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

Dated: 21/04/2016

To

Appellant as per address in table below

Respondent as per address in table below

<u>Final Order No. A/ 70130/2016 SM dated 10/02/2016</u>

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/54190/2014	ORIENT BELL LTD 8, INDUSTRIAL AREA SIKANDRABAD BULANDSHAHAR,UP
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, NOIDA C-56/42, SECTOR-62 NOIDA(UP)

Other Appellants and Respondents as per Annexure

Copy To

3<u>Advocate(s) / Consultant(s</u> SH S.C.KAMRA, ADV
B-2/210(BASEMENT)
SAFDARJUNG ENCLAVE
NEW DELHI-29

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 & Service Tax Appellate Tribunal
Regional Bench (Allahbad)

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Appeal No : E/54190/2014

(Arising out of OIA/NOI/EXCUS/000/APPL/44/14 Dated 25/02/2014 passed by Commissioner (Appeals), of Central Excise-AHMEDABAD-III)

M/s Orient Bell Ltd. : Appellant (s)

Vs

CCE & ST, Noida : Respondent (s)

Represented by:
For Appellant (s) : Shri S.C.Kamra (Advocate)
For Respondent (s) : Shri D.K. Sinha, (AR)

For approval and signature:

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

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?	
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Departmental authorities?	Yes

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

Date of Hearing/Decision: 10.02.2016

Final Order No. 70130/2016

Per: ANIL CHAUDHRY

The appellant is in appeal against order in appeal dated 25/2/2014 passed by Commissioner (Appeals), Customs and Central Excise, Noida.

2. The appellant is a manufacturer of ceramic tiles and verified tiles. They also traded in the tiles manufactured by other manufactures and also import tiles (for trading) on payment of Customs duty. The appellant maintains sale depots about 20 in numbers to which tiles are cleared from manufacturing unit. Further tiles purchased for trading are also stocked in the depots for sale. The applicant received common input services at the depots. Show cause notice dated 17/10/2012 was issued for the period January 2011 to March 2012 as it appeared to Revenue that under the provisions of Rule 6 of CCR, Cenvat credit of service tax is available only in respect of dutiable goods/taxable services. Upon insertion of explanation in the definition of "Input service" in Rule 2 (e), with effect from 1/4/2011 or subsequently, the trading service was not taxable under the provisions of Section 66 of the Finance Act and accordingly, it appeared that the appellant is not eligible to avail Cenvat credit on the part of services not utilized for rendering output ~~taxable~~ taxfree. Further the Cenvat credit availed on common services was required to be reversed proportionately on the trade turn over. Further, it appeared that the appellant effected for the period January 2011 to March 2011 and for

the period from April 2011 to March 2012 sales and have taken credit of common input services as follows :-

Allocation of common Input Service Tax credit to trading turnover (exempted services)

Period	Trading Sales (Rs.)	Manufacturing sales (Rs.)	Total sales (Rs.)	Common input services (Cenvat availed)	Cenvat Credit pertaining to trading (exempted service) (Rs.)
2010-11 (1.1.2011 to 31.03.2011)	25,42,04,963 (25%)	75,89,27,800 (75%)	101,31,32,763	26,80,806	6,72,641
2011-12 (1.4.2011 to 31.3.2012)	115,38,08,715	280,06,75,261	395,44,83,976	130,38,091	38,30,475 (As per SCN)

Submission before court below:-

Calculations as per formula of Expl I (c) given below rule 6 (30) of C.C.R. 2004 for the period 1.4.2011 to 31.03.2012	11,53,80,872 (10% of trading turnover)	280,06,75,261	291,60,56,133	130,38,091	5,16,308 (As per Appellant) As admitted

Accordingly, the appellant was required to show cause as to why Cenvat credit totalling Rs.~~45,115~~ 45,03,115/- wrongly availed on common input services during the period January 2011 to March 2012 should not be disallowed and recovered from them under Rule 14 of the CCR read with section 11 A with further proposal to appropriate the amount already reversed of Rs. 20,42,244/- with further proposal to disallow Cenvat credit of Rs. 1,13,266/- being credit wrongly availed for the inadmissible service, (being Rent-a-cab) service of Rs. 6,738/-, plus ~~and~~ on construction service of Rs. 1,06,468/-, should not be disallowed and recovered along with interest and further penalty was proposed under rule 15 of CCR read with 11 AC of the Act

3. The appellant contested the SCN on the grounds that trading was not an exempt service prior to 1/4/2011 and as such no Cenvat credit was required to be reversed for the period January 2011 to March 2012. So far the period beginning from 1/4/2011 is concerned, appellant agreed to reverse proportionate amount. The SCN was adjudicated and the proposed demand confirmed and further appropriated with the amount of Cenvat credit already reversed of Rs. 20,43,344/-. Further, the proposed amount on Rent a cab service and construction service was also disallowed and penalty of Rs.46,16,321/- was imposed under Rule 15 of CCR read with section 11 AC of the Act. Being aggrieved the appellant preferred appeal before the Commissioner (Appeals). It is relevant to mention that before the Adjudicating Authority and before the Commissioner (Appeals), the appellant admitted the proposed liability for the period January 2011 to March 2011. Further, Cenvat credit in proportion to the trading turnover for the period starting 1/4/2011, in terms of explanation 1 (C) in rule 6 (3D) of CCR 10% and the trading turnover was taken as the qualifying turnover for reversal of Cenvat credit attributable to trading activity. Accordingly, the appellant reworked the Cenvat Credit to be reversed and the amount of Rs. 5,16,308/- was admitted to be reversed under Rule 6, Sub-rule (3) read with Sub Rule 3 (A) of CCR. The said contention have been rejected by Learned Commissioner (Appeals) on the ground that the said explanation 1 (C)

in sub Rule 3 (D) of rule 6 have been inserted with effect from 1/7/2012 and not with effect from 1/4/2011.

4. Being aggrieved the appellant is before this Tribunal. The Learned Counsel urges that in view of the ruling of the Division Bench of this Tribunal in the case of Marcedes Benz India Ltd. vs. CCE 2014 (36) S.T.R 74, it is evident that trading was not a service prior to 1/4/2011, hence not an eligible service. Common cenvat credit shall be apportioned with reference to turnover of manufactured goods and trading goods. Accordingly the appellant does not dispute the amount of Cenvat credit held liable to be reversed of Rs. 6,72,641/- for the period January 2011 to March 2011. So far the period beginning 1/4/2011 is concerned, the Learned Counsel for appellant states from the definition of exempted services, as contained in Rule 2 (e), it is evident that in the definition of service, trading was included with effect from 1/4/2011 vide notification number 3/2011 – CE-NT dated 1/3/2011. The Learned Counsel also draws my attention to explanation 1 (C) in sub Rule 3D in of Rule 6 of CCR, also inserted by the Notification No. 3/11- CE provides trading, shall be the difference between the sale price and the cost of goods sold (determe ined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or 10% of the cost of goods sold, whichever is more, for computation for the purpose of value as defined in Sub Rules 3 and 3 (A) of Rule 6. From a plain reading of the rule 6 (3D) Expl.1 (c) as inserted with effect from 1/4/2011, there is no doubt of insertion of the same with effect from 1/4/2011 and the

Learned Commissioner (Appeals) is in error in holding the same to be effective from 1/7/2012. Accordingly, he prays for appropriate relief in the matter. As regards the denial of Cenvat credit on Rent a cab service is concerned that the ld.Counsel does not dispute that in view of the amendment in Rule 2 (l) with effect from 1/4/2011, Cenvat credit cannot be availed on rent-a-cab service. He further said that the appellant had already reversed the credit attributable before issue of SCN. So far the Cenvat credit of Rs. 1,06,468/- is concerned for civil construction, he states that the discallowance under clause B of Rule 2 (k), provides for service activity relating to construction of a building or a civil structure or a part thereof, refers to new construction and it does not apply to the repairs and maintenance of the existing structures. In the present case, under Rule 2 (l), services for repairs and maintenance are eligbile and as such the same is allowable.

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

6. Having considered the rival contentions I hold that for the period beginning 1/4/2011 the appellant will be required to reverse the amount of Rs. 5, 16, 308/- being the proportionate Cenvat credit availed on 10 % of trading turnover, in view of the explanation 1 (C) in Sub Rule 6 (3) of the CCR. So far the Cenvat credit on the repair and maintenance under the head civil construction, I find that under sub clause (ii) of Rule 2 (l) and renovation or repair service of premises for manufacture or of service provider have been specifically included as an input service. As such I hold the amount of Rs. 1,06,468/- as allowable Cenvat credit. The penalty imposed is also set

aside. The appellant will be entitled to the consequential benefit, in accordance with law.

7. Thus, the appeal is allowed.

(Operative portion of the order pronounced in Court)

Sd/-
(Anil Choudhary)
MEMBER (Judicial)

G.Y.

प्रमाणित प्रति / Certified True Copy
5.5.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
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