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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/1311/2011-1324/2011 - CU[DB]   Date **11/04/2012**
ST/S/2764-2777/2011

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

To :
M/S STATE BANK OF PATIALA, (BRANCH-SARDULGARH)
HEAD OFFICE, BALANCE SHEET DEPTT. THE MALL,
PATIALA, PUNJAB.
147001

M/S STATE BANK OF PATIALA, (BRANCH-SARDULGARH) Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/296-309 2012 CU[DB]** dated 28.02.12 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alonwith Stay Order No ST/S/364-377/12

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult
MR.A.K.BATRA & ASSOCIATES
A-36, FIRST FLOOR, RAJOURI GARDEN,
RING ROAD, N DELHI.

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)

M/S STATE BANK OF PATIALA, (BRANCH-BHADUR,
HEAD OFFICE, BALANCE SHEET DEPTT. THE MALL, PATIALA, PUNJAB.

M/S STATE BANK OF PATIALA, (BRANCH-MOONAK)
HEAD OFFICE, BALANCE SHEET DEPTT. THE MALL, PATIALA, PUNJAB.

M/S STATE BANK OF PATIALA, (BRANCH-GONIANA,
HEAD OFFICE, BALANCE SHEET DEPTT. THE MALL, PATIALA, PUNJAB.

M/S STATE BANK OF PATIALA, (BRANCH-MALERKOTLA,
HEAD OFFICE, BALANCE SHEET DEPTT. THE MALL, PATIALA, PUNJAB.

M/S STATE BANK OF PATIALA, (BRANCH-BHAWANIGARH)
HEAD OFFICE, BALANCE SHEET DEPTT. THE MALL, PATIALA, PUNJAB.

M/S STATE BANK OF PATIALA, (BRANCH-LEHRAGAGA,
HEAD OFFICE, BALANCE SHEET DEPTT. THE MALL, PATIALA, PUNJAB.

M/S STATE BANK OF PATIALA, (BRANCH-RALLA, MANSA)
HEAD OFFICE, BALANCE SHEET DEPTT. THE MALL, PATIALA, PUNJAB.

M/S STATE BANK OF PATIALA, (BRANCH-BUCHO KALAN,
HEAD OFFICE, BALANCE SHEET DEPTT. THE MALL, PATIALA, PUNJAB.

M/S STATE BANK OF PATIALA, (BRANCH-GRAIN MARKET
HEAD OFFICE, BALANCE SHEET DEPTT. THE MALL, PATIALA, PUNJAB.

M/S STATE BANK OF PATIALA, (BRANCH-KILLANWALLI,
HEAD OFFICE, BALANCE SHEET DEPTT. THE MALL, PATIALA, PUNJAB.

M/S STATE BANK OF PATIALA, (BRANCH-NATHANA,
HEAD OFFICE, BALANCE SHEET DEPTT. THE MALL, PATIALA, PUNJAB.

M/S STATE BANK OF PATIALA, (BRANCH-JALLALABAD
HEAD OFFICE, BALANCE SHEET DEPTT. THE MALL, PATIALA, PUNJAB.

M/S STATE BANK OF PATIALA, (BRANCH-MALAUT,
HEAD OFFICE, BALANCE SHEET DEPTT. THE MALL, PATIALA, PUNJAB.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

Date of Hearing:28.02.2012
Date of decision:28.02.2012

Service Tax Stay Applications Nos.2764-2777 of 2011 in Appeals Nos.1311-1324 of 2011

(Arising out of common Orders-in-Appeal No.39-52/ST/Appeal/CHD-I/2010 dated 03.05.2011 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.

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

3. Whether Their Lordships wish to see the fair copy of the Order?
4. Whether Order is tc be circulated to the Departmental authorities?

M/s. State Bank of Patiala ...Appellants

Vs.

CCE, Chandigarh ...Respondent

Appearance: Rep. by Shri A.K. Batra, Chartered Accountant for the appellant.
Rep. by Shri B.L. Soni, AR for the respondent.

