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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/851 /2010, ST/S/1626/2010 - CU[DB] Date **18/04/2011**

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

To :
M/S J. J. RE-ROLLERS,
RING ROAD NO.2, GOGAON, P.O.SARORA, RAIPUR
DISTT-RAIPUR-493221 (C.G.)

M/S J. J. RE-ROLLERS, Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/151/ 2011 CU[DB]** dated 04.04.11 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/219/11

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING,
DHAMTARI ROAD, TIKRAPARA,
RAIPUR 492001.

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. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

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

Date of Hearing: 04.04.2011

Service Tax Stay Appn. No.1626/10 and
Service Tax Appeal No.ST/851/10

[Arising out of Order-in-Appeal No.11 (ST)/RPR-1/2010 dated 25.03.2010 passed by the Commissioner of Central Excise (Appeals),

J.J. RE ROLLERS ...Appellant

Vs.

CCE, RAIPUR ... Respondent

Present for the Appellant : None
Present for the Respondent : Shri Fateh Singh, SDR

Coram: HON'BLE MR.D.N.PANDA, JUDICIAL MEMBER
HON'BLE MR. MATHEW JOHN, TECHNICAL MEMBER

Final **ORDER NO.** ST/151/11 **DATED: 04.04.2011**
Stay order No. ST/219/11
PER: D.N.PANDA

None present for the appellant. While filing the appeal the appellant has also moved a stay application. There is an application dated 18.6.2010 on record requesting the Tribunal to decide the matter on merit without granting of any personal hearing.

2. The aforesaid request of the assessee required us to go through the first appellate order to find out whether the said

order suffers from any legal infirmity or the appellant was denied relief unlawfully. The extensive examination done by the ld. Commissioner (Appeals) by order dated 23.5.10 clearly shows the application of mind, when we read the last para of the order which is reproduced below:-

> *"Another argument of the Appellant is about quantification of liability as the same has been worked out on the total amount instead of 25% of the gross amount as per exemption Notification No.32/04 ST dated 03.12.2004. The said Notification exempts service tax on 75% of the gross amount charged in respect of taxable service provided of goods transport agency to a customer provided that the credit of duty paid on inputs or capital goods used in provided such taxable service has not been taken and the goods transport agency has not availed the benefit under Notification No.12/03 ST dated 20.06.2003. The adjudicating authority has denied benefit of aforesaid Notification No.32/2004 ST dated 03.12.2004 as the Appellant had failed to produce any evidence to support that conditions enumerated in the notification have been satisfied so as to enable them to avail benefit of said Notification. In this context I find that the appellant have produced copies of confirmation from their transporters about non availment of cenvat credit on inputs/ capital goods and also about non-availment of benefit under Notification. Therefore, I agree with the contention that the liability to pay service is only on 25% of the gross amount of freight paid. Accordingly the short payment of services that works to Rs.34,798/- only as detailed below:-*

(A) 01.01.2005 to 31.03.2005.

Total amount of freight	*Taxable value 25%*	*Service Tax payable @ 10.2%*	*Service Tax paid*	*Service Tax Short paid*
10,03,359/-	*2,50,840/-*	*25,586/-*	*22,781/-*	*2,805/-*

(B) 2005-2006

Total amount of freight	*Taxable value 25%*	*Service Tax payable @ 10.2%*	*Service Tax paid*	*Service Tax Short paid*
34,02,076/-	*8,50,519/-*	*86,753/-*	*54,760/-*	*31,993/-*

3. Reading of the aforesaid order, emerges light that the appellate authority below has gone through the confirmation received from the transporters about the non-availment of cenvat credit for allowing the benefit of Notification No.32/04 dated 3.12.04. Allowing appropriate relief, the Commissioner rightly worked out the liability that has arisen on the basis of evidence produced from the transporter. The said liability has been very neatly worked out for two different periods as appearing in last part of the last paragraph of the Appellate Order. When the exercise of the ld. Commissioner indicates that the niceties of the law have been well examined to consider the case of a small tax payer, we do not find any legal infirmity with the order passed by the ld. Commissioner (Appeals). We do not simply say that because the assessee is absent today, we have examined the order to come to such a conclusion. ~~But~~ Substantially, we have examined the issue and the examination resulted with the same finding at which the ld. Commissioner has arrived at. Therefore, dismissing both stay

application and appeal, we dispose the prayer of the appellant as aforesaid.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

Anita