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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/190 /2009 – SM[BR] Date **20/12/2010**

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

To :
M/S DHILLON KOOL DRINKS & BEVERAGES LTD
G.T.ROAD, PHILLAUR.

M/S DHILLON KOOL DRINKS & BEVERAGES LTD Appellant

Vs

C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Respondent

I am directed to transmit herewith a certified copy of **Final order No.**1454 / 2010-SM[BR] dated 10.12.2010 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
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)
C.R.BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH.
2. Adv. / Consult
MR.KAMALJEET SINGH
J-144, PATEL NAGAR -
I,GHAZIABAD.
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
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. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. 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

Service Tax Appeal No. 190 of 2009-SM

[Arising out of Revision Order No. 69/CE/Jal/08 dated 24.11.2008 passed by the Commissioner of Central Excise, Jalandhar]

Date of Hearing/decision: 10th December, 2010

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?	

M/s. Dhillon Kool Drinks & - Beverages Ltd., Appellant

Vs.

CCE, Jalandhar Respondent

Appearance:

Present for the Appellant :Shri Kamaljeet Singh, Advocate
Present for the Respondent :Shri K.P. Singh, SDR

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

Final **ORDER NO.** 1454/2010 SM (BR) **DATED**

PER D.N. PANDA:

This matter came up yesterday but for the request by Revenue to read the judgment of Hon'ble High Court of Punjab & Haryana in the case of Nahar Industrial Enterprises Ltd., the matter was adjourned. Learned Counsel Shri Kamaljeet Singh submits that the issue whether as framed by Hon'ble High Court of Punjab & Haryana is involved in the present appeal. According to him this case is covered by the decision of Hon'ble High Court in terms of judgment dated 6th May, 2010 in C.A. No. 99/2008 along with other appeals disposed by that order. He prays for grant of similar relief in the present case what the Hon'ble High Court of Punjab & Haryana has granted in the said judgment.

2. Per contra, learned D.R. submits that following question of law was framed by the Hon'ble High Court of Punjab & Haryana to decide the appeal of M/s. Nahar Industrial Enterprises Ltd.:-

"Whether a person who is not a actual service provider but discharges the service tax liability on the Taxable Services, under Section 68(2) of Finance Act, 1994 as a deemed service provider, is entitled to avail the CENVAT credit on inputs/input services/capital goods for payment of GTA service tax, even if he is not using such inputs/input service/capital goods for providing taxable services by virtue of deeming legal fiction?" [Emphasis supplied]

3. Learned D.R. has no information whether Revenue has gone in appeal against the judgment dated 6th May,

2010 of Hon'ble High. According to the learned D.R., the spirit of Cenvat Rule is that a deemed credit under Service Tax law, earned cannot be set off against excise duty liability. Therefore, the appellant should discharge its excise duty liability paying that in cash instead of claiming set off of tax paid on GTA service availed.

3. Heard both sides and perused the record.

4. In para 16 of the Review Order of Revenue it is mentioned that the matter of Nahar Industrial Enterprises Ltd. was before the Hon'ble High Court of Punjab & Haryana. Once the controversy is resolved and law is laid down by Hon'ble High Court in its judgment dated 6th May, 2010, the present apepal on similar question as that was before Hon'ble High Court does not pose any difficulty to decide since there is no factual dispute in this appeal as agreed by both sides. For understanding the principles of law, it would be proper to extract the relevant part of the judgment of Hon'ble High Court:

"Learned counsel for the reveue has contended that the respondents cannot pay the service tax from the Cenvat credit availed by them. But this argument has no force, because a perusal of para 24.2 of CBEC's Excise Manual of Supplementary Instructions shows that there is no legal bar to the utilisation of Cenvat credit for the purpose of payment of service tax on the GTA services.

A part from the above, even as per Rule 3(4) (e) of the Cenvat Credit Rules, 2004 the Cenvat credit may be utilized for payment of service tax on any output service.

In the present case also, the service tax was paid out of the Cenvat credit on GTA services and, hence, the respondents were well within their right to utilize the Cenvat credit for the purpose of payment of service tax. The Commissioner (Appeals) as well as the

Tribunal have rightly held that the respondents were entitled to pay the service tax from the Cenvat credit.

In view of the above, the question of law posed in these appeals is answered in favour of the assessee and against the revenue. We find no merit in these apepals and the same are accordingly dismissed."

5. The question of law having been answered in favour of the assessee as aforesaid, the present appellant succeeds and its appeal is allowed.

(Pronounced in the open Court)

(D.N. PANDA)
JUDICIAL MEMBER

R.K.