FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 27/03/2019

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/70664-70665/2019-SM[BR]** dated **19/03/2019**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/70690/2018 ST/70894/18	**R S P L Limited** 119/121 Part Block P & T, Fazalganj Kalpi Road Previously M/s /ghari Industries Pvt Ltd 117/H2/202 , Pandu Nagar, KANPUR -208012
		Name and Address of Respondent
2		Ghari Industries Pvt Ltd 117/H-2/202, Pandu Nagar,, KANPUR -208005
3		C.C.E. & S.T.-Kanpur 117/7,SARVODYA NAGAR, KANPUR-208005

Copy To

4Advocate(s) / Consultant(s):

A. P. Mathur
167, TAGORE TOWN,
Allahabad-211002

5 Bar Association, CESTAT, Allahabad

6 Director Publications, Customs, Excise. I.P. Estate, Delhi-110003

7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-110003

8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-600017

9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad-500016

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 M/s TAXONGO Pvt Ltd B-XI/8183, VASANT KUNJ, NEW DELHI-110070

15 C.D.R. 16 Office Copy 17 Second Folder Copy 18 Guard File

Asstt. Registrar

gajendra

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/70690/2018 & ST/70894/2018-ST[SM]

(Arising out of Order-in-Appeal No. 170/Comm. (Audit)/CE/Appl./KNP/2018 dated 19/03/2018 passed by Commissioner of Central Excise & Central Tax (Audit), Kanpur)

M/s RSPL Ltd. (In Appeal No.E/70690/2018) **&**

Commissioner of Central Excise & S.T., Kanpur
(In Appeal No.ST/70894/2018) **Appellants**

Vs.

Commissioner of Central Excise & S.T., Kanpur &
M/s Ghari Industries Pvt. Ltd., **Respondent**

Appearance:

Shri A.P. Mathur, Advocate for Service Provider
Shri Gyanendra Kr. Tripathi, Deputy Commissioner (AR), for Revenue

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 19/03/2019
Date of Decision : 19/03/2019

FINAL ORDER NO-70664-70665/2

Per: Anil G. Shakkarwar

Above stated two appeals are taken together for decision, since they are arising out of same impugned Order-in-Appeal No. 170/Comm. (Audit)/CE/Appl./KNP/2018 dated 19/03/2018 passed by Commissioner of Central Excise & Central Tax (Audit), Kanpur. Appeal No.E/70690/2018 is in respect of service tax matter and the same is filed by service provider. The other appeal is filed by revenue.

2. After hearing both the sides duly represented by learned Counsel Shri A.P. Mathur, Advocate for service provider & learned A.R. Shri Gyanendra Kumar Tripathi, Deputy Commissioner appearing for revenue, I note that the service provider were brand owner and were paying service tax on the royalty amount under the category of 'Intellectual Property Right Service'. The service provider were paying service tax by debiting cenvat account. The service provider were availing Cenvat credit of service tax paid by them. It was observed by revenue that Cenvat credit amounting to Rs.20,16,876/- and education cess amounting to Rs.40,338/- was utilized by service provider, out of distributed Cenvat credit to them and said Cenvat credit was distributed by availing the same on Goods Transport Agency Service. The stand taken by revenue was that Goods Transport Agency Service is not input service for Intellectual Property Service as output service and therefore, through show cause notice dated 18.05.2017 the demand of service tax of above stated amount was raised under Section 73 of Finance Act, 1994. Initially, the matter had reached this Tribunal and earlier orders were set aside through the Final Order of this Tribunal bearing No.ST/A/35/2012 dated 16.01.2012 and the matter was remanded for denovo adjudication with a direction to state all facts clearly in the order without giving any room for doubts. Accordingly, Order-in-Original dated 28.11.2014 was passed by the Original Authority wherein demand of around Rs.20

lakhs was confirmed under Section 73 of Finance Act, 1994 along with interest and equal penalty. The said order was challenged before learned Commissioner (Appeals). The learned Commissioner (Appeals) has upheld the confirmation of demand with interest and set aside penalty imposed under Section 78 of Finance Act, 1994. The Service Provider is in appeal aggrieved by confirmation of demand and revenue is in appeal aggrieved by setting aside the penalty. Therefore, above stated two appeals.

3. After hearing both the sides and on perusal of record, I note that the service provider had paid service tax under Section 66A of the Finance Act, 1994 as service receiver and service tax leviable under Section 66A of the said Act had been made eligible for availment of Cenvat credit at Clause (ixa) of Sub-rule (1) of Rule 3 of Cenvat Credit Rules. Further, there is no dispute that the output service is Intellectual Property Rights in the present case. Further, as per Sub-rule (4) of Rule 3 of Cenvat Credit Rules the availed Cenvat credit can be utilized for payment of service tax on output service. Therefore, I do not find any provision in the Cenvat Credit Rules which allow revenue to decide which service is input for which output service since there are no such provision in the law, Cenvat credit is to be allowed as provided under Sub-rule (1) of Rule 3 of Cenvat Credit Rules and utilization of the same is to be allowed, as provided under Sub-rule (4) of Rule

3 of Cenvat Credit Rules. I do not find any violation of either of the said rules in the present case. I, therefore, set aside the impugned order and allow the appeal filed by service provider.

4. Since the impugned order does not survive, I reject the appeal filed by revenue.

(Dictated in Court)

-Sd/-
(Anil G. Shakkarwar)
Member (Technical)

akp

प्रमाणित प्रति / Certified True Copy
10/05/19
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.
38, एम.जी. मार्ग, इलाहाबाद-211001
38,M. G. MARG, ALLAHABAD-211001