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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/647/2012-CU[DB], ST/648/2012-CU[DB], ST/649/2012-CU[DB]

Dated: **30/05/12**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
STEEL STRIPS WHEELS LTD
Vill-somalheri/lehi, P.o. Dappar, Teh: Dera Bassi, Mohali-140606

Steel Strips Wheels Ltd (Appellant)

VS

C.C.E. & S.T.-Chandigarh-ii (Respondent)

I am directed to transmit herewith a certified copy of **Final Order No.** ST/A/404-406/12 **CU[DB]** dated 23.05.12 passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Assistant Registrar
CUSTOMS Appeal Branch

Copy To,
1. Respondent
C.C.E. & S.T.-Chandigarh-ii
PLOT NO.19... CENTRAL REVENUE BUILDING......
SECTOR 17-C, CHANDIGARH,160017

2. Advocate(s) / Consultant(s):
K.VAITHEESWARAN, R.RADHIKA
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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
CUSTOMS Appeal Branch

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

Service Tax Appeal No. 647 to 649 of 2012

[Arising out of Order-in-Appeal No. 56-58/ST/Appl/CHD-II/2012 dated 22.02.2012 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II, Chandigarh]

Date of Hearing/decision: 23rd May, 2012

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the 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?	

M/s. Steel Strips Wheels Ltd., Appellant

Vs.

CCE & ST, Chandigarh-II
Mohali Respondent

Present for the Appellant : Shri V.S. Manoj, Advocate
Present for the Respondent : Shri K.K. Jaiswal, D.R.

Coram: Hon'ble Shri D.N. Panda, Judicial Member;
Hon'ble Shri Mathew John, Technical Member

FINAL ORDER NO. ST/A/404-406/12-Cus.

Per D.N. Panda:

In all the 3 appeals it is the submission of the learned Counsel that appellant is an exporter of goods and in the course of export certain expenditures were incurred to avail services of freight forwarder. The services so availed have suffered service tax in the hands of the said service provider. The tax paid by appellant was treated by Revenue as payment under the category of "Business Auxiliary Service" provided. Revenue denies to refund the service tax so paid by Appellant when that remained unutilised for no domestic clearances made by appellant or any domestic out put service provided by it. Even if the appellant may not get benefit of notification No. 17/2009-ST date d7.7.2009, it shall substantially get relief under Rule 5 of Cenvat Credit Rules, 2004. Therefore, the matter may go back for allowing refund on examination of elements of the said Rule 5.

2. There is no objection by Revenue to the proposition of the learned Counsel for the appellant.

3. Heard both sides and perused the record.

4. Larger Bench of Tribunal had occasion to deal with refund of unutilised Cenvat credit in the case of Steel Strips vs. CCE, Ludhiana - 2012 (26) STR 270 (Tri.-LB). Argument of learned counsel that it shall get substantial relief under Rule 5 of Cenvat Credit Rules, 2004 cannot be brushed aside because of its undisputed status of exporter. Earning of Cenvat credit by appellant is also undisputed. It is immaterial for Appellant to know whether service tax paid by it was taxed in the hands of service provider under appropriate taxing entry or classification to claim service tax refund. What that is material is to find integrity of input service to manufacture or in relation to manufacture.

5. Fact finding is necessary to satisfy whether the appellant had claimed any draw back against the export and whether there is no possibility of adjustment of Cenvat credit in respect of service availed to export its goods. Once the finding is that adjustment is not impossible, and no draw back or rebate was claimed, the appellant cannot be denied refund. It is made clear that elements of Rule 5 of Cenvat Credit Rules, 2004 should be satisfied by the appellant to get refund.

6. On the aforesaid ground and reasoning the matter is remitted to learned Adjudicating Authority to consider prayer of appellant in terms of above guideline. It may be stated that export earns foreign exchange for the country, and exporting sector needs earliest redressal of their grievance. Adjudicating authority shall expeditiously dispose the matter issuing notice to appellant as early as possible upon receipt of this order.

7. In the result, all the three appeals are remanded to the learned Adjudicating Authority.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RK