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

Dated: 12/2/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70063/2016 dated 09/2/2016

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
	E/58172/2013	L G ELECTRONICS INDIA PVT LTD PLOT NO 51, UDYOG VIHAR SURAJPUR KASANA ROAD GREATER NOIDA(UP)

Name and Address of Respondent: CCE, NOIDA
C-56/42, SECTOR-62
NOIDA(UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH BIMAL JAIN,CA
650, POCKET-V
MAYUR VIHAR,PHASE-1
DELHI-91

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,Punjagutta 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/58172/2013

(Arising out of OIA/62-CE/APPL/NOIDA/2013 Dated 22.03.2013 passed by Commissioner (Appeals) of Customs &Central Excise, Noida)

M/s LG Electronics India Pvt. Ltd. : Appellant (s)

Vs

CCE & ST, NOIDA : Respondent (s)

Represented by:
For Appellant (s) : Shri Bimal Jain, (C.A)
For Respondent (s) : Shri D.K. Deb (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?	Yes
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: 09.02.2016

Final Order No. 70063/2016

Per: ANIL CHAUDHRY

The appellant is in appeal against order in appeal dated 22/3/13 passed by Commissioner (Appeals) Customs, Central Excise and service tax, Noida by which the disallowance of Cenvat credit availed on input services being shifting and relocation expenses of the employees incurred by the Assessee under the their transfer policy was upheld as not an eligible input service.

2. The brief facts are that the appellant is engaged in the manufacture of Air Conditioner, Colour Television, Computer, Monitor etc., and also engaged in providing service and is registered with the Central Excise Department and also regd. as taxable service provider, having about 42 branches across India. The appellant transfers its employees from one location to another according to business needs for smooth functioning of the business. In case of such shifting, the shifting expenses, which includes transportation of household goods of the employee to the new location are incurred by the appellant. The appellant availed the Cenvat credit on such input services as it believed that such expenses are incurred in relation to the business of manufacturing and providing service and accordingly availed Cenvat credit. That the expenses are duly recorded in the books of account maintained and the credit availed of the service tax is also included in the amount of Cenvat credit in the ER-1 Returns. For the first time, in the course of audit for the period January 2007 to December 2007, in the month of April 2008, the Revenue objected to availing of such credit as it appeared inadmissible on the freight charges for household

shifting of employees. The disputed period in the present appeal is October 2010 to March 2011, for which show cause notice was issued on 1/11/2011 for an amount of Rs. 1,13,363/- being the Cenvat credit on services received on shifting expenses of employees upon transfer. The appellant appeared and contested the show cause notice stating that there is no suppression etc. On their part and further contended that the transfer of the employees is made in furtherance of their business prospects and profitability of the company. The SCN was adjudicated and vide OIO dated 30/11/12 the proposed Cenvat was disallowed Rs. 1,13,363/- along with interest and equal amount of penalty was imposed under Rule 15 read with section 11 AC of the Act. Being aggrieved the assessee preferred appeal before Learned Commissioner (Appeals) who vide the impugned order was pleased to dismiss the appeal holding that in the instant case, the said service has no ~~essense~~ nexus with the business of the appellant. It is observed that the shitting of employee is not an activity of the business of the appellant and as such the same is not an ineligible input. So far limitation is concerned, it was held that as the appellant have not specifically disclosed in the return that they have availed Cenvat credit on the said service, accordingly there is suppression on their part and extended period of limitation is applicable. Being aggrieved the appellant is in appeal before this tribunal.

2. The Learned Counsel for the appellant urges that vide amendment to Rule 2 (L) of CCR with effect from 1/4/2011 clause (C) includes travel benefits extended to employees on vacation such as leave or home travel concession, when such services are used primarily for personal use or consumption of an employee have been

specifically excluded. Prior to 1.4.2011 such expenditure was not specifically excluded and if the same was ~~reliable~~ relatable to business, the same was allowable. As the period in this appeal is prior to 1.4.2011 such input service squarely qualifies, as transfer of employees is in the business interest of the appellant. The Learned Counsel also draws my attention to circular number 943/4/2011 – CX dated 29/4/2011 wherein at Serial No. 12 query raised was is the credit on services received before 1/4/2011 on which credit is not allowed now/e.g., Rent a cab service? By way of clarification it is the stated "the credit on such service shall be available if the provision has been completed prior to 1/4/2011". The Learned Counsel relied on the ruling in the case of CIT vs. Bimetal Bearings 1994 (210) ITR 945 (Mad), held that the amount paid by a company to its employees by way of settling allowance in connection with shifting of its factory to a new place is allowable expenditure. The Learned Counsel also relies on the ruling of the Bombay High Court in the case of CCE vs. Ultratech cement Ltd 2010 (260) E.L.T 369 wherein the Hon'ble High Court have held that the definition of 'input service' is not restricted to services used in or in relation to manufacture of final product, but extends to all services used in relation to the business of manufacturing the final product. He further states that the definition of input and input service is distinct under the Cenvat credit rules. Input service is defined illustratively and not restrictively, illustratively and not exhaustively as comprising interalia the enumerated services. A restriction has been incorporated on availment of Cenvat credit with effect from 1/4/2011 accordingly the Learned Counsel prays for allowing the appeal.

3. The learnedly AR for Revenue relies on the impugned orders. He further points out from the order in appeal that Learned Commissioner have specifically held that the appellant have not declared the Cenvat credit availed for such service separately, accordingly extended period of limitation is applicable.

4. Having considered the rival contentions, I hold that transfer and shifting expenses incurred by the appellant company pursuance of the policy of employees transfer is eligible input service prior to 1/4/2011. I also hold that in view of the clarification of CBEC Vide Circular No. 943/4/2011-CX it has been clarified that expenses having some~~time~~ tinge of personal nature ~~and~~ are not allowable with effect from 1/4/2011, if the same is incurred particularly for an employee. Such expenses are allowable if the same are provided to employees in general as expenditure in relation to the business of an assessee. It have been also so held by SMB bench of this Tribunal in Hindustan Coca Cola Beverages Pvt. Ltd. vs. CCE, Nasik 2015 (38) S.T.R. 129 (Tri.-Mumbai).

5. Thus, the appeal is allowed, the impugned order is set aside. The appellant shall be entitled to consequential benefit, it if any, in accordance with law.

(Operative portion of the order pronounced in Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

G.Y.

प्रमाणित प्रति / Certified True Copy
17.2.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
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