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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/499 /2008-502 /2008 - CU[DB] Date **02/11/2011**

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 FIBRES (PROP. NAHAR EXPORTS LTD.), Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/580-83/ 2011 CU[DB]** dated 31.10.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
M/S NAHAR FIBRES (PROP. NAHAR EXPORTS LTD.),
JITWAL KALAN, TEH.-
MALERKOTLA,DISTT. SANGRUR
(PUNJAB)

2. Adv. / Consult

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

Assistant Registrar
(Customs Appeal Branch)

P.T.O.

M/S VINAYAK TEXTILE MILLS ,
PHASE-VIII, FOCAL POINT,LUDHIANA. (PUNJAB)

M/S ARIHANT SPINNING MILLS.
INDUSTRIAL AREA,MALERKOTLA (PUNJAB)

M/S RISHAB SPINNING MILLS (PROP. NAHAR SPG. MILLS
VILLAGE JODHAN,DISTT. LUDHIANA.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 499 to 502 of 2008

[Arising out of Order-in-Appeal No. 94-97/CE/LDH/2008 dated 17.4.2008 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the 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

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Commissioner of Central Excise Ludhiana — Appellants

Vs.

M/s. Nahar Fibres — Respondent
M/s. Arihant Spinning Mills
M/s. Vinayak Textile Mills
M/s. Rishab Spinning Mills

Appearance:

Shri Amrish Jain, SDR for the Appellants
None for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing/decision : 21.10.2011

Final **ORAL ORDER NO. ST/ 580-583/11**

Per Archana Wadhwa (for the Bench):

All the four appeals filed by the Revenue are disposed of by a common order as they are directed against the same impugned order passed by Commissioner (Appeals) and the issue involved is identical.

2. After hearing both the sides, we find that the issue relates to the fact as to whether the respondents, who are liable to pay Service Tax in respect of goods transport agency services received by them are entitled to utilise the modvat credit for discharge of their Service Tax liability or as such liability has to be discharged in cash.

3. Commissioner (Appeals) has held in favour of the respondents by following the Tribunal's decision in the case of Commissioner vs. Nahar Industrial Enterprises reported as 2007 (80) RLT 482 (CESTAT-DEL). It has been held in the said decision of the Tribunal that the Cenvat Credit availed by the appellants can be used for payment of Service Tax on the GTA services received by the assessee prior to 19.4.06. As such by following the said decision of the Tribunal Commissioner (Appeals) has held in favour of the respondents.

4. It is seen that the Revenue has challenged the said order on the ground that Tribunal's decision in the case of Nahar Industrial Enterprise does not stand accepted by the Revenue and appeal there against stand filed before the Hon'ble High Court of Punjab and Haryana which is pending decision. However, it is seen that the said appeal of the Revenue stand dismissed by the Hon'ble Punjab and Haryana High Court as reported in 2011(104) RLTONLINE 3 (P&H). Inasmuch as the issue stands decided in favour of the respondents, we find no reasons to interfere with the order of Commissioner (Appeals). Revenues' appeals are accordingly rejected.

(Operative part of the order pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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