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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/719/2008-CU[DB]

Dated: **29/06/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E Bhopal
Hoshangabad Road, 48, Administrative
Area, Area Hills, Bhopal (M.P.) 462011

C.C.E Bhopal (Appellant)

VS

VARDHMAN FABRICS (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/485/2012-CU[DB]** dated **18/06/2012** 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**
VARDHMAN FABRICS
VILLAGE PILIKARAR-TALPURA,
REHTI ROAD, BUDHNI, M.P.

2. **Advocate(s) / Consultant(s):**

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

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 18.6.2012

Service Tax Appeal No. 719 of 2008

[Arising out of the Order-in-Appeal No. 139/BPL/2008 dated 3.9.2008 passed by the Commissioner, Central Excise, Bhopal)

For Approval & signature :

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
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 Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

CCE, Bhopal — Appellant

Vs.

M/s Vardhaman Fabrics — Respondent

Appearance:

Appeared for Appellant : Shri K.K. Jaiswal, A.R.
Appeared for Respondent : None

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

Final Order No.ST/A/485/12-CW dated............

Per **Archana Wadhwa** :

Revenue is in appeal against the order of the Commissioner (Appeals). Nobody is present on behalf of the respondents. Accordingly, we have heard ld. A.R.

2. On going through the impugned order, we find that the appellant availed Cenvat credit in respect of various services received by them used for construction of worker's houses, hostel, officers bungalow etc. On an objection raised by audit, the respondents reversed the said credit but subsequently claimed the same on the ground that the same are admissible cenvatable input services.

3. A Show Cause Notice was issue proposing denial of refund claim. The adjudicating authority in his impugned order held that inasmuch as the said services were not used for the export purposes, in terms of Notification No. 41/2007-ST, refund cannot be sanctioned. The same was accordingly rejected.

4. The Commissioner (Appeals) vide his impugned order observed that the said notification has got nothing to do with the refund of service tax as the refund claimed by the assessee was reversal of Cenvat credit ~~as~~ which has no link with the notification. Accordingly, he observed that lower authority has passed the impugned order on a strange ground which was not even the subject matter of the Show Cause Notice. As the assessee was not given any opportunity to present his case, Commissioner (Appeals) set aside the order of the lower authorities, on merits

as also on breach of principles of natural justice. He accordingly directed the lower authorities to sanction the refund after due verification, by way of re-credit in the Cenvat account.

The said order of Commissioner (Appeals) is impugned before us.

5. After hearing the ld. AR, we find that neither of the authorities below have gone into the merits of the case. Admittedly the order of the original adjudicating authority is incorrect inasmuch as it was not a case of refund of service tax used for export of the goods. As such, we agree with the Commissioner (Appeals) to the extent ~~with~~ that reference to Notification No. 41/2007 was not called for and had no relevance in the matter. But we are of the view that having observed so, the ~~allowance~~ allowing of the appeal on this ground alone has also on the point of violation of principles of natural justice was not proper on the part of the Commissioner (Appeals). The appellate authority was required to decide on the legal issue as to whether the services were eligible cenvatable services or not.

7. Inasmuch as neither of the authorities below have discussed the issue on merits and as the matter already stands remanded to the original adjudicating authority with directions

to grant refund, after verification, we deem it fit to make the remand order as open remand. Accordingly, we direct the original adjudicating authority to examine the aspect of availability of credit of service tax in respect of services utilised for constructions of worker's house, hostel etc. The Revenue's appeal is disposed of in the above manner.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM