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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/656/2011-CU[DB]

Dated: **27/08/2012**

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

C.C.E. LUDHIANA
Central Excise House, 'F' Block, rishi
Nagar, Ludhiana 141001 (Punjab)

C.C.E. LUDHIANA (Appellant)

VS

BHOGPUR CO-OPERATIVE SUGAR MILLS LTD., (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/553/2012-CU[DB]** dated **07/08/2012** 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
BHOGPUR CO-OPERATIVE SUGAR MILLS LTD.,
BHOGPUR, JALANDHAR, (PUNJAB)

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

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

ST/Appeal No.656/2011

(Arising out of order in Review No.14/OIR/2/2010 dated 15.4.2011 passed by the Commissioner of Customs & Central Excise, Chandigarh)

Date of Hearing: 7.8 .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

CCE Ludhiana — Appellant

Vs

M/s Bhogpur Cooperative Sugar Mills Ltd — Respondent

Appeared for the Appellant: Shri Nitin Pathak, DR
Appeared for the Respondent: Shri Balbir Singh Auth. Rep.

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

ORDER

Final ORDER No ST/A/553/12-Cus

Per Mathew John:

The respondent is manufacturer of sugar. Sugar is a commodity on which the Central Government exercises control regarding release of goods in the market. When the Government decides to build buffer stock of sugar, it asks ~~they ask~~ the manufacturers to store the goods manufactured by them, till the Government issues release orders and for such quantity of sugar, Government pays some subsidy to compensate the manufacturers on account of interest, storage expenses and insurance charges to be incurred by the manufacturers. The respondent in this case had received such subsidy during the period 18.12.02 to 30.9.04. The respondent did not pay any service tax on such subsidy received.

2. Revenue was of the view that the respondent should have paid service tax on the subsidy amount received from the Government considering it as consideration received for providing storage and warehousing facility. Based on such reasoning, two show cause notices had been issued for the period 18.12.02 to 17.12.03 and 18.12.03 to 30.9.04. ~~As~~ The Assistant Commissioner who adjudicated the matter held that the respondent were complying with the provisions of Sugar Development Fund Rules, 1983 and they cannot be considered as providing any service to Government of India and therefore, dropped the proceedings initiated.

3. The Commissioner exercised power under section 84(1) of Finance Act, 1994 for revising the order and issued show cause notices dated 9.11.2010 and 12.11.2010. The Commissioner also dropped the proceedings initiated by the show cause notice dated 9.11.2010 and 12.10.10. Aggrieved by the order of the Commissioner, Revenue has filed this appeal before the Tribunal.

3. The learned AR for Revenue submits that the Commissioner (Appeals) has relied on the decision in the case of CCE Vs Nahar Industrial Enterprises Ltd 2010 (19) STR 166 (P&H). The learned AR submits that the Department has filed an SLP before the Hon'ble Supreme Court in the matter. Revenue argues that the activity of storing the goods carried out by the respondent is at the request of

Government of India and respondent received consideration for doing such activity and therefore, service is provided by the respondent to Government. The service provided is essentially of the nature of 'storage and warehousing service' made taxable in Section 65(105)(zza) of the Finance Act, 1994 and hence the appellant should have paid service tax on such consideration received for providing the service.

4. The AR for Respondent submits that the sugar in question belonged to them and while storing it, they were only taking care of their own goods and therefore, it cannot be said that they have provided service to any other person. He also submits that the subsidy received by them is only a compensation for various elements of cost which they have incurred to comply with the provisions of statutes in force. Complying with the provision of law cannot be considered as a service and therefore, in this situation, there is no service involved and therefore, the demand is not maintainable.

5. We have considered arguments of both sides. We find that this matter has already been decided by the Hon'ble Punjab & Haryana High Court in the case of Nahar industrial Enterprises (supra) and it has been held by the Hon'ble High Court that in such situation, the sugar mills are not providers of storage and warehousing service to Government of India and service tax will not be applicable. Following the said decision of Hon'ble High Court, we reject the appeal filed by the Revenue.

(Order dictated and pronounced in the open Court.)

(ARCHANA WADHWA0
Member (Judicial)

(MATHEW JOHN)
Member (Technical)

MPS*