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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/1896-97/2010 - CU[DB]
ST/S/4004-05/2010

Date **06/09/2011**

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

To :
M/S SHIV NIWAS PALACE

(A UNIT OF THE LAKE SHORE PALACE HOTELS PVT. LTD.) CITY PALACE, UDAIPUR, (RAJASTHAN)

M/S SHIV NIWAS PALACE Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/431-32 2011 CU[DB]** dated 05.09.2011 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/602-03/2011

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, ADV
B-1/1289-A VASANT KUNJ
NEW DELHI – 70

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)

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

ST/Stay/4004-4005/10 in Appeal No.ST/1896-1897/10

(Arising out of Order-in-Appeal No.393(CB)/ST/JPR-II/2010 & No.393(CB)/ST/JPR-II/2010 dated 20.10.10 passed by the Commissioner of Customs, & Central Excise (A), Jaipur)

Date of Hearing/Decision: 26.08.2011

For approval and signature:
Hon'ble Mrs.Archana Wadhawa, Member (Judicial)
Hon'ble Mr.Mathew John, 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

M/s.Shiv Niwas Palace — Appellant

Vs.

CCE, Jaipur — Respondent

Present for the Appellant: Ms.Sukriti Das, Advocate
Present for the Respondent: Shri Amirsh Jain, SDR

Coram: Hon'ble Mrs.Archana Wadhawa, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

Stay order No. ST/602-603/11
Final **ORDER NO.** ST/431-432/11

PER: ARCHANA WADHWA

After dispensing with the conditions of pre-deposit service tax, we proceed to decide the appeal itself, inasmuch the issue lies in an narrow compass.

2. The benefit of Notification No.01/2006-ST dated 1.3.2006, which provided for abatement of value of services, stands denied to the appellants on the ground that they have availed cenvat credit and as such they have not fulfilled the condition of the notification.

3. On the other hand, it is the appellants' contention that credit availed by them initially, stands reversed subsequently. They have contested that the said reversal of credit amounts to a situation as if no credit was availed by them. By relying upon the various decisions, learned Advocate submits that the benefit of notification cannot be denied on the ground that the said reversal of credit was subsequent to the availment of exemption notification.

4. We find that the issue no more res integra as the same stands settled by the Hon'ble Allahabad High Court in the case of Hello Minerals Water (P) Ltd. vs. Union of Idia reported in 2004 (174) ELT 422 by taking into account the ~~subsequent~~ decision of Hon'ble Supreme Court in the case of Chandrapur Magnet Wires (P) Ltd. vs. CCE reported in 1996 (81) ELT 3 (SC) has held that subsequent reversal of modvat credit amounts to non taking of credit on inputs and the benefit of exemption of notification cannot be denied even if reversal of credit on input was done at the Tribunal's stage. To the same effect decision of the Hon'ble Gujarat High Court in the case of CCE, Ahmedabad-II vs. Maize Products reported in 2009 (234) ELT 431 (Guj.).

5. Though, the legal issue is clear, we take into account the plea of the learned SDR that there is no verification of fact of reversal of credit. For the said limited purpose, we set aside the impugned order and remand the matter to the original adjudicating authority for verification of the fact of reversal of credit.

6. The stay petitions and the appeals are disposed of in the above terms.

(Pronounced in the open court)

(ARCHANA WADHAWA)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

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