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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/603-604 /2008 - CU[DB] Date **16/03/2012**

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

M/S OM TEA COMPANY Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/214-215 2012 CU[DB]** dated 23.02.2012 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 OM TEA COMPANY
49/62,BAGLA BUILDING,
NAYAGANJ, KANPUR.

2. Adv. / Consult
MR.RUPESH KUMAR
F-12A,(L.G.F)KAILASH COLONY,
NEW DELHI.110 048

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, New Delhi

COURT-II

Service Tax appeal No. 603-604 of 2008

Date of hearing/decision: 23rd February, 2012

CCE, Kanpur — Appellant

Versus

M/s. Om Tea Company — Respondent

Appearance:

Shri R.K. Gupta, D.R. for the appellant;
Shri Rupesh Kumar, Advocate for the respondent

Coram: Hon'ble Shri D.N. Panda, Judicial Member;
Hon'ble Shri Rakesh Kumar, Technical Member

Final **ORDER NO.** ST/A/214-215/12-Cus **DATED**

Per D.N. Panda:

Revenue has come in appeal with the grievance that it is affected for no service tax liability discharged by the respondent on Goods Transport Service.

2. Shri Rupesh Kumar, learned Counsel says that there is no dispute by Revenue that for the self same service provided by the transporter and that was received by the respondent, tax was collected from the transporter on such service and that has gone into the treasury. The notice issued proposed double taxation of the same service. Therefore, Revenue's appeal may be dismissed following decision of the

Tribunal in the case of CCE, Meerut-II vs. Geeta Industries P. Ltd., reported in 2011 (22) STR 293 (Tri.-Del.).

3. Heard both sides and perused the record.

4. We are unable to find in the present appeal whether the service provided by the transporter was to someone else than the appellant. When the transporter is same and recipient is respondent and there is no contradiction that tax was collected from the transporter, double taxation on the same transaction is inconceivable under the present provisions of Finance Act, 1994. Once we do not find any loss of Revenue, it is difficult to agree with the learned DR's proposition. We find that the present cases are within the four of the decision cited by the Respondent for which both the appeals of Revenue are dismissed.

(Dictated & pronounced in Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RK