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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/644 /2007 - CU[DB] Date **23/09/2011**

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

To :
C.C.E. LUDHIANA

CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

C.C.E. LUDHIANA Appellant

Vs

M/S COOL COLLECTIONS Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/486/ 2011 CU[DB]** dated 16.09.2011 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
M/S COOL COLLECTIONS
SARUP PLAZA , PARTAP ROAD,
MOGA(PB)

2. Adv. / Consult
MR.G.S.BHANGOO
H.NO. 5, SECTOR-10A, CHANDIGARH.

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
(Custom Branch)

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

DIVISION BENCH
Court-IV
Service Tax Appeal No.644 of 2007

Date of Hearing/Decision: 20.07.2011

(Arsing out of Order-in-Appeal No.195/CE/APPL/LDH/2007 dated 31.7.07 passed by the CCE(A),Chandigarh)

For approval and signature:

Hon'ble Mr.Ashok Jindal, 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?	Yes
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?	No

CCE, Ludhiana — Appellant

Vs.

M/s.Cool Collections — Respondent

Present for the Appellant: Shri Sonal Bajaj, SDR
Present for the Respondent: None

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

Final **ORDER NO.** 57148(?)6/11

PER: ASHOK JINDAL

The Revenue has filed this appeal against the impugned order wherein the adjudication order demanding service tax alongwith interest and penalty has been set aside.

2. The brief facts of the case are that the respondents are registered with the department under service tax as consignment agent and sales agent. The respondents filed refund claim of Rs.19,155/- only on the ground that their value of taxable services was Rs.1,87,409/- during the period 2005-06 which remained below the monetary limit of Rs.4 lakhs. On scrutiny of the refund claim, it was observed that the respondents availed the cenvat credit on service tax paid on telephone service. Therefore, they were not entitled for the exemption and required to pay service tax on the entire taxable value during the year 2005-06. Accordingly, the show cause notice was issued and refund claim was denied. On appeal, the Commissioner (Appeals) relying upon the decision of the Apex Court in the case of Shri Hari Chemical Exports Ltd. vs. UOI reported in 2006 (193) ELT 257 (SC) allowed the refund claim. Aggrieved by the said order Revenue is in appeal before us.

3. Learned SDR appeared for the Revenue submitted that as per condition no.(ii) of Notification No.6/2005-ST, dated 1.3.2005 the provider of taxable service shall not avail the Cenvat credit of service tax paid on any input services. It is apparent from the records that the respondents availed the credit on telephone service, therefore, the respondents are not entitled for the benefit of exemption of Notification No.6/2005-ST, dated 1.3.2005. Therefore, the impugned order is to be set aside.

4. None appeared for the respondents. Nor any request for adjournment has been received. As is the issue is in a narrow compass, the appeal is taken for final disposal.

5. After hearing the learned SDR, we find that the impugned order has been passed by the Commissioner (Appeals) relying upon the decision of the Apex Court in the case of Shri Hari Chemical Exports Ltd. (supra) wherein the apex court has held that "only because in his books of accounts entries are made for taking of the credit in terms of one provision of the Rules, the same if ultimately found to be inapplicable and return of the credit is taken effect, we are of the opinion that there cannot be any legal bar in claiming the exemption under another rule." In this case, admittedly the respondents have taken credit on telephone service but have not utilized the credit
and they have reversed the credit taken so
available for payment of service tax on telephone service they are entitled to claim for the benefit of exemption Notification No.6/2005-ST, dated 1.3.2005. Therefore, we do not find any infirmity in the impugned order, the appeal filed by the Revenue is dismissed.

(Pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

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