Hon'ble Mr. S.K. Gaule, 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 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, Ludhiana — Appellant

Vs.

M/s. Nahar Spg. Mills Ltd., — Respondent

Appearance:

Shri S.K. Bhaskar, Authorised Representative (DR) for the Revenue;
None for the respondents

Coram:

Hon'ble Mr. S.K. Gaule, Member (Technical)

ORAL ORDER NO. 324/2010-SM (BR) **dated**

Per S.K. GAULE:

The Revenue's appeal is directed against order No. 26/CE/LDH/08 dated 17.1.2008 whereby the Commissioner (Appeals), while relying upon the Tribunal's decision in the case of CCE, Chandigarh vs. Nahar Industrial Enterprises, reported in 2007 (7) STR 26 (Tri.-Del.), has upheld the payment of service tax in respect of output service of GTA by the respondent from their Cenvat account.

2. None appeared for the respondents despite notice. Therefore, appeal is taken up for decision in the absence of the respondents. Shri S.K. Bhaskar, learned D.R. appeared on behalf of the Revenue.

3. The contention of the appellant is that the respondents did not pay service tax on output service of GTA through cash/PLA/TR-6 challan, instead they paid the service tax through accumulated Cenvat credit meant for payment of central excise duty and service tax in respect of output service, etc. The Contention is that the department appealed in the Punjab & Haryana High Court against the decision of the Tribunal in the case of Nahar Industrial Enterprises (supra) on which the Commissioner (Appeals) relied upon while allowing the appeal of the respondent. They also placed reliance on the decision in the case of Alstom Projects India Ltd. vs. CCE, Coimbatore, reported in 2008 (12) STR 23 (Tri. – Chennai).

4. I find that there is no stay of operation/proceedings against the decision of the Tribunal in the case of Nahar Industrial Enterprises (supra). Further it is not in dispute that service tax has been paid in the case. However, the Revenue's case is that the respondents had not paid service tax on GTA service through cash/PLA/TR-6 challan. The Commissioner (Appeals) in his impugned order held that payment of service tax in respect of out put service of GTA service from their Cenvat credit account is within the purview of law. The appellants could not produce anything contrary to the above. The Tribunal in the case of Alstom Projects India Ltd (supra) held that the input service tax credit was not available to be utilized for payment of service tax on GTA service which was also an input service. Whereas the instant case relates to payment of service tax from accumulated Cenvat credit instead of non-payment of service tax of GTA service through cash/PLA/TR-6 challan. This fact has been noted in para 2 of the order-in-original and para 2 of the impugned order-in-appeal. In these circumstances and in view of the decision of Tribunal in the case of Nahar Industrial Enterprises (supra), I do not find any infirmity in the impugned order. Accordingly, appeal is dismissed.

(S.K. GAULE)
MEMBER (TECHNICAL)

RK