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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/559 /2008 - CU[DB] Date **12/06/2012**

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

To :
M/S HINDUSTAN COCA COLA BEVERAGES PVT. LTD.
SP-39-40, RIICO INDUSTRIAL AREA, KALADERA,
JAIPUR.

M/S HINDUSTAN COCA COLA BEVERAGES PVT. LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/453 2012 CU[DB]** dated 15/05/12 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
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult

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
PRINCIPAL BENCH, NEW DELHI
Court No.III

ST/Appeal No.559/2008

(Arising out of order in appeal No. 60/BKS/ST/JPR-1/08 dated 31.3.2008 passed by the Commissioner of Customs & Central Excise(Appeals), Jaipur)

Date of Hearing: 15.5.2012

For Approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member Judicial
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?	Yes
2.	Whether it would 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 Department Authorities?	No

M/s Hindustan Coca Cola Beverages Pvt Ltd — Appellant

Vs

CCE, Jaipur-I — Respondent

Appeared for the Appellant: Shri Sanjeev Dahiya, Rep.
Appeared for the Respondent: Shri A. Jain, DR

Coram: **Hon'ble Mrs. Archana Wadhwa, Member(Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

Final ORDER No. ST/A/453/12-Cus

Per Mathew John

The Appellants are manufacturers of excisable goods and they avail the benefit of Cenvat Credit scheme as notified under Cenvat Credit Rules, 2004. They were receiving services of Goods Transport Agencies and they were required to pay service tax on such services as receiver of such service as per provisions of Rule

2 (v) of the Service Tax Rules, 1994. The present dispute relates to the period April 2005 to September 2005.

2. The appellants initially paid tax on the services received by them using Cenvat credit available in their account. During an audit conducted by Revenue, the officers raised the objection that service tax on services received by the appellants could not have been paid through Cenvat credit and it should have been paid in cash. When the objection was pointed out the appellants paid the tax amount in cash. However they did not pay any interest on such tax initially paid through credit and later paid in cash. Revenue issued a Show cause notice demanding such tax along with interest on such tax amounting to Rs. 42,897/- along with penalty. On adjudication the demand was confirmed and tax paid by the appellant in cash is appropriated against the demand. Further interest of Rs. 42,987/- was demanded and penalty of Rs. 100/- per day was imposed under section 76 of the Finance Act, 1994. Aggrieved by the order the appellants filed an appeal with the Commissioner (Appeal). The Commissioner (appeal) confirmed the demand for interest but waived the penalty invoking powers under section 80 of the Finance Act, 1994. Aggrieved by the order of the Commissioner (Appeal) the appellants have filed this appeal.

3. The Authorized Representative for the appellants submits that as per the decision of Rajasthan High Court in the case of CCE Vs. Nahar Industrial Enterprises Ltd. 2012 (25) S.T.R. 129 (P & H) payment made initially through Cenvat credit was a good discharge of the tax liability and hence there cannot be a demand for interest. He submits that they paid the tax again in cash only to avoid unnecessary litigation and that cannot be a reason to demand interest from them when there was no short payment by them during the period.

4. The A.R. for revenue submits that the appellants never contested the tax liability. Interest is an adjunct to tax which

becomes payable if tax is not paid at the stipulated time which has happened in this case.

5. We have considered arguments on both sides. We find that the tax demand confirmed by lower authorities is not maintainable in view of the decision in the case of Nahar Industrial Enterprises (Supra). Interest is payable when a tax due was not paid in time. Since the effect of the decision is that the appellant had paid the tax properly during the relevant time there cannot be a liability for interest in this case.

6. We see merit in the argument of the appellants and hence the impugned orders of the lower authorities are set aside and the appeal is allowed.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

MPS*