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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/768-69 /2011 - CU[DB]
ST/S/1581-82/11

Date **04/01/2012**

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

To :
M/S VENKATESHWARA DISTRIBUTORS PRIVATE LIMITED,
3833, JAI HOUSE, PATAUDI HOUSE ROAD, DARYA GANJ, NEW DELHI.
110002

M/S VENKATESHWARA DISTRIBUTORS PRIVATE LIMITED, Appellant

Vs

C.C.E. DELHI I Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/673-74 2011 CU|DB|** dated 23.12.11 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/921-22/11

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

2. Adv. / Consult Sh. Vijay Jain, Adv
C/O Appellant

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 (Harvana)
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

DIVISION BENCH
Court No.3
ST/Stay/1581-1582/2011 & Appeal No.ST/768-769/2011-Cus

(Arising out of Order-in-Appeal No.24/ST/DLH/2011 and No.25/ST/DLH/2011 both dt.14.2.11 passed by the CCE (Appeals), Delhi-I)

Date of Hearing/decision: 15.12.2011

For approval and signature:
Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Rakesh Kumar, 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?	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

Venateshwara Distributors (P) Ltd. Appellant
Vs
CCE, Delhi-I Respondent

Present for the Appellant: Shri Vijay Jain, Advocate
Shri Sanjay Kumar, Advocate
Present for the Respondent: Shri Amirsh Jain, SDR

Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Rakesh Kumar, Member (Technical)

Final **ORDER NO.** ST/673-674/11
Stay order No. ST/921-922/11

PER: ARCHANA WADHWA

After dispensing with condition of pre-deposit of service tax and penalty involved in both the appeals, we proceed to decide appeal itself inasmuch as the issue involved ~~is~~ lies in a narrow compass.

2. The appellants have discharged service tax liability as recipient of GTA service so availed by them. They were also availing the benefit of Notification No.1/2006-ST dated 1.3.06 which grants abatement to the extent of 75% of the value of service. The proceedings were initiated against the appellant by way of issuance of show cause notice on the allegation that since they have availed credit in respect of various other services, they are not entitled to avail abatement in terms of said notification. The said proceedings resulted in culmination into passing of the impugned order confirming demand and penalty which stands upheld by the Commissioner (Appeals).

3. From the show cause notice, we find that the allegation is in respect of availment of credit by the appellants. Various decisions of the Tribunal have held that the condition of the Notification No.1/2006-ST providing for non availment of cenvat credit on inputs etc. or non availment of the benefit of Notification No.12/03-ST dt.20.6.03 related to service provider i.e. transporter. Availment of credit by the service recipient cannot be held to be ground for denial of the benefit of notification No.32/2004-ST. In this regards, reference can be made to the following decisions:-

1. Indian Oil Corration Ltd. vs.CCE, Mumbai-II-2011 (22) STR 282 (Tri.-Mumbai)
2. U.P.State Sugar Corporation vs. CCE, Meerut-2009 (14) STR 428 (Tri.-Del.)
3.CCE, Rajkot vs. Sunhil Ceramics Pvt.Ltd.-2008 (9) STR 530 (Tri.-Ahmd.)

4. Even otherwise, we find that the appellants have produced on record sample certificate by the transporter declaring that they have neither availed cenvat credit of duty paid on any inputs or capital goods used for providing transport services nor benefit of Notification No.12/2003-ST dt.20.6.03. The Tribunal in its various decisions has held that such type of declaration is sufficient and there is no need to give declaration on each and every consignment note inasmuch as there is no such requirement in the notification. Otherwise also, we find that when the transporters are not paying service tax, the question of availment of credit and the benefit of Notification does not arise. As such, we are of the view that denial of benefit of Notification No.01/2006-ST is not justified. We accordingly, set aside the impugned order and allow the appeals with consequential relief to the appellants.

5. The stay petitions as also the appeals get disposed in the above terms.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(RAKESH KUMAR)
MEMBER (TECHNICAL)

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