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: 27/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71003-71004/2016-EX[DB] dated 03/10/2016

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/52221/2014	L G ELECTRONICS INDIA PRIVATE LIMITED PLOT NO. 51, UDYOG VIHAR, SURAJPUR-KASANA ROAD, GREATER NOIDA UP
2	E/52222/2014	BHARAT BHUSHAN SHARMA MANAGER COMMERCIAL M/S LG ELECTRONICS INDIA PRIVATE LIMITED, PLOT NO. 51, UDYOG VIHAR, SURAJPUR- KASANA ROAD, GREATER NOIDA,UP

Name and Address of Respondent

	Name and Address of Respondent
3	C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307
4	C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

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23-11-16

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

V. LAKSHMI KUMARAN,
ALD
3/1A/3 OPP AUTO SALES,
COLVIN ROAD, LOHIA
MARG ALLAHABAD-211001

6 Bar Association, CESTAT, Allahabad

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

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

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

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

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad 38

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

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

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

Hon'ble Mr. ... Member (Judicial)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. E/52221 & 52222/2014-EX[DB]

(Arising out of Order-in-Original No. 48-52/Commissioner/Noida/2013-14 dated 29/01/2014 passed by Commissioner of Central Excise & Customs, Noida.)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
and
Hon'ble Mr. Anil G. Shakkarwar, 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?	Yes
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?	Yes

M/s L G Electronics India Private Limited, Bharat Bhushan Sharma Manager — **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Noida — **Respondent**

Appearance:

Shri Atul Gupta, Advocate &
Shri Hrishikesh, Advocate, — for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), — for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 03/10/2016

FINALORDER NO..71003-71004/2016

Per: Anil G. Shakkarwar

The present two appeals are filed by the appellant, M/s L G Electronics India Private Limited & Bharat Bhushan Sharma Manager Commercial, against Order-in-Original No. 48-52/Commissioner/Noida/2013-14 dated 29/01/2014 passed by Commissioner of Central Excise & Customs, Noida.

2. The brief facts of the case are that the appellants are a manufacturer of home appliances such as Air Conditioner, Colour Television, Computers, Refrigerator etc. They were availing Cenvat Facility. The appellants enter into an agreement of 1st March, 2008 with M/s BVI HR Practice Private Limited for supply of 'Manpower'. In the said agreement the appellant inserted a clause that BVI shall obtain various license/registration service etc. required under the Income Tax law applicable on the type of services rendered by them, such as Service Tax and that BVI shall ensure timely and correct payment of tax applicable from time to time and that Service Tax shall be charged on all invoices as per law and that proof of deposit of applicable taxes shall be required to be

produced to the appellants as and when asked for. On the basis of invoices issued by M/s BVI HR Practice Private Limited wherein registration of Service Tax was mentioned and Service Tax paid was indicated, assessee took Cenvat credit of Service Tax paid as stated in the said invoices on 'Manpower or Supply Agency Services'. On investigation it came to the knowledge of Revenue that BVI had not made the payment of Service Tax stated on the invoices issued to the appellant. Investigation was carried out and a Show Cause Notice was issued to the appellant who was recipient of service, as to why, Cenvat credit amounting to Rs.3,32,76,600/- wrongly availed during the period from April, 2007 to March, 2009 should not be recovered from them under the provisions of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A(4) of Central Excise Act, 1944. There was a proposal to impose personal penalty on Mr. Bharat Bhushan Sharma, Authorized Signatory of the appellant. The allegation in the Show Cause Notice was that the appellants failed to ensure in conformity with the provisions of Sub-rule 6 of Rule 9 of Cenvat Credit Rules, 2004 and as a result of which they became disentitle for Cenvat credit provided by Rule 3 of Cenvat Credit Rules, 2004. There was allegation in the said Show Cause

Notice that appellants connived with the service provider that is M/s BVI HR Practice Private Limited for evasion of Service Tax and for availing inadmissible Cenvat credit and as a result extended period was invoked for issue of Show Cause Notice. The Show Cause Notice was issued on 09-05-2012 for the period from April, 2007 to March, 2009.

