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

STAY Application No. : E/Stay/1549/2012
Appeal No. : E/1236/2012-EX[DB]

Dated: **03/08/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
Ballarpur Industries Ltd
Unit Shree Gopal, Yamunanagar-135001,
Haryana

Ballarpur Industries Ltd (Appellant)

VS

C.C.E. & S.T.-Panchkula (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/900/2012-EX[DB]** , StayOrder No. **SO/1209/2012** dated **31/07/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E. & S.T.-Panchkula
SCO 407-408...SECTOR 8,
PANCHKULA,134119

2. Advocate(s) / Consultant(s): SH. B.L. NARASIMHAN, ADV, B-6/10, S.J. ENCLAVE, N. 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 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. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 31.7.2012

Stay Application No.1549 of 2012 and
Central Excise Appeal No.1236 of 2012

Arising out of the order in appeal No.41/BK/PKL/2012 dated 31.1.2012 passed by the Commissioner (Appeals), Customs & Central Excise, Gurgaon.

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	

Ballapur Industries Ltd. .. Appellant

Vs.

C.C.E., Panchkula .. Respondent

Present for the appellant : Shri B.L. Narasimhan, Advocate
Present for the respondent : Shri I. Baig, A.R.

STAY order No 1209/2012-Ex(BR)
FINAL Order No. A/900/2012-Ex(BR)

Per Justice Ajit Bharihoke(Oral):

M/s Ballapur Industries, the appellant herein are engaged in the manufacture of paper and paperboard of different varieties falling under Chapter 48 of the Schedule to the Central Excise Tariff Act, 1985. The appellant during the period in dispute from April 2009 to December 2009 was clearing and manufacturing paper reels from his factory on payment of excise duty to the job worker for cutting purposes. The service provided by the job workers being subject to levy of service tax the service tax was paid in respect of job work done by the job worker.

2. The issue involved in the present appeal is whether or not the appellant is entitled to the benefit of cenvat credit in respect of service tax paid in relation to paper cutting on job work done by the job worker.

3. The matter was taken up for hearing on the stay application. However, after hearing the parties, we are of the view that appeal itself can be disposed of. Accordingly, after waiving the condition of pre-deposit we have proceeded to hear the appeal.

4. The plea of the Department is that paper reels were cleared by the assessee on payment of excise duty calculated as per transaction value and the transaction value did not include the job work charges. As such, the appellant cannot claim cenvat credit in respect of service tax paid on job work charges particularly when the job work was done after manufacture and removed paper reels. The plea of the appellant on the contrary is that at the time of clearance of paper reels from the factory the job work charges were included in the transaction value.

5. Ld. Counsel for the appellant has pleaded that the adjudicating authority as well as Commissioner (Appeals) have failed to appreciate that Shri Sanjiv Raheja, Manager of the assessee company in his statement dated 6.1.2011 categorically stated that cutting charges raised by the job worker have been included in the assessable value of the reels for which appropriate central excise duty is paid. Ld. counsel submitted that since job work charges are included in the transaction value of the goods for the purpose of excise duty the appellant is eligible to avail cenvat credit in respect of service tax paid on the job work charges. `Shri B.L. Narasimhan, learned Counsel has also drawn

our attention to the finding of the authority in original wherein he has rejected the plea that job work charges was included in the transaction value on the ground that the assessee has not adduced any evidence to show that they have included the charges of cutting activity in the transaction value. Ld. Counsel further submitted that due to inadvertence the appellant failed to adduce evidence on the above aspect, that he is in position to lead evidence to show that transaction value was inclusive of job charges. Thus he has urged for setting aside the impugned order in original and remanding the case for fresh adjudication.

6. Shri I. Baig, learned Authorised Representative of the Department has argued in support of the impugned order. Opposing the stay application, the ld. A.R. submitted that from the evidence on record it is established that the goods were cleared at the factory gate at transaction value less than the price at which the goods were cleared from the depot after cutting job work done by the job worker. Learned A.R. has contended that the aforesaid on value addition no excise duty has been paid by the appellant. As such he is not entitled to claim cenvat credit on the service tax paid on job work charges. Ld. A.R. however has no objection if the matter is remanded back to the adjudicating authority for de novo adjudication on the aspect whether or not the excise duty was paid by the appellant assessee on the transaction value inclusive of job work charges.

7. In view of the submissions made by the parties and the concession given at the Bar we find that it would be in the interest of justice to set aside the impugned order and remand the matter back to adjudicating authority for fresh adjudication after permitting the appellant to lead evidence in support of the above contentions that the transaction value on which excise duty was paid was inclusive of job

work charges. Accordingly, the impugned order is set aside and the matter is remanded back to the adjudicating authority for de novo adjudication. Appeal as well as stay application are disposed of accordingly.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar
Technical Member

scd/