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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/500-501, 506, 567, 569 /2007 - CU[DB] Date **19/03/2012**

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

To :
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE,
"C" SCHEME, JAIPUR 302005.

C.C.E. JAIPUR II

Appellant

Vs

M/S RAJASTHAN SPINNING & WEAVING MILLS LTD. & OTHERS

Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/226-230 2012 CU[DB]** dated 13.03.2012 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 RAJASTHAN SPINNING & WEAVING MILLS LTD., VILLAGE-LODHA, BANSWARA (RAJASTHAN)

M/S SANGAM SPINNERS, BILIYAN KALAN, CHITTOR ROAD, BHILWARA, (RAJASTHAN).

2. Adv. / Consult MR. B.L. NARSIMAHAN,
B-6/10, SAFDARJUNG ENCL.,
NEW DELHI – 110 029.

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 No. III

Service Tax Appeal No.500-501 of 2007, No.506 of 2007, No.567 of 2007 & No.569 of 2007

Date of Hearing / Decision : 13.03.2012.

[Arising out of Order-In-Appeal No.378/HKS/ST/JPR/2007, dated 22.06.2007 issued by CCE, Jaipur]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

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.

CCE, Jaiur — Appellant
Versus
M/s Rajasthan Spinning & Weaving Mills Ltd. — Respondents
M/s Sangam Spinners

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Present for the Appellant - Shri B.L.Soni, DR
Present for Respondent - Shri B.L.Narsimhan, Adv.

Final **Order No.**ST/A/226 - 230/12-Cus **Dated :**

Per Ms. Archana Wadhwa:

All the five appeals filed by the Revenue are being disposed by a common order as the issue involved is identical.

2. The short issue is as to whether the respondents are entitled to utilise the Cenvat Credit for payment of service tax on

GTA services availed for outward transportation of their final product. The Commissioner(Appeals) by following the Tribunal's decision in the case of Nahar Industrial Enterprises Ltd. had held in favour of assessee. Revenue has filed the present appeal on the ground that Tribunal's decision in the case of Nahar Industrial Enterprises Ltd. does not stands accepted by the Revenue and has been appealed before the Hon'ble High Court of Punjab & Haryana.

3. We find that the Revenue's appeal stands disposed of by the Hon'ble High Court of Punjab & Haryana in the case of Nahar Industrial Enterprises Ltd. & ors. reported in 2011(104)RLTONLINE3(P&H). Apart from above, we find that the issue also stands decided by Hon'ble High Court of Himachal Pradesh in the case of Auro Spinning Mills & ors. reported in 2011(187)ECR0308(HP). By following the decision of Hon'ble High Court of Punjab & Haryana in the case of Nahar Industrial Enterprises Ltd., it stands held by the Hon'ble High Court that such utilisation of Cenvat Credit for discharging service tax liability on account of GTA services services ~~is~~ was permissible during relevant period. As such, we find no merit in these appeals filed by the Revenue.

4. However, we find that in appeal No.569 of 2007, the period involved is upto 30.09.06, ld. Advocate appearing for the respondents fairly concedes that there was amendment to Rule 3(4)(e) of the Cenvat Credit Rules w.e.f. 18.04.06 and in view of the amended provisions, the utilization of the credit for payment of service tax on GTA services would not be permissible. As such he submits that the respondents be directed to pay the amount in

cash and consequently the credit so utilized by them would get restored. Ld. DR agrees on the above course of action.

5. In view of the above, we reject the appeals filed by the Revenue except appeal No.569 of 2007 in which the period involved ~~is~~ extends after 18.04.06, for this period the assessee would discharge his duty liability in cash. As a result, the credit so utilized by them would get credited back in their Cenvat Credit account. Ld. Advocate also submits that the interest would be chargeable in accordance with the law. For the above issue, we remand the appeal No.569 of 2009 to the original adjudicating authority for quantification of service tax liable to be paid in cash as also for determination on the point of interest.

6. All the appeals are disposed in above manner.

(Dictated and pronounced in the Open Court)

(Archana Wadhwa)
Judicial Member

(Mathew John)
Technical Member

RK-I