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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/82 & 75 /2008 - CU[DB] Date **08/03/2011**

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

To :
M/S UPPER DOAB SUGAR MILLS
SHAMLI- 247776, DISTT.MUZAFFERNAGAR(U.P.)

M/S UPPER DOAB SUGAR MILLS Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/72-73 2011 CU[DB]** dated 09.02.11 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
C.C.E, MEERUT I
EXCISE CHOWK, UNIVERSITY
ROAD, MANGAL PANDEY
NAGAR, MEERUT - 250005.
2. Adv. / Consult Mr. S.C.Kamra, Adv
B-2/210 (Basement)
Safdarjung Enclave New Delhi – 29
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
NEW DELHI

COURT NO. II

Service Tax Appeal No. 82 of 2008

(Arising out of Order-in-Appeal No. 186-CE/Appl/MRT-I/2007 dated 30.10.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-I)

Upper Doab Sugar Mills — Appellant

Vs.

CCE, Meerut-I — Respondent

Appearance

Appeared for Appellant : Shri S.C. Kamra, Advocate

Appeared for Respondent : Shri Fateh Singh, DR

AND

Service Tax Appeal No. 75 of 2008

(Arising out of Order-in-Appeal No. 186-CE/Appl/MRT-I/2007 dated 30.10.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-I)

CCE, Meerut-I — Appellant

Vs.

M/s Upper Doab Sugar Mills — Respondent

Appearance

Appeared for Appellant : Shri Fateh Singh, DR

Appeared for Respondent : Shri S.C. Kamra, Advocate

Date of Hearing: 9.2.2011

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

Final Order No. ST/72-73/11 dated 9.2.11

Per D.N. Panda :

Both sides are in controversy as to applicability of the Notification No. 32/2004-ST dated 3.12.2004. Ld. Counsel Shri

Kamra arguing the appeal filed by the assessee submits that there was no foundation in the Show Cause Notice as to applicability of Notification No. 32/2004-ST dated 3.12.2004. The only point for defence called for by Show Cause Notice was as to the applicability of Notification No. 34/2004-ST dated 3.12.2004. He submits that under Notification No. 34/2004-ST services rendered by GTA is exempt if the gross amount charged on consignments transported in a goods carriage does not exceed Rs.1500/-. This exemption is for "service provided by a goods transport agency". The exemption makes no mention of the person paying tax. So the exemption should be available to service provided by goods transport agency even in situation where the recipient is paying the tax.

2. Both the grounds canvassed by the appellant are found valid. So also Revenue in their appeal states that Commissioner has not discussed the issue ~~is~~ of Notification No. 32/204 dated 3.12.2004. This actually supports the case of the assessee.

3. Ld. DR submits that the ld. Commissioner has not decided the matter properly. Therefore the case should be remanded back.

4. Heard both sides and perused the record.

5. So far as Revenue's appeal is concerned, we do not find any substance in their appeal to appreciate that there is a cause in their appeal. While Shri Kamra brings out that the Revenue's appeal supports the assessee's appeal, that ground alone is enough to look into the appeal of the assessee first. When we examined the appeal of the assessee, we find that the Notification No. 34/2004-ST dated

3.12.2004 has not intended to give exemption with reference to the person paying tax. We do appreciate that the expression *'mutatis mutandis'* is not appearing in the notification. But spirit of the notification is to be understood keeping in view the social philosophy attached to the notification. Prescription of the small value limit to the transport cost indicates that Government did not intend to tax the activity carried out by small transport agencies. This philosophy which is judicially recongised in various Apex Court's judgement is appreciated also by the Larger Bench of Tribunal in the case of **BSBK** - 2010-TIOL-646-CESTAT (Del.-LB). We are not inclined to deny such a benefit to activities carried out by small transporters. Therefore while the ld. Commissioner came to the conclusion that the notification No. 34/2004-ST is not applicable he still proceeded to decide the matter under Notification No. 32/2004-ST dated 3.12.2004 for which party was not put to notice. We do not find any cogent reasons why Notification No. 34/2004-ST shall not be applicable to the facts and circumstances of the case. Accordingly, appeal of the assessee is allowed.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RM