3. Appellants submitted before the Original Authority that the invoices issued by M/s BVI HR Practice Private Limited were containing all the particulars prescribed under Rule 4(A) of Central Excise Act, 1944 and that appellants paid Service Tax to M/s BVI HR Practice Private Limited for services provided and the service for which Service Tax was paid by appellants to the Service Receiver was an input service for them and said Service Tax was admissible to them as Cenvat credit as per Rule of Cenvat Credit Rules, 2004. They have further submitted that the appellants has availed the Cenvat credit on the basis of invoices raised by M/s BVI HR Practice Private Limited wherein Service Tax valued and Service Tax therein separately shown and paid by the appellants and the invoices were in compliance with provisions of Rule 4A of Service Tax Rules, 1994 and this is how the document was in conformity with the

provisions of Sub-rule 1 of Rule 9 of Cenvat Credit Rules, 2004. They have further submitted that as provided under Sub-rule 7 of Rule of Cenvat Credit Rules, 2004 which provides that credit on input services can be availed once payment has been made on the full value of the service including Service Tax and this is how they were eligible for said Cenvat credit. They have further submitted that it is practically not feasible for any service recipient to ask each and every service provider to show the proof of the tax deposited by it with the Government and that non-deposit of tax by the service provider cannot be a ground to deny credit to the service recipient. They have further pointed out that through Section 73 & 73A of Finance Act, 1944 law has provided legal remedy to the Department for recovery of Service Tax not paid as well as Service Tax collected but not deposited with the exchequer and it is not the responsibility of the service receiver to ensure payment of Service Tax by service provider. They have further contended that the extended period of limitation was not admissible to be invoked in the present Show Cause Notice though the allegation was made on the Show Cause Notice that is connivance of the appellant with the service provider but such an allegation has not been supported by any evidence. The Original

Authority did not appreciate the submissions of the appellant and through Order-in-Original No. 48-52/Commissioner/Noida/2013-14 dated 29/01/2014, adjudicated the said Show Cause Notice and confirmed the demand and disallowed the Cenvat credit of Rs.3,32,76,600/- to the appellant. He imposed equal penalty on appellant. Further, he imposed penalty of Rs. 10 lakhs on appellant. He further imposed penalty of Rs. 5 lakh on Shri Bharat Bhushan Sharma, Authorized Signatory of the appellant Company. Aggrieved by the said Order-in-Original No. 48-52/Commissioner/Noida/2013-14 dated 29/01/2014, the appellant is before this Tribunal. The grounds of appeal are same as that were stated before the Original Authority.

4. The ld. Counsel for the appellants reiterated the grounds. He has further relied on the ruling by Hon'ble High Court of Allahabad in the case of Commissioner of Central Excise & Service Tax *Versus* Juhi Alloys Ltd. reported at 2014 (302) E.L.T. 487 (Allahabad). In the said case law the Hon'ble High Court of Allahabad has ruled that it would be impractical to require the assessee to go behind the records maintained by the first stage dealer and that assessee if acts with all reasonable diligence in

its dealing with the first stage dealer within the meaning of Rule 9(3) of Cenvat Credit Rules, 2004 obligation is limited to that. He has further elaborated that in the said case law the Hon'ble High Court ruled that once it is demonstrated that reasonable steps have been taken as required within the meaning of Rule 9(3) of Cenvat Credit Rules, 2004 it would be contrary to the Rules to casting an impossible or impractical burden of going on the assessee issuing invoices to verify his records. He has further relied on ruling by the Hon'ble High Court of Jharkhand at Ranchi in the case of Commissioner of Central Excise, East Singhbhum *Versus* Tata Motors Ltd. reported at 2013 (294) E.L.T. 394 (Jharkhand). It was submitted that the Hon'ble High Court of Jharkhand at Ranchi has held that it is unreasonable to expect buyer of such inputs to go and verify accounts of supplier or to find out from Central Excise Department whether actually duty had been paid on inputs. He has further argued the said case laws are squarely applicable in this case. The ld. D.R. has supported the Order-in-Original.

5. Having considered the rival contentions, we find that the argument put forth by the appellant before the Original Authority has great force of law. We find that the Show Cause Notice did not bring forward any evidence to

establish that there has been collusion between the appellant and the service provider for evasion of Service Tax and for availing inadmissible Cenvat credit. Therefore, the invocation of extended period in the said Show Cause Notice is not sustainable. We, therefore, hold that the said Show Cause Notice, so far as, relates to denial of Cenvat credit to the appellant, imposition of penalty on appellant, proposal for imposition of penalty on its Authorized Signatory & proposal of demanding interest from the appellant is unsustainable. We, therefore, modify the impugned Order-in-Original to the extent that the demand confirmed in respect of Cenvat credit of Rs.3,32,76,600/- is set aside, order for recovery of interest on the said demand is set aside, imposition of penalty of Rs.3,32,76,600/- on appellant is set aside, imposition of penalty of Rs. 10 lakhs on the appellant is set aside & imposition of Rs. 5 lakhs on Shri Bharat Bhushan Sharma, Authorized Signatory is set aside. In above terms both the appeals are allowed.

(Dictated and pronounced in Court)

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari

प्रमाणित प्रति / Certified True Copy

16.11

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