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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/3-4 /2008 - CU[DB] Date **23/09/2011**

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

To :
M/S PRAKASH INDUSTRIES LTD
P.O. CHAMPA DISST. JANJGIR C.G.

M/S PRAKASH INDUSTRIES LTD Appellant

Vs

C.C.E. RAIPUR (ST/489-90/2011) Respondent

I am directed to transmit herewith a certified copy of **Final order No.**ST/489-90 **2011 CU[DB]** dated 19.9.2011 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. RAIPUR
CENTRAL EXCISE BUILDING,
DHAMTARI ROAD, TIKRAPARA,
RAIPUR 492001.

2. Adv. / Consult , Mr. Ramesh Nair, Adv.
Laxmi Vihar, AG-192,
Scheme No-54, Vijay Nagar
Indore (MP)

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)

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

Service Tax Appeal No. 3-4 of 2008

[Arising out of Order-in-Appeal No. Commissioner/RPR/45-46 /2007 dated 28.9.2007 passed by the Commissioner of Customs & Central Excise, Raipur]

For approval and signature:

Hon'ble Ms. 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

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M/s. Prakash Industries Ltd. — Appellants

Vs.

Commissioner of Customs & Central Excise, Raipur — Respondent

Appearance:

Shri G.L. Rawal with Shri Rohit Chaudhary, Advocates for the Appellants
Shri Sheo Narayan Singh, Jt. CDR for the Respondents

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar , Member (Technical)

Date of Hearing/decision : 14.09.2011

Final **ORAL ORDER NO.** ST/489 to 490/11

Per Archana Wadhwa (for the Bench):

After hearing both the sides, duly represented by Shri G.L. Rawal, learned advocate and Shri Sheo Narayan Singh, learned Jt. CDR, we find that the short issue involved in the present appeals is as to whether the appellant is entitled to use the modvat credit on payment of duty on the GTA services received by him. The said utilisation stands denied by the lower authorities on the ground that the receipt of GTA services cannot be considered to be output services though under ~~no~~ deemed fiction of law the appellant is required to pay service tax on the same.

2. We find that the issue is no more res integra and stands settled by the Tribunal in the case of CCE, Chandigarh vs. Nahar Industries Enterprises Ltd. reported in [2007 (7) STR 26 (Tri-Del)]. The said decision stands confirmed by Punjab & Harayana High Court when the appeal filed by the Revenue was rejected as reported in 2011 (104) RLTONLINE 3(P&H).

3. However, we note that the period involved in the present appeals is from October, 2005 to July, 2006 and from February, 2006 to July, 2006. Learned Advocate submits that there is duplication of the period involved in both the appeals which needs rectification.

4. Learned DR appearing for the revenue submits that the law was amended with effect from 19.4.2006 and deemed status of service provider given to the service receiver in terms of provisions of Rule 2(p) was taken away. He also submits that above referred decisions are

applicable for the period prior to 17.4.2006. He relied upon the decision of Hon'ble Supreme Court in the case of Maruti Suzuki Ltd. as reported in 2009 (240) ELT 641 (SC) and decision of the Tribunal in the case of ITC Ltd. vs. CCE, Guntur reported in [2011 (23) STR 41 (Tri-Bang).

5. Learned Advocate in his rejoinder submits that even for the period post April, 2006, such utilization of credit would be available to the appellants. However, he fairly agrees that the said issue was not raised before the lower authorities and as such does not stand~~s~~ considered by him.

6. By taking into account overall facts, we set aside the impugned orders and remand both the appeals to the original adjudicating authority for adjudging the appellants' liability to service tax, if any, in terms of declaration of law by the Tribunal as also by Punjab & Haryana High Court in the case of Nahar Industrial Enterprises Ltd. referred (supra). The adjudicating authority would also consider the appellants grievances of overlapping period in both the appeals and their liability to pay taxes for the period post 17.4.2006 and in terms of the decision relied upon by the learned DR.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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