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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. ST/53 /2011-54 /2011 - CU[DB]
ST/103-04/2011

Date **12/10/2011**

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

To :
M/S SIDDHARTHA TUBES LTD.
VILLAGE-LONDHIYA, A.B. ROAD, SHAJAPUR. (M.P.)

M/S SIDDHARTHA TUBES LTD. Appellant

Vs

C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/540-41/ 2011 CU[DB]** dated 04.10.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwith Stay Order No ST/694-95/2011

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult
MR.BIPIN GARG
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 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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
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 (Haryana)
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
14. M/S SHREEPATI STEEL TUBES PVT. LTD.
PLOT NO. 82, TARAGANJ INDU. AREA,
A.B. ROAD, SARANGPUR, DISTT. RAJGARH (M.P)

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

Service Tax Stay No.103 of 2011- Customs in Appeals Nos.53 of 2011-Customs

M/s. Siddhartha Tubes Ltd. Appellant

Versus

CCE, Indore Respondent

Service Tax Stay No.104 of 2011- Customs in Appeals No.54 of 2011-Customs

M/s. Shreepati Steel Tubes Ltd. Appellant

Versus

CCE, Indore Respondent

[Arising out of common Order-in-Appeal No.IND/314 & 315/2010 dated 8.10.2010 passed by the Commissioner of Central Excise & Service Tax (Appeals), Indore].

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see 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?

Appearance: Rep. by Ms. Sukriti Das, Advocate for the appellant.
Rep. by Shri Sunil Kumar, SDR for the respondent.

CORAM : **Hon'ble Smt. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Technical Member

Stay order No. ST/694/11 & ST/695/11
Final Order No. ST/540-541/11 Dated : 2.9.2011

Per Rakesh Kumar:

The period of dispute in both the cases is from Jan. 2005 to September, 2005 and the dispute is in respect of payment of service tax on the Goods Transport Agency services received by the appellants.

While M/s. Sidhartha Tubes Ltd. are manufacturers of CR Coils/Sheets, GP Coil/Sheet and GC Sheet chargeable to the central excise duty, M/s. Shreepati Steel Tubes are manufacturers of M.S. Black Pipes etc. chargeable to central excise duty.

2. Sofar as M/s. Siddhartha Tubes Ltd., are concerned, there are two objections of the department –

(a) during the period of dispute they paid the service tax on the GTA services received by them by wrongly availing the benefit of exemption notification no.32/04-ST dated 3.12.2004 as they do not satisfy the condition for the same inasmuch as there is no evidence that no cenvat credit in respect of inputs or capital goods has been availed by the GTA service provider from whom the GTA services had been received. On this ground, it is alleged that service tax amounting to Rs.3,69,658/- had been short paid.

(b) The second objection of the department is that service tax amounting to Rs.57,739/- has been paid through cenvat credit while the same was required to be paid in cash, as the GTA services received by them on which service tax had been paid as service recipient, was not their out-put service, while as per the provisions of the Cenvat Credit Rules, 2004, the Cenvat credit could be used only for payment of central excise duty on finished products or on service tax as output services.

2.1 In view of the above, the jurisdictional Asstt. Commissioner vide Order-in-Original dated 30.10.2009 denied the exemption under Notification No.32/04-ST to M/s. Siddhartha Tubes Ltd. and confirmed the service tax demand of Rs.3,69,658/- along with interest and imposed penalty of –

(a) Rs.200/- per day till the date of payment of service tax under Rule 76 of the Finance Act, 1994;

(b) Penalty of Rs.3,69,658/- under Section 78 of the Finance Act, 1994; and

(c) Penalty of Rs.1,000/- under section 77 of the Finance Act, 1994.

3. As regards M/s. Shreepati Steel Tubes, the department raised the similar objections and alleged that during the period of dispute service tax amounting to Rs.49,336/- had been short paid by wrongly

availing the exemption under Notification No.32/04-ST and service tax amounting to Rs.12,176/- has been wrongly paid through cenvat credit while the same should have been paid in cash. In their case also, the jurisdictional Asstt. Commissioner vide Order-in-Original dated 30.10.2009 –

(a) confirmed service tax demand of Rs.49,336/- by denying the exemption under Notification No.32/04-ST along with interest;

(b) confirmed cenvat credit demand of Rs.12,176/- along with interest;

(c) imposed penalty of Rs.200/- per day under Section 76, penalty of Rs.49,336/- under Section 78 and penalty of Rs.1,000/- under Section 77 of the Finance Act, 1994.

