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: 21/02/2017

To

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

Final Order No. A/70185/2017-EX[DB] dated 02/02/2017

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/796/2007	**HCL INFOSYSTEMS LTD.** E-4,5 & 6, SECTOR-11, NOIDA.
		Name and Address of Respondent
2		-C.C.E, NOIDA Office of Commissioner of Customs,Central Excise and Service Tax, C-56/42, Sector-62, Noida - 201307

Copy To
3Advocate(s) / Consultant(s):

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO
SALES,Above the Office Of
Blue Dart/DHL Courier,
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/796/2007-EX[DB]

(Arising out of Order-in-Original No.02/COMM/Noida/2007 dated 31/01/2007 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 HCL Info Systems Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri Atul Gupta & Shri Hrishikesh, Advocates 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 : 02/02/2017
Date of Decision : 02/02/2017

FINAL ORDER NO:- 70185/2017..........

Per: Anil Choudhary

The present appeal is filed by the appellant-assessee against Order-in-Original No.02/COMM/Noida/2007 dated 31/01/2007.

2. The issue in this appeal is whether the appellants who were manufacturing computers during the relevant period and selling the same and were raising separate invoices for the sale of hardware-computer, for sale of peripherals, for providing technical services in the nature of training and/or installation of the computers, whether the 'Technical Service Charges' recovered vide separate invoice are includible in the assessable value or not.

3. We find that this is the third round of litigation before this Tribunal. In the last round vide Final order dated 02nd May, 2005, this Tribunal made the following observations: –

"The submissions made by learned Counsel that the principles of natural Justice have been violated, are well founded. Once the adjudicating authority had relied upon the statements of the various Customers of the appellants to arrive at the conclusion that no technical services, except installation were provided, an opportunity of cross-examination of these customers has to be afforded to the appellants. Non-affording of the opportunity of the cross-examination goes against the principles of Natural Justice. The appellant have also brought on record various purchase orders which reflect that their customers had requested them to provide various technical services. A due consideration of these purchase orders is also required to be done by the Adjudicating Authority. In view of this, this issue has also to go back to the Adjudicating Authority for reconsideration in the light of the directions contained in this order."

4. Thereafter, the learned Commissioner has observed in the finding portion of the order in para-12 as follows: –

"In their defense reply, the party has submitted a list of 14 persons for cross examination on the issue of 'technical service charges' in the value of computers. The cross-examination have been sought on the ground that, the conclusion that no technical service were provided, was solely based on the statement of various customers. A plain reading of the evidences, spelt out in the show cause notice, revealed that there were several other evidences showing that HCL collected additional amount in the garb of technical service charges towards price of computers. As far as cross-examination of witnesses is concerned, I observe that cross-examination in course of quasi-judicial proceedings is not a right. Cross examination is not a mandatory procedure to be accepted in all cases and failure to allow cross-examination would not result in miscarriage of Justice or non-observations of the principles of Natural Justice in all cases. It can be allowed only according to the facts and circumstances of the case."

5. Heard the parties.

6. Having considered the rival contentions we find that the impugned order is directly in conflict and in the teeth of the directions of this Tribunal as contained in the Final Order dated 02 May, 2005 and is also in the teeth of the Ruling of Hon'ble Delhi High Court in the case of M/s Basudev Garg Vs. Commissioner of Customs reported at 2013 (294) ELT 353 (Del.). We further find that the learned Commissioner have misconceived the directions which were required to be followed given by this Tribunal rather have dared to overrule them. Under this fact and circumstances, we hold that the impugned order is not sustainable as the same is not in accordance with the directions given by this Tribunal noticed hereinabove. We also take a notice that this is the 03rd round of litigation before this Tribunal. Accordingly, we set aside the impugned order and allow the appeal.

7. The learned counsel for the appellant had also made arguments on the point of limitation stating that it is more than evident that there is no contumacious conduct and/or mala fide on the part of the appellant. The dispute is purely a question of interpretation for which 03rd rounds of litigation have already been undergone and also have drawn our attention to the Ruling of Hon'ble Supreme Court dated 17/12/1996 in the case of PSI Data Systems Ltd Vs Collector of Central Excise reported at 1997 (89) ELT 3 (S.C.), wherein it was held that software, peripherals and 'technical service charges', are not includable in the assessable value of the computers. In view of our

Registrar

findings in previous paragraphs, we do not record any finding on the issue of limitation.

8. Accordingly, we allow the appeal filed by the appellant. The appellant is also entitled to consequential benefits, in accordance with law.

(Dictated in Court)

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

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

akp

प्रमाणित प्रति / Certified True Copy
22/02/17
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