CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 29/2/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70082/2016 SM dated 02/11/2015

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
	E/51976/2014SM	AVERY WEIGH TRONIX PVT LTD C /O M/S AVERY INDIA LTD PLOT NO 50-59, SECTOR-25 BALLABGARH, HARYANA
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE,NOIDA C-56/42, SECTOR-62 NOIDA

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s SH R.K.CHOUDHARY,ADV
SCO-67, IST FLOOR
RAMNEEK SHOPPING COMPLEX,
PART-II, TIKONA PARK
NIT, FARIDABAD)

4 Bar Association, CESTAT, ALLAHABAD

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Panjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Ex. Appeal No.51976/14

Arising out of OIA No.NOI/EXCUS/000/APPL/178/13 dated 27.08.2013 passed by Commissioner of Central Excise (Appeals), Customs & S.Tax, Noida.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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M/s Avery Weigh Tronix Pvt. Ltd. ...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Customs & S.Tax, Noida

RESPONDENT (S)

APPEARANCE

Shri Raj Kumar Choudhary, Adv. for the Appellant (s)
Shri Ranvidra Kumar Das, Dy.Commr. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 02.11.2015

Final ORDER NO. 70082/2016

सीमा शुल्क उत्पाद एवं सेवा कर अपीलीय न्यायाधिकरण CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Mr. Anil Choudhary :

The appellant is in appeal against order in appeal dated 27/8/13 by which the denial of Cenvat credit for the period October 2010 to September 2011, have been denied on the ground that the said pleaded for this prior to 2/9/11 when the appellant was not registered.

2. The brief facts are that the appellant is engaged in providing 'Information technology software service' falling under section 65 (105) of the Finance Act. The said service became taxable service with effect from 16/5/2008. Being an exporter of service the appellant was entitled to refund of Cenvat credit remaining unutilised under the provisions of Rule 5 of Cenvat credit rules read with notification number 5/2006. A show cause notice dated 23/10/12 was issued as it appeared to revenue that the appellant could not have taken Cenvat credit received during October, 2010 to September, 2011 prior to the date of registration (02.09.11). Accordingly the appellant was required to show cause as to why Cenvat credit amounting to Rs. 4, 85, 595 should not be disallowed and recovered under rule 14 of CCR read with proviso to section 73 (1) of the Finance Act, along with interest and further, penalty was proposed under rule 15 of CCR read with section 78 of the Finance Act. Vide Order-In-Original dated 13/5/13, the Assistant Commissioner confirmed the show cause notice and equal amount of penalty was imposed under rule 15 of CCR read with section 78 of the act.

3. Being aggrieved the appellant preferred appeal before the Commissioner (Appeals), who vide the impugned order was pleased to reject the appeal holding that the appellant would not have taken Cenvat credit prior to the date of registation. Being aggrieved the appellant is before this Tribunal.

4. The ld.Counsel for the appellant, states that the issue is no more *res-integra* and the same is decided in favour of the assessee by another Single Member Bench of this Tribunal in M/s Imagination Technologies India Private Ltd Vs. CCE : 2011 23 STR 661 wherein input services received prior to date of registration being not disputed, as well as payment of tax on the same and the utilisation in providing of taxable out-put service, it was held that there was no provision in Cenvat Credit Rules, 2004 for denial of credit on tax paid on such inputs/input services. The ld. Counsel also relies on the SMB ruling in the case of C. Matric Solutions Private Ltd. Vs. CCE : 2012 28 STR 460 (Tri.), held following the Division Bench ruling of this Tribunal in Well Known Polysters Limited Vs. Commissioner : 2011 (267) ELT 221, it was held that assessee is eligible to take Cenvat credit of service tax paid on input services received prior to date of registration. Accordingly the ld. Counsel prays for allowing the appeal with consequential benefits.

5. The ld.A.R. for Revenue relies on the impugned order.

6. Having considered the rival contentions and relying on the earlier rulings of this Tribunal in the case of Imagination Technologies India private Limited (supra) and Well Known Polysters Limited Vs.

Commissioner (supra). I hold that the appellant is entitled to Cenvat credit on the inputs/input services received prior to the date of registration as the service in question was taxable during the period when the inputs/input services were received. Only for the reason of being not registered during the period, credit of inputs or input service cannot be denied. It has been so held in the case of mPortal Wireless Private Ltd by Honourable Karnatka High Court. Thus, the appeal is allowed with consequential benefits if any. The impugned order is set aside.

(Pronounced in the open Court)

(Anil Choudhary)
Member (Judicial)

mm

Certified True Copy
15-3-16
Asstt. Registrar
(C.E.S.T.A.T.)
38, M. G. MARG, ALLAHABAD-211001