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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/702 /2008-709 /2008 - CU[DB] Date **05/06/2012**

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

**C.C.E. CHANDIGARH** Appellant

Vs

**M/S ARISHT SPINNING MILLS** Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/419-426 2012 CU[DB]** dated 31.05.12 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 ARISHT SPINNING MILLS**
SAI ROAD, BADDI.

2. Adv. / Consult M/S DSK LEGAL
46, ARADHANA CHANAKYAPURI
NEW 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)

14. Mr. S.C. Kamra, Adv.
B-2/210, (Basement)
Safdarjung Enclave
New Delhi.

P.T.O.

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

## COURT NO. II

**Service Tax Appeal No. 702 to 709 of 2008**

[All arising out of common Order-in-Appeal No. 394-401/CE/CHD/2008 dated 1.8.2008 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

**Date of Hearing/decision: 31st 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? | |

CCE, Chandigarh — Appellant

Vs.

M/s. Arisht Spinning Mills,
M/s. Vardhman Spg. & General Mills Ltd.,
M/s. Birla Textile Mills,
M/s. Auro Spinning Mills,
M/s. Mahavir Spg. Mills,
M/s. Dev Resins Pvt. Ltd.,
M/s. Ridhi Packages Pvt. Ltd., — Respondent

Present for the Appellant : Shri Amresh Jain, D.R.
Present for the Respondent : Shri S.C. Kamra, Advocate & Shri Abhisek Singh Baghel, Advocate

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

**FINAL ORDER NO.** ST/A/ 419-426/12-Cus

**Per D.N. Panda:**

Shri Kamra, learned Advocate appearing for appeal No. ST/704/08 says that the matter in controversy is whether Cenvat credit earned on payment of commission to foreign party ~~shall be admissible~~ can be utilized to discharge tax/duty liability. He says that there is no prohibition in law to permit such a set off modality. For this, he relies on the decision of Hon'ble Karnataka High Court in the case of CST, Bangalore vs. Aravind Fashions Ltd. - 2011-TIOL-748-HC-KAR-ST. Placing Para 4 of the judgement he says that Hon'ble High Court has decided that there is no bar for set off in such circumstances.

2. In respect of appeal No. ST/702/08 and ST/703/08 Shri Abhisek Singh Baghel, learned advocate adopts arguments of Shri Kamra on the ground that his case is also on the similar cause of action.

3. Shri Abhisek Singh Baghel in appeal No. ST/705/08, 706/08 and 707/08 submits that what that was argued by Shri Kamra is also proposition of law in the judgement of High Court of Punjab & Haryana in the case of CCE, Chandigarh vs. Nahar Industrial Enterprises Ltd., reported in 2012 (25) STR 129 (P & H).

4. In short, prayer of both the learned Counsels is to dismiss appeal of Revenue.

5. Learned D.R. appearing for Revenue says that discharge of liability from Cenvat credit is not right modality since the respondent has not provided output service.

6. Heard both sides and perused the record.

7. It is not possible to find any provision of law debarring the respondents to set off Cenvat credit against duty liability on the touch stone of law laid down in the decisions cited by the learned Counsels. Therefore, all the six appeals of Revenue are dismissed. Consequential relief, if any, shall be admissible to the respondents in accordance with law.

**ST/708-709/2008**

8. None present for the respondent in these two cases. It was mentioned in Bar by Shri Kamra and Shri Abhisek Singh Baghel that appeal No. ST/708/08 and ST/709/08 also emanate from the same order-in-appeal which was the subject matter of appeal No. ST/705/0 to 707/08 and related to GTA service. Learned D.R. for Revenue does not differ on above factual position. In view of above decision taken in appeal No. ST/707/08 to 707/08, these two appeals are also dismissed.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RK