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(28)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/753 /2007 - CU[DB] Date **24/08/2011**
ST/334/2008

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

To :
M/S SHREE RAJASTHAN SYNTEX LTD.
SIMALWARA ROAD, VILLAGE UDAIPURA,
DUGARPUR

M/S SHREE RAJASTHAN SYNTEX LTD. Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/391-92 2011 CU[DB]** dated 23.08.2011 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
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

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 Pragati Paper Industries Ltd
Ambala - Naraingarh Road
Vill: Handesra, SAS Nagar
Mohali - (Pb)

Assistant Registrar
(Customs Appeal Branch)

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

Service Tax Appeal Nos.753 of 2007 and 334 of 2008

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, 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?	:	Yes
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.

<u>Service Tax Appeal No.753 of 2007</u>

[Arising out of Order-in-Appeal No. 531 (RKS) ST/JPR-I1/2007 dated 27.9.2007 passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur]

M/s. Shree Rajasthan Syntex Ltd. — Appellants

Vs.

Commissioner of Central Excise
Jaipur — Respondent

<u>Service Tax Appeal No. 334 of 2008</u>

[Arising out of Order-in-Appeal No. 174/CE/CHD/2008 dated 3.3.2008 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

M/s. Pragati Papers Industries Ltd. — Appellants

Vs.

Commissioner of Central Excise
Chandigarh — Respondent

Appearance:

Ms. Sukriti Das, Advocate for the Appellants
Shri R.K. Gupta, SDR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Date of Hearing/decision : 11.08.2011

Final **ORAL ORDER NO.** ST/391-392/11

Per Archna Wadhwa (for the Bench):

Both the appeals are disposed of by a common order as the issue involved is identical. The appellants are availing the services of goods transport agency and were paying service tax on the same as recipient of such services. The said Service Tax was paid by them by availing the Cenvat credit of duty paid on the inputs, capital goods and the Service Tax paid on the input services. The issue required to be decided is as to whether such utilisation of Cenvat credit for payment of Service Tax on the GTA services so received by the appellants is according to the law or the appellants were required to pay such Service Tax in cash. The lower authorities by holding the services of GTA received by the appellant cannot be held to be an output services and as such the Cenvat Credit availed on the inputs services or inputs or capital goods cannot be utilised for payment of Service Tax.

2. It stands contended before us under Rule 3(4) of Cenvat Credit Rules, 2004, Cenvat credit may be utilised for payment of Service Tax on any output services. The question which arises is as to whether the appellant can be said to be the provider ~~producer~~ of any output services. The term 'output services' defined under Rule 2 (p) of the Cenvat Credit Rules ~~to~~ mean that "any taxable service provided by the provider of taxable service…..". The term 'provider of taxable service' has been defined in rule 2(r) of the Rules to include "a person liable for paying service tax". It is not in dispute that as recipient of service from goods transport agency, the appellant is liable to pay service tax by virtue of notification under Section 68(2) of the Finance Act, 1994. If the appellant is the person liable to pay service tax, he would be deemed to be provider of taxable service by fiction ~~friction~~ of law and, therefore, the service provided by him will be deemed to be output service under rule 2(p) of the Rules.

3. After hearing the learned DR, we find that the issue is no more res integra and stands settled by various decisions of the

Tribunal, which also stands confirmed by the Hon'ble High Court of Punjab and Haryana. The Tribunal in the case of Commissioner of Central Excsie, Nagpur vs. Visaka Industries Ltd. reported in [2007 (8) STR 231 (Tri-Mum)] has held that the assessee, a manufacturing unit paying Service tax on goods transport services, fall within the definition of 'provider of taxable service' under Rule 2(r) of Cenvat Credit Rules, 2004 which includes a person liable for paying Service tax. As such, it was held that payment of Service tax in respect of services rendered by Goods transport agency through Cenvat Credit was ~~appropriated~~ appropriate. Similarly, in the case of CCE, Chandigarh vs. Nahar Industries Enterprises Ltd. reported in [2007 (7) STR 26 (Tri-Del)] it was held that Cenvat credit can be utilised towards payment of Service Tax in respect of services received from Goods Transport Agency inasmuch as by a deemed fiction of ~~tax~~ law service recipient ~~to be~~ is held ~~as~~ to be output service provider. The said order of the Hon'ble Tribunal stands confirmed by the Hon'ble Punjab and Haryana High Court as reported in [2011 (104) RLTONLINE 3 (P&H)] when the appeal filed by the revenue was rejected. We also take note of latest decision of the Tribunal in the case of M/s. Dhillon Kool

Drinks & Beverages Ltd. vs. CCE, Jalandhar as reported in [2011-TIOL-307-CESTAT-DEL] as also another decision of the Tribunal in the case of M/s. National Engineering Indus. Ltd. vs. CCE, Jaipur I issued vide Final Order No. ST/64/11 dated 22.2.2011 laying down that the appellants are eligible to pay tax on GTA services received from their Cenvat Credit account.

4. As against the above decisions, learned SDR appearing for the Revenue has drawn our attention to the decision of the Tribunal in the case of ITC Ltd. vs. CCE, Guntur reported in [2011 (23) STR 41 (Tri-Bang) holding that the appellant was not entitled to utilise the Cenvat Credit, for payment of service tax on the GTA services, so received by the appellant.

5. However, we find that facts in the above case of ITC Ltd. are entirely different inasmuch as it is seen that M/s. ITC was neither manufacturing any dutiable product nor providing any output services to any customer or client. As such, it was observed that though the services received by them is deemed to be an output services but as the Cenvat Credit on inputs or input services was not available to them as no manufacturing activity was being undertaken or any output services was being

provided, the question of paying of Service Tax through Cenvat Credit account does not arise. In other words, the Bench observed that M/s. ITC was not entitled to avail any Cenvat Credit and as such there can be no account of any credit for utilisation towards payment of duty on the GTA services so received by them.

for the period prior to issue of Notification 10/2008 CE (NT) dt 1-3-2008

6. As discussed above, the issue stands finally decided in favour of the appellant by various judgements referred supra and ITC decision not being relevant to the facts of the case, we by following the earlier precedent decisions on the issue involved, set aside the impugned orders and allow both the appeals with consequential relief to the appellants.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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