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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

Date **25/01/2011**

Appeal No. ST/2 /2008 - CU[DB]

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

To :
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD Appellant

Vs

Respondent

M/S KASHI VISHWANATH & SONS

I am directed to transmit herewith a certified copy of **Final order No. ST/22/ 2011 CU[DB]** dated 21.01.11 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 KASHI VISHWANATH & SONS
J12/9, B.C. RAMKATORA
VARANASI U.P.
2. Adv. / Consult Mr. Pravin Sharma, Adv
KF – 84, Kavi Training Institute
Ghaziabad – 02
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 (Harvana)
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
NEW DELHI
Court No.IV

ST/Appeal No.2/2008

(Arising out of order in appeal No.48-49/ST/Alld/07 dated 26.9.07 passed by the Commissioner of Central Excise (Appeals), Varanasi)

Date of Hearing: 20.1.2011

For Approval and signature:

Hon'ble Ms Archana Wadhwa, Judicial Member
Hon'ble Mr. M. Veeraiyan, Technical Member

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 would 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 Department Authorities?	Yes

CCE, Allahabad — Appellants

Vs

M/s Kashi Vishwanath & Sons — Respondent

Appeared for the Appellant: Shri Fateh Singh, SDR
Appeared for the Respondent: Shri Parveen Sharma, Advocate

Coram: **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final ORDER No.57/22/11

Per Archana Wadhwa:

Being aggrieved with the order passed by the Commissioner (Appeals), Revenue has filed the present appeal.

2. After hearing both sides, we find that a very short issue is involved. The respondents, who are liable to pay service tax on the goods transport agency services received by them, have availed the benefit of Notification No. 32/04-ST dated 3.12.2004. The said Notification grants abatement to the extent of 75% of taxable services on goods transport, subject to the condition that the goods transport agency has not availed credit on inputs and capital goods used for providing the taxable services and has also not availed the benefit of Notification No. 12/03-ST dated 20.6.03.

3. As the respondents did not submit the required declaration in proper format, Revenue entertained a view that they were not entitled to the 75% abatement in terms of Notification No. 32/04-ST. Accordingly, proceedings were initiated against them by way of show cause notice dated 13.10.06 proposing to confirm the demand of Rs. 6,917/-. The said show cause notice culminated into an order passed by the original adjudicating authority confirming the demand and imposing penalties. However, on appeal against the above order, the Commissioner (Appeals) set aside the same on the ground that goods

transport agency has given declarations to the above effect. This suffices the requirement ~~and~~ of the notification condition in as much as, the notification does not provide any format for filing the declaration. He further held that the Board's Circular No. B-1/6/05-TRU dated 27.7.05 cannot introduce any format for filing declaration in the Notification. The fact of non-availment of cenvat credit etc. can be proved by any manner. He also observed that the Revenue has nowhere disputed that the goods transport agency has not availed the benefit of modvat credit or of Notification No. 12/03. He accordingly allowed the appeal.

4. Hence the present appeal by the Revenue.

5. We find that the issue is no more res-integra and stands settled by various decisions of the Tribunal. One such reference can be made to the Tribunal decision in the case of Sri Venkata Balaji Jute (P) Ltd Vs CCED Vishkhapatnam reported in 2010 (19) STR 403 wherein by following the Tribunal decision in the case of Commissioner of Central Excise Vapi Vs Unimark Remedies Ltd reported in 2009 (15) STR 254 (Trib), it has been that the Notification does not require consignment - wise declaration on consignment notes. As regards non-availment of credit and the declaration, ~~that note of consignment notes~~ even though not on the consignment notes, is sufficient for allowing the benefit of Notification No. 32/04. To the same effect is the Tribunal decision in the case of CCE Vs Nerala Paper Mills Pvt Ltd reported in 2009 (14) STR 374 (Trib.- Ahmd.). As the issue is covered in favour of the respondents by above referred decisions of the

Tribunal, we find no infirmity in the view adopted by the Commissioner (Appeals). Accordingly, appeal field by the Revenue is rejected.

(Order dictated and pronounced in the open Court.)

(ARCHANA WADHWA)
Judicial Member

(M. VEERAIYAN)
Technical Member

MPS*