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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/1744/2011 - CU[DB]
ST/S/3659/11

Date **22/05/2012**

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

To :
M/S A.C. BAXI & CO. PVT. LTD.

C-103, LAL KOTHI, JAIPUR (RAJASTHAN)

M/S A.C. BAXI & CO. 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/390/ 2012 CU[DB]** dated 08.05.12 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/570/12

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
MR.ANIL TOTUKA ADVOCATE
C/O APPELLANT

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. II

Service Tax Appeal No. 1744 of 2011
Service Tax Stay Application No. 3659 of 2011

Date of Hearing/decision : 8.5.2011

[Arising out of Order-in-Appeal No. 331/(DKV)ST /JPR-I /2011 dated 29.7.2011 passed by the Commissioner of Central Excise (Appeals-I), Jaipur]

For approval and signature:

Hon'ble Mr. D.N.Panda, 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? :

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :

3. Whether Their Lordships wish to see the fair copy of the Order? :

4. Whether Order is to be circulated to the Departmental authorities? :

M/s. A.C. Baxi & Co.Pvt.Ltd. — Appellants

Vs.

Commissioner of Central Excise
Jaipur I — Respondent

Appearance:
Shri Ankit Totuka, Advocate for the Appellants
Shri P.K. Sharma, AR for the Respondent

CORAM:

Hon'ble Mr. D.N.Panda, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

Final **ORDER NO.** ST/A/390/12-Cus
Stay order No. ST/S/570/12-Cus

Per D.N.Panda (for the Bench):

Learned Counsel submits that Cenvat credit was earned on business auxiliary service which is not in dispute. When they were intended to be set off against taxable service provided by the Appellant in May, 2006, dispute arose only on the ground that with effect from 1.5.06, the appellant having provided business support service credit earned in the past from Business Auxiliary service cannot be utilised in respect of taxable service provided in May, 2006. Since dispute is on narrow compass, it was prayed that both the stay petitions and appeal may be disposed.

2. Learned AR supports the finding of the authorities below.

3. We have perused the contents of the show cause notice and also the order in original. There is absolutely no dispute in respect of the earned credit before May, 2006. There is also no dispute that taxable service was provided in May, 2006. But there is no rationale brought out on record by the Authorities below to show why the credit earned prior to May, 2006 shall be deniable for set off against tax liability arising in May, 2006. The disallowance of the Cenvat credit, in this case, is Rs.73,175/-. The Cenvat credit rule does not require one to one co-relation. Only removal of cascading effect is its motto. None of the authorities

below brought on record showing disintegrity of the output service with the input service. In the absence of such essential element, denial of Cenvat credit is not sustainable for which appeal is to be allowed. We order accordingly. With this proposition, stay petition is also allowed.

(D.N.Panda)
Judicial Member

(Mathew John)
Technical Member

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