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

Dated: 16/2/2016

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/ 70068/2016 dated 20/01/2016

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/58302/2013EX	SPORTS AND LEISURE APPAREL LTD B-207A, PHASE-II 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 V.L.KUMARAN,ADV
5, JANGPURA EXTENSION
LINK ROAD, NEW DELHI-14

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

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad

Date of hearing/order: 20.01.2016

Excise Appeal No. E/58302/2013-EX [DB]

[Arising out of the Order-in-Original No.84/Commissioner/NOIDA/2012-13 dated-31.03.2013 passed by the Commissioner of Customs, Central Excise & Service Tax, NOIDA]

For approval and signature:

Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble Mr. H.K. Thakur, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?
2	Whether it should be released under Rule 26 of 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?
4	Whether Order is to be circulated to the Departmental authorities?

M/s. Sports and Leisure Apparel Ltd.

..Appellant

Vs.

Commr. of Customs, Central Excise &
Service Tax-Noida

.... Respondent

HK

Appearance:

Shri B.L. Narasimhan (Advocate) & Shri Karan Sachadev (Advocate)

for the appellant

Shri Rajeev Ranjan (Jt. Commissioner) A.R.

for the Respondent/Revenue

Coram: Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble Mr. H.K. Thakur, Technical Member

Final Order No. 70068/2016

Per: Mr. Mr. H.K. Thakur

This appeal has been filed by the appellant against Order-in-Original No.84/Commissioner/NOIDA/2012-13 dated-31.03.2013 passed by Commissioner, Noida under which a demand of Rs. 51,44, 507/- has been confirmed by the Adjudicating authority by denying CENVAT Credit on certain services alongwith interest and an equivalent amount of penalty has also been imposed under CENVAT Credit Rules, 2004.

2. Shri B.L. Narasimhan (Advocate) and Shri Karan Sachdev (Advocate) appeared on behalf of the appellant. It was argued by Shri B.L. Narasimhan that the entire emphasis of the Adjudicating authority is only on one point that since

duty is paid at the time of clearance of the goods, therefore, the same will be the place of removal under Section 4 of the Central Excise Act, 1944. That appellant is the manufracturer of ready made garments and are paying duty under Section 4A of the Central Excise Act, 1944 on MRP basis. That the entire quantity of the finished goods is made through appellant's own retail shops from where the goods are sold to the customers. That only a very little quantity of garments are sold to the franchisees and that too from the appellants warehouses. It is the case of the appellant that by virtue of definition of 'place of removal' given under Section 4 (3) (c) of the Central Excise Act, 1944 in their case the place of removal will be the retail shops from where goods are sold. Learned Advocate made the bench go through the provision of Section 4 (3) (c) and argued that his case would be covered under Section 4 (3) (c) (iii) and all the services availed upto the place of removal will be eligible as CENVAT Credit. That Rule 2 (t) of the CENVAT Credit Rules, 2004 (CENVAT Credit Rules) also prescribe that if any word is not defined in the CENVAT Credit Rules but defined in the Central Excise Act, 1944 then the definition given in the Central Excise Act can be followd. That CBEC vide circular No. 137/3/2006-CX4 dated 2/2/2006 also clarified that place of removal defined under Section 4 of the Central Excise Act, 1944 will also be applicable to MRP based assessment under Section 4A for availing CENVAT Credit by virtue of Rule 2 (t) of CENVAT Credit Rules. It was his case that credit with respect to each of the services availed at the retail outlets is admissible on merits, as the same are place of removal, in view of various case laws. Learned Advocate gave a chart of each of the services on which credit was taken and the case laws under which these credits have been held eligible. Learned Advocate relied upon,inter alia, the following case laws:

(i) L.G. Electronics (India) Pvt. Ltd. Vs. Commissioner of Central Excise, Noida [2010 (19) STR 340 (Tri.-Del)]

(ii) Ultratech Cement Ltd. Vs. Commissioner of Central Excise, Raipur [2014 (307) ELT 3 (Chattisgarh)]

(iii) Metro Shoes Pvt. Ltd. Vs. Commissioner of Central Excise, Mumbai-I [2008 (10) str 382 (Tri-Mumbai]

3. Shri Rajeev Ranjan, Joint Commissioner (A.R.), on the other hand argued that the place of removal is the factory gate as the duty is paid at the time of clearance from factory. That the services availed at the retail shops of the appellants are beyond the place of removal hence CENVAT Credit is not admissible. Learned A.R. thus strongly defended the order passed by the Adjudicating authority.