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

Final Order No. ST/A/296-309/12-Cus/Dated:28.02.2012

Per. D.N. Panda: Stay order No. ST/S/364-377/12-Cus.

In these appeals and stay applications, Shri A.K. Batra, ld. Chartered Accountant for the assessees says that the demands involved in this matter ranges from Rs.7,000/- to Rs.58,000/- as per chart given in para-1 of the Appellate Order. The only question involved in these appeals is whether the Cenvat credit can be availed by the appellants in respect of inputs service credit distributed by the Estate Department of the Bank when that Department was not registered as input service distributor.

2. It was submitted for appellant that period involved in these bunch of appeals is 16.06.2005 to 28.08.2006. Estate Department of the Bank sought registration with the Service Tax Authorities on 28.8.2006. Even before registration, the service distributed having suffered service tax made the appellant eligible to get Cenvat credit for no strict Rule of registration prevailed till 16.06.2005 and input service distribution concept was introduced in law from September, 2004.

3. According to Shri Batra, once particulars are contained in the document relied upon by the Appellant that serves the purpose of

Rule 9 of Cenvat Credit Rules, 2004 to grant credit. Even if a concern is merely registered and the particulars do not evidence payment of service tax, law does not permit availability of Cenvat credit in such case. Therefore, what that is necessary under the law is that credit particulars stated on the respective document is whether verifiable and whether the service tax realized has actually been paid into treasury. That aspect is not doubted nor disputed in the Appellate Order. Therefore, absence of registration may not be a cause to deny the appellant to cenvat credit on the basis of distributed credit from the Estate Department of the Sate Bank of Patiala.

3. Ld. Representative for Revenue submits that unless the appellant is registered under law and comes to fold of law, it is not possible for the department to make verification. At this juncture, Shri Batra, ld. Chartered Accountant mentions that subsequent adjudication order passed by the Adjudicating Authority of Chandigarh in terms of the order dated 26.08.2011 resulted with dropping of entire demand. So also, the Authority has recorded that the State Bank of Patiala was registered with Service Tax Authorities for banking and financial services in terms of para-24 thereof. He draws attention to para-29 to show that State Bank has not committed any error in compliance to the law for which further proceedings were dropped.

4. Heard both sides and perused the records.

5. We have examined requirement of Rule 9 of Cenvat Credit Rules, 2004 which requires that satisfaction of the Department is to be recorded on the materials produced before it. The documents that need verification under the Rule is that respective challans, invoice or bills issued by the input service distributor under Rule 4 A of the Service Tax Rules, 1994. Sofar as issuance of invoice, bills or challans are concerned that is not disputed in the present set of appeals.

6. We looked into the scheme of the Cenvat credit granted in terms of Rule 3 & 4 of Cenvat Credit Rules, 2004. We did not find the Cenvat credit claimed is otherwise deniable. But particulars of registration did not appear in the input distribution evidence relied upon by appellant. If an assessee is registered and documents, which are not known to law are produced or such documents become questionable under law, that shall not *ipso facto* grant right to the claimant to get Cenvat credit even if that contains a registration number. Therefore, while registration is one of the requirement for verification, the documents, which are led in support of the claim, are equally primary to be considered in all material particulars to consider admissibility of Cenvat credit.

7. In the fitness of the circumstances, considering that subsequent adjudication proceedings were dropped in the case of same appellant, there is nothing to doubt conduct of the appellant as to its existence and issuance of relevant genuine documents relied upon by the appellant. Making an overall assessment, we are of the view that when the documents produced in support of the claim are credible evidence and also conduct of the appellant does not appear to be questionable from para-20 of the adjudication order cited by Shri Batra, ld. Chartered Accountant, dispensing the requirement of pre-deposit, all the appeals are allowed. Stay applications get disposed accordingly.

[order dictated & pronounced in open court]

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

Ckp.