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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/1690/2010 - CU[DB]
ST/S/3637/2010

Date **20/07/2011**

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

To :
M/S U.P.ASBESTOS LTD
MOHANLALGANJ, RAIBAREILLY ROAD, LUCKNOW.

M/S U.P.ASBESTOS LTD Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/296/ 2011 CU[DB]** dated 11.07.11 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/442/2011

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

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. 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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
COURT NO. III

Date of Hearing : 11.7.2011

Service Tax Stay No. 3637 of 2010 and Service Tax Appeal No. 1690 of 2010

[Arising out of Order-in-Appeal No. 237/ST/LKO/2010 dated 3.9.2010 passed by the Commissioner of Central Excise (Appeals), Lucknow]

Coram:
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Mathew John, 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?	
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 Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

M/s U.P. Asbestos Ltd. — Appellant

Vs.

CCE, Lucknow — Respondent

Appearance:

Appeared for Appellant : Shri Kamaljeet Singh, Advocate
Appeared for Respondent : Shri K.K. Jaiswal, SDR

Coram:

Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Mathew John, Member (Technical)

Stay order No. ST/442/11
Final Order No. ST/296/11 dated 11.7.11

Per S.S. Kang:

Heard both sides.

2. The applicant filed this application for waiver of pre-deposit of Rs.26,67,638/- interest and penalty. The demand is confirmed after denying the utilisation cenvat credit for payment of service tax on the Goods Transport Agency ~~from the Cenvat credit account paid~~ as recipient of the service.

3. The contention of the applicant is that for the subsequent period, the Commissioner (Appeals) vide order dated 30.5.2008 set aside the demand which was confirmed on the same ground after taking into consideration the decision of the Tribunal in the case of and in the case of **CCE Vs. Nahar Exports Ltd.** reported in 2008 (9) STR 252 and in the case of **India Cements Ltd. Vs. CCE** reported in 2007 (7) STR 569. The applicant also relied upon the decision of Hon'ble Punjab and Haryana High Court in the case of **CCE, Vs. Nahar Industrial Enterprises Limited & Others** vide order dated 6th May 2010 upheld the decision of the Tribunal in the case of **CCE, Vs. Nahar Industrial Enterprises Ltd.**

4. Revenue submitted that the Tribunal in the case of **ITC Ltd. Vs. CCE** reported in [2011] 31 STT 463 held that ~~from~~ for the period 1.4.2005 to 31.3.2007, ~~the~~ there was requirement to pay Service Tax on deemed output service through cash and not through Cenvat credit. It is also submitted by ld. DR that in view of the above decision of the Tribunal the demand is rightly made.

5. We find that the Commissioner (Appeals) has dismissed the appeal for non-compliance to the provisions of Section 35F of the Central Excise Act without going into the merits of the Appeal. We

find that in the case of **Nahar Industrial Enterprises** (supra) which is upheld by the Punjab & Haryana High Court vide order dated 6th May 2010 whereby the payment of service tax from Cevant amount was upheld. In the case of **ITC Ltd.** (supra) the decision above cited has not been brought to the notice of the bench. In these circumstances, prima facie, we find it is a fit case for total waiver of amount of tax, interest and penalty. The stay petition is allowed. We find that the Commissioner (Appeals) has not gone into the merits of the appeal. Hence, the impugned order is set aside and the matter is remanded to the Commissioner (Appeals) to pass afresh order without insisting upon any pre-deposit and after affording an opportunity of hearing to the Appellant. The Appeal is disposed of by way of remand. Stay petition and appeal is allowed in same terms.

(Dictated & pronounced in open Court)

(S.S. Kang)
Vice President

(~~Mathew~~ John)
Member (Technical)

RM