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: 05/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71102/2016-EX[DB] dated 28/11/2016

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/1601/2009	**HCL TECHNOLOGIES LTD** A 10 & 11 ,SECTOR 3 , NOIDA
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Copy To

3 Advocate(s) / Consultant(s):

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

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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
14 C.D.R. 15 Office Copy ~~16 Guard~~ File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/1601/2009-EX[DB]

(Arising out of Order-in-Original No. 06/COMM/NOIDA/2009 dated 20/02/2009 passed by Commissioner of Central Excise & Customs, Noida)

M/s HCL Technologies Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

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

CORAM:

Hon'ble Shri Justice Dr. Satish Chandra, President
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 28/11/2016
Date of Decision : 28/11/2016

Final ORDER NO....71102/2016....

Per: Dr. Satish Chandra

The present appeal is filed by the appellant against the impugned Order-in-Original No.06/COMM/NOIDA/2009 dated 20.02.2009.

2. The brief facts of the case are that M/s HCL Ltd., Noida were engaged in providing taxable services, viz: Business Auxiliary Service, Management Consultants Service, Manpower Recoupment Service, Business Support Service, Commercial Training Service, Advertisement Service, Online & Data Information Service. They were also providing exempted service, i.e. software development.

Simultaneously, they were availing Cenvat credit on input services and capital goods but not maintaining separate records for exempted services.

3. During the course of audit conducted, it was observed that the said party had utilized excess Cenvat credit amounting to Rs.27,89,221.00 during the period October 2006 to March, 2007.

4. During the period under consideration the appellant was providing taxable as well as exempted service to their customers. The appellant availed the Cenvat credit on input service and also on capital goods but not maintained the separate records for exempted service. It is contention of Department that as per the provisions of Rule 6(3) (c) of Cenvat Credit Rules, 2004, the appellant has to utilize service only to the extent of an amount not exceeding 20% of the amount of service tax payable on taxable output service. After issuing the show cause notice, the department has demanded Cenvat credit amounting to Rs.63,13,392/-. Aggrieved, the appellant is before this Tribunal.

5. We heard Shri Atul Gupta Learned Counsel for the appellant and Shri Rajeev Ranjan Learned A.R. for the Department.

6. During the course of argument Learned Counsel submits that the adjudicating Commissioner has restricted the utilization of credit in respect of capital goods and in respect of specified services under Rule 6(5) of Cenvat Credit Rules, 2004, applying the sub-rule 6(3) (c) of the said Rules as the appellants have been producing dutiable and exempted output services. The learned Counsel states that sub-rule 6(3) (c) relates to only input duty credit and restriction placed thaerein

is not applicable to the capital goods credit and credit in respect of specified services, which are covered under sub-rule 6(4) and Rule 6(5) respectively. In support of his contention, he relies on the Ministry of Finance (Board's) Circular No. 137/203/07-CX-4 dated 01.10.2007 and the decision of the Tribunal in the case of M/s. Idea Cellular Ltd. Vs. CCE, Rohtak- Final Order No.130-131/09 dated 17.02.2009. He further states that the Board's Circular was taken note of by the adjudicating Commissioner but he has not dealt with same.

7. In view of the submissions of learned Counsel of the appellant that the Commissioner has not dealt with a circular whether the circular is applicable in the instant case or not, we deem fit to set aside the impugned order and remand the matter back to the Commissioner (Appeals) to decide the issue De-novo to examine whether the circular is applicable in the present circumstances of the case or not but by providing an opportunity of hearing to the appellant. Additional evidence may be admitted as per law. In the result, the appeal is allowed by way of remand.

(Dictated in Court)

Sd

(Anil G. Shakkarwar)

Member (Technical)

Sd

(Justice Dr. Satish Chandra)

President

akp

प्रमाणित प्रति / Certified True Copy

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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