4. Heard both sides and perused the case records. The issue involved in these proceedings is whether appellant will be eligible to CENVAT Credit of services at their retail outlets from where sales are effected. No sales are effected by the appellant at the factory gate but duty is paid at the time of clearance.

4.1 As per the provisions of Rule-2 (l) of the CENVAT Credit Rules input services ,availed by an assessee in or in relation to the manufacture of the goods upto the place of removal, is admissible. The words 'place of removal' has not been defined in CENVAT Credit Rules but by virtue of Rule 2 (t) of CENVAT Credit Rules, the definition given in Section 4 (3) (c) of the Central Excise Act, 1944 can be followed. As per this definition, place of removal is as follows:

> "place of removal "means
>
> (i)a factory or any other place or premises of production or manufacture of the excisable goods;
>
> (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without 1[payment of duty;
>
> 2(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;]"

4.2 As per the above provisions a depot, premises of a consignment agent or any other place or premises from where excisable goods are to be sold, after their clearance from the factory, can also be the place of removal. In the instant case, no sales are effected from the factory gate. Central Excise duty in all cases has to be paid at the time of clearance from the factory but it does not mean that place of removal in all cases should be the factory gate by virtue of definition given in Section 4 (3) (c) of the Central Excise act, 1944. In the existing factual matrix in the case of the appellant since the goods are not sold at the factory gate but are sold at the retail outlets, therefore, by virtue of the express provisions of Section 4 (3) (c) (iii) of the Central Excise Act, 1944 the place of removal in the case of appellant will be the retail outlets from where goods are sold. This view is also fortified by the relied upon case law of Metro Shoes Pvt. Ltd. Vs. Commissioner of Central Excise, Mumbai-I (Supra) where CESTAT, Mumbai has held as follows in para 6:-

> "6......"(1) Input service"means any service,-
>
> (i)Used by a provider of taxable service for providing an Output service; or
> (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal,and includes services used in relation to setting up, modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, And security, inward transportation of inputs or capital goods and outward transportation upto the place of removal".

It can be seen from the above reproduced portion that the input services definition is having three different parts. Presumably, the first part i.e. used by provider of taxable service for providing an output service"is not an issue in this case. The second part of the definition used by the manufacturer.....from place of removal"is being strongly contested by both sides. On a plain reading of the second part of the definition, we find that any input service used by the manufacturer, whether directly or indirectly in or in relation to the manufacture of final product and clearance of final product from the place of removal, stands eligible for availing as credit. It is undisputed, in this case, that the appellant had manufactured shoes in their factory premises and cleared the same to their own showrooms situated at various places. It is also undisputed that the sale of said shoes take place from the said showrooms only and did not take place from the factory premises. If that be so, it has to be accepted that the show rooms which are belonging to the appellant herein, have to be considered as place of removal. The services utilised by the appellant till the place of removal and the service tax paid thereon are to be considered as services utilized by him for the manufacture of final product and clearance of the same from the place of removal. This would indicate that the services which are rendered by various service providers during the course of transportation of the final product from the appellant's factory premises to their own showrooms located in various place, for e.g. GTA, warehousing facilities, C&F agents, insurance, internet services, security, courier services, telecom services, pest control services, bank services etc. And service tax paid on such services would be eligible as credit being the services used by the appellant directly or indirectly in or in relation to the final product and the clearance of the same from the place of removal. As such, we find that the credit of the service tax paid by the service providers and charged to appellant till the sale of the goods from the retail showroom, the appellant is eligible to avail said credit as input service credit."

4.3 Similar view has been taken by CESTAT, Delhi in the case of L.G. Electronics (India) Pvt. Ltd. Vs. Commissioner of Central Excise, Noida (Supra) wherein paras 4.2.4, 5.1, 6.1 & 7 it has been held that if deliveries are on FOR destination basis then the point of sale will be treated as 'place of removal' and CENVAT Credit upto such place of sale will be admissible.

5. In view of the above observations and settled proposition of law, appellant has correctly availed CENVAT Credit on input services availed at the retail outlets which will be the place of removal in the present case. Accordingly, appeal filed by the appellant is allowed with consequential relief, if any.

(Operative part of the order already pronounced in the open Court)

Sd/-

(H.K.THAKUR)
MEMBER (TECHNICAL)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

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17.2.16
सहायक पंजीयक / Asstt. Registrar
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