4. Against both these orders, the appellants filed the appeals before the Commissioner (Appeals), which were disposed of by the Commissioner (Appeals) by a common order dated 8.10.2010 by which the appeals were dismissed. Against this order of the Commissioner (Appeals), these two appeals along with stay application have been filed.

5. Heard both the sides.

6. Though these appeals were listed for hearing of the stay applications only, after hearing both the sides, we were of the view that these appeals can be finally disposed of. Accordingly, with the consent of both the sides, both these appeals were heard for final disposal after waiving the requirement of pre-deposit.

7. Mrs. Sukriti Das, Advocate, ld. Counsel for the appellants, pleaded that there are two issues involved in both the appeals, that the first issue is as to whether during the period of dispute i.e. from Jan. 2005 to September, 2005, the appellants were eligible for the benefit of Notification No.32/04-ST dated 3.12.2004 under which the 75% abatement is available for payment of service tax by the service recipient on the GTA services received by them, that this exemption is available subject to certain conditions and the department has denied this exemption on the ground that the conditions for this exemption regarding non-availment of Cenvat credit in respect of inputs and capital goods by GTA service providers from whom the services had been received, is not satisfied, that denial of exemption under this exemption is incorrect, as whole the bulk of the service tax demand is on this issue, the same has not been discussed at all the impugned order-in-appeal, that the second issue involved in these appeals is as to whether the service tax on the GTA services received can be paid by the recipient through cenvat credit, that during the period of dispute in both the cases, there was an explanation to Rule 2 (p) of Cenvat Credit Rules, 2004 providing that in case of the services received by an assessee on which the assessee is required to pay service tax as service recipient the service received was to be treated as the assessee output service, that since by virtue of Explanation to Rule 2(p), the GTA services received by the appellant was their output service, the service tax has been correctly paid through cenvat credit, that in this regard

she relies upon the judgement of the Tribunal in the case of **CCE, Chandigarh Vs. Nahar Industrial Enterprises reported in 2007 (7) STR 26 (Tribunal-Delhi),** which has been upheld by the Hon'ble Punjab & Haryana High Court vide judgement reported in 2010.TIOL-869.HC (P&H) ST, that in view of this, the Commissioner (Appeals)'s order disallowing the payment of service tax through cenvat credit is not correct, that as mentioned above with regard to denial of benefit of notification no.32/04-ST, there is neither any discussion nor any findings in the Commissioner (Appeals)'s order and that in view of this, the impugned order is not correct.

7. Shri Sunil Kumar, ld. Departmental Representative, defended the impugned order with regard to the question of payment of service tax on GTA services by the appellant as service recipient through cenvat credit, pleading that the GTA services received by the appellant cannot be treated as their output service. He, however, accepted that with regard to the second point of dispute regarding the appellant's eligibility for exemption under Notification No.32/04-ST, there is absolutely no discussion or the findings in the impugned order.

8. We have carefully considered the submissions from both the sides and perused the records. Though as discussed above, there are two issues involved in these appeals – whether during the period of dispute from Jan. 2005 to September, 2005,the appellants were eligible for benefit of exemption notification no.32/04-ST and whether during this period, they

could pay the service tax on the GTA services as recipient through cenvat credit. Though in both the appeals, bulk of the service tax demand is based on the denial of exemption under Notification No.32/04-ST, in the impugned order, there is neither any discussion nor any findings on this issue. The impugned order discusses only the issue as to whether during the period of dispute, the appellant could discharge their service tax liability in respect of GTA services received through cenvat credit by treating the GTA services so received as their output service. The order thus is incomplete. In view of this, the same is set aside and the matter is remanded back to the Commissioner (Appeals) for de novo decision of the appeals after hearing the appellants.

(order pronounced in open court).

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

Ckp.