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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/1433/2010 - CU[DB]
ST/S/3017/10, ST/ROA/21/11

Date **16/05/2012**

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

To :
M/S SRI RAM CABLES PVT. LTD.

A-524, RIICO INDUSTRIAL AREA, CHOPANKI,
BHIWADI.

**M/S SRI RAM CABLES PVT. LTD.** Appellant

Vs

**C.C.E. JAIPUR I** Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/381 2012 CU[DB]** dated 30.04.12 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/S/534/12 & Misc Order No ST/M/188/12

Assistant Registrar
(Customs Appeal Branch)

**Copy to :**

1. Respondent
**C.C.E. JAIPUR I**
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult Sri Bipin Garg
B-1/1205 Vasant Kunj
New Delhi

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-3
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.1433 of 2010**
**Service Tax ROA Application No. 21 of 2011**
**Service Tax Stay Application No. 3017 of 2010**

Date of Hearing/decision : 30.4.2012

[Arising out of Order-in- Appeal No. 3/2010/ST/Commr. dated 2.3.2010 passed by the Commissioner of Central Excise, Jaipur ]

**For approval and signature:**

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

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|---|---|---|
| 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. Shri Ram Cables Pvt. Ltd. — Appellants

Vs.

Commissioner of Central Excise Jaipur I — Respondent

**Appearance:**

Shri Bipin Garg, Advocate for the Appellants
Shri K.K. Jaiswal, DR for the Respondent

**CORAM**:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Misc. order No. ST/M/188/12
Final. **ORAL ORDER NO. ST/A/381/12**
Stay. order No. ST/S/534/12

**Per Archana Wadhwa (for the Bench):**

The application is for restoration of appeal dismissed vide final Order No. ST/91/10 dated 23.9.10 as the appellant had not removed the defect pointed out by the Registry. Learned Advocate submits that such defect has been removed by them. In view of the above, we recall the order of dismissal, allow the application and restore the appeal to its original number.

2. At this stage, we find that the issue is covered by the precedent decision. Accordingly, after dispensing with the condition of pre-deposit of Service Tax of Rs.2,11,122/- and penalty imposed upon the appellant, we proceed to decide the appeal itself.

3. It is seen that proceedings were initiated against the appellant for denial of use of Cenvat credit ~~without~~ for payment of Service Tax on the GTA service so received by them. The original adjudicating authority dropped the demand by following the judgement of Tribunal in the case of Nahar Industrial Enterprises reported as 2007-TIOL-555-CESTAT. The said order of the original adjudicating authority was reviewed by Commissioner, who vide his impugned order set aside the same and upheld the demand along with imposition of penalty on the ground that

Tribunal's decision in Nahar Industrial Enterprises has not attained finality and appeal filed against the same before the Hon'ble Punjab & Haryana is pending decision.

4. We find that the appeal of the Revenue before Hon'ble Punjab & Haryana High Court stand decided and vide its decision reported in 2012 (275) E.L.T. 534 (P & H) , the same stand rejected. As such, the issue is no more res integra and stand settled by the above decision. We also note that another decision of the Hon'ble Himachal Pradesh High Court in the case of Auro Spinning Mills also supports the above stand. Accordingly, we set aside the impugned order of the Commissioner and restore the order of Joint Commissioner and allow the appeal with consequential relief to the appellant.

5. ROA application, stay petition as also appeal gets disposed of in the above terms.

(Pronounced in the open court )

( Archana Wadhwa )
Member(Judicial)

( Mathew John )
Member(Technical)

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