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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 11/07/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70360-70362/2016-CU[DB] dated 27/06/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/2793/2012	**MAGNUM VENTURES LTD** 64/6,SITE-IV, INDL. AREA, SAHIBABAD, GHAZIABAD
2	ST/2794/2012	**VIJENDER SINGH GUSAIN** M/S. MAGNUM VENTURES LTD, 64/6, SITE-IV, INDL. AREA, SAHIBABAD, GHAZIABAD
3	ST/2795/2012	**SUNIL CHAUHAN** M/S. MAGNUM VENTURES LTD, 64/6, SITE-IV, INDL.AREA, SAHIBABAD, GHAZIABAD
		Name and Address of Respondent
4		C.C.E. & S.T.-Ghaziabad 202,..WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

V. LAKSHMI KUMARAN
5, JANGPURA EXTENTSION LINK
ROAD NEW DELHI-110014

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

12 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

13 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

14 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

15 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

16 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

17 C.D.R. 18 Office Copy 19 Guard File

Asstt. Registrar

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

Old Red Building , 38 M.G. Marg, Civil Lines, Allahabad

Date of hearing/decision: 19.11.2015

Service Tax Appeal No.2793 - 2795 of 2012 (DB)

Arising out of the order in -original No.01/COMMR/S.T./GZB/2012-13 dated 5.6.2012 passed by the Commissioner, Customs, Central Excise & Service Tax, Ghaziabad.

For approval and signature:

Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble Mr. C.J. Mathew, 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?	

Magnum Ventures Ltd. .. Appellants
Vijender Singh Gusain
Sunil Chauhan

Vs.

C.C.E., Ghaziabad .... Respondent

Appearance:

Present Shri B.L. Narasimhan , Advocate for the appellants
Present Shri Devendra Nagvenkar, Additional Commissioner (A.R) for the respondent/Revenue

Coram: Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble Mr.C.J. Mathew, Technical Member

Final Order No. 70360 - 70362/2016

Per Anil Choudhary:

The appellant, M/s Magnum Ventures Ltd. is in appeal against the order-in-original dated 5.6.2012 by which the demand of cenvat credit has been made under Rule 6 (3) read with Rule 6(3A), some invoices on which cenvat credit availed were found deficient in particulars under the Rules and credit pertaining to capital goods used exclusively for providing exempted service, totalling Rs.1,11,72,351/-.

2. Ld. Counsel for the appellant states that they are not pressing the grounds for demand of Rs.15,393/- relating to credit pertaining to capital goods used exclusively for providing exempted service. The co-appellant Shri Vijender Singh Gusain, Senior Manager (Finance) is in appeal against penalty of Rs.5 lakhs and Shri Sunil Chauhan, Manager (Excise) on whom penalty of Rs.5 lakhs is imposed under Rule 15(1) of Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994.

3. The brief facts of the case are that the appellant, a manufacturer, obtained registration in the year 2008-09 under the categories of Business Auxiliary Service, Transport of Goods by Road (GTA), Interior Decorators, Dry Cleaning, Health Club and Fitness Centre, Internet Telephone, mandap Keeper, Outdoor Catering, Pandal or Shamiana, Renting of Immovable Property, Internet Cafe, Rent-a-Cab,Franchise etc. