

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/60 /2008 - CU[DB]

Date 17/01/2012

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

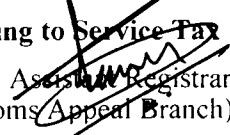
To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.
C.C.E. KANPUR

Appellant

Vs
Respondent

M/S GHARI INDUSTRIES PVT LTD

I am directed to transmit herewith a certified copy of **Final order No.ST/A/35 2012 CU[DB]** dated 16.01.12
passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

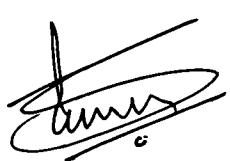

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
M/S GHARI INDUSTRIES PVT LTD
117/H-2/202, PANDU NAGAR,
KANPUR.

2. Adv. / Consult
MR.A.P.MATHUR
167,TAGORE TOWN, ALLAHABAD,UP

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications 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 & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.**

**Date of Hearing : 23.8.2011
Date of Pronouncement : 16-1-2012**

Service Tax Appeal No. 60 of 2008

[Arising out of Order-in-Appeal No. 367-ST/APPL/KNP/2007 dated 30.11.2007 passed by the Commissioner, Central Excise & Service Tax, Kanpur]

Coram:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
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 Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	no

CCE, Kanpur

Appellant

Vs.

M/s Ghari Industries Pvt. Ltd.

Respondent

Appearance:

Appeared for Appellant : Shri R.K. Gupta, DR

Appeared for Respondent : Shri A.P. Mathur, Advocate

Coram:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Hon'ble Shri Mathew John, Member (Technical)

Find Order No. ST.A/35/12-WS dated.....

Per Mathew John:

The Respondents are owners of the brand name "Ghari". They have licensed M/s Rohit Surfactants Pvt. Ltd and M/s Calcutta

Detergent Pvt Ltd to manufacture soaps and detergents with the said brand name. For the royalty received from the licensees for use of such brand name the Respondents pay service tax under the head "Intellectual property Service". This far the facts of the case are clear.

2. Now there is some confusion in further facts. In third and fourth of the unnumbered paragraphs in the SCN read as under:

"And whereas the party pays service tax on the freight paid by them on the transportation of Soap & Detergents from the factory of M/s Rohit Surfactants Pvt. Ltd. to the buyers premises sold on account of the party, i.e. service tax is paid on transportation of goods from the factory of the franchisee to the premises of buyers of M/s Ghari Industries Pvt. Ltd. The service tax so paid is distributed by the party's headquarters' to the factories of the party mentioned above, which is utilized for payment of service tax or Cenvat duty by them.

And whereas on the scrutiny of the S.T. 3 returns (RUD No. 1) of the party (M/s Rohit Surfactants Pvt. Ltd.) for the period Oct. 2005 to March, 2006, it is seen that they have paid Rs.55,08,738/- as service tax and Rs.1,10,143/- as Education Cess on Good Transport Service. This tax paid on GTA service has been distributed to Soap and Detergent division of the party. As per the S.T. 3 return for the period Oct. 2005 to March 2006 in respect of intellectual Property (RUD No. 2) filed on 24.5.2006, it has been observed that the service tax credit amounting to Rs.20,16,876/- and education cess credit amounting to Rs.40,338/- has been utilized by them vide R.G. 23A/Pt.II debit entry No. 4 & 5 both dated 24.3.2006 (RUD No. 3) out of the above said distributed credit for payment of Service Tax on Intellectual Property Right service."

3. The SCN starts by stating that the word "party" is used in the SCN to refer to Ghari Industries Pvt. Ltd. However in the fourth paragraph the word "party" is explained to be Rohit Surfactants Pvt Ltd. So it is not clear who is the party referred to in this paragraph. If it is Ghari Industries it is not clear how credit taken by Rohit Surfactants Pvt. Ltd can be distributed to Soap and Detergent Division of Ghari Industries (P) Ltd. If the word "party" refers to Ghari Industries Pvt. Ltd it is not clear how a scrutiny of the ST-3 returns filed by M/s Rohit Industries Pvt. Ltd can show Cenvat credit on service tax on freight paid by Ghari Industries Ltd.

4. We notice from the SCN that RUD-1 is the ST-3 returns for GTA service is filed by Rohit Surfactants Pvt Ltd. So it appears that freight was being paid by Rohit Surfactants Pvt. Ltd. For this reason we are not able to brush aside the contradiction in said paragraph of the SCN as a simple error.

5. The third of the unnumbered paragraphs in the order-in-Original reads as under:

"The party pays service tax on the freight paid by them on the transportation of Soap & Detergents from the factory of M/s Rohit Surfactants Pvt. Ltd. to the buyers premises sold on account of the party, i.e. service tax is paid on transportation of goods from the factory of the franchisee to the premises of buyers of M/s Ghari Industries Pvt. Ltd. The service tax so paid is distributed by the party's headquarters' to the factories of the party mentioned above, which is utilised for payment of service tax or Cenvat duty by them.

From this paragraph also it is not clear who paid the freight. The factories referred to in the previous paragraph are the factories at Kanpur and Haridwar. It is not clear what are the products manufactured by these factories. This fact may not be very relevant, but would have certainly helped in understanding the controversy.

6. However the second of the un-numbered paragraphs in the order in appeal, facts are stated as below:

“The appellant pay service tax on the freight paid by them on the transportation of Soap and Detergents from the factory of M/s Rohit Surfactants Pvt. Ltd. to the buyers premises sold on account of the appellant. The Service Tax so paid is distributed by the appellants headquarters to the factories of the appellants which is utilized for payment of Service Tax or Cenvat duty by them. On scrutiny of ST-3 return of the appellant for the period Oct., 2005 to March, 2006, it was observed that they have paid Rs.55,08,738/- as Service Tax Rs.1,10,143/- as Education Cess on Goods Transport Service which has been distributed to Soap and Detergent Division of the appellant. As per ST-3 return for Oct., 2005 to March 2006 in respect of intellectual Property, it has been observed that the Service Tax credit amounting to Rs.20,16,879/- and Education Cess credit amounting to Rs.40,338/- has been utilized by them out of above said distributed credit for payment of Service Tax on Intellectual Property Right Service. Department was of the view that in terms of definition of input service, GTA cannot be treated as input service for providing output service of Intellectual Property Right. The transportation of goods from one destination to other cannot be treated as input service for the royalty received by the appellant for allowing the use their brand name ‘Ghari’.”

7. During arguments in the Tribunal no issues were raised regarding facts and the arguments proceeded on the basis that the facts stated in impugned order are correct. The legal issue that was raised while arguing the case was that the Show Cause Notice raises the issue of utilization of credit only and not eligibility for taking credit. The adjudication order denies credit for the reason that transportation is not an input service for providing Intellectual property service and thus the adjudication order has travelled beyond the scope of SCN. In fact the order of the Commissioner (Appeal) has set aside the adjudication order for this reason as seen from the last but one paragraph and other paragraphs of the many unnumbered paragraphs in the Order-in-Appeal. The Revenue has filed this appeal challenging this finding of the Commissioner (Appeal).

8. We are not in agreement with the finding of the Commissioner (Appeal) that the adjudication order was beyond the scope of Show Cause Notice. This is because we see a paragraph as under in the SCN:

“In terms of this definition of Input service GTA cannot be treated as input service for providing output service of Intellectual Property Right. The transportation of goods from one destination to other cannot be treated as input service for the royalty received by M/s Ghari Industries Pvt. Ltd. for allowing to use their brand name ‘Ghari’.”

9. So even though the word utilization has been used in the SCN, the issue of eligibility is part of the issue of utilization. If credit is taken for ineligible credit, then its utilization is not proper. The argument

canvassed by the Respondent is a hyper technical argument. Further the eligibility for credit is a legal argument which can be taken at any stage of the proceedings. At the same time the respondent has to get an opportunity to argue this point and there has to be clear decision on the issue after statement of facts clearly.

10. We are of the view that this matter involves a substantial issue to be decided. But the impugned orders of the lower authorities are not maintainable and the issue needs to be decided afresh stating all facts clearly without giving any room for doubts on facts in question and issues in question. So the impugned order is set aside and the matter is remitted to the adjudicating authority for a de-novo adjudication after giving opportunity for the Respondents to make his submissions on the eligibility to credit.

11. The basic question appears to be whether, the Respondents are doing the transportation of goods from the premises of the licensees to the dealers of the branded goods for promotion of the brand name. For this the contract with the two parties are very relevant. It would be desirable and in the interest of Revenue and the Respondents to bring the contract on record and proceed. The fact as to who pays the freight is also relevant.

12. Thus the appeal is allowed by setting aside both the impugned order and the adjudication order and remitting the matter for de-novo adjudication.

16/01/12

(Pronounced on _____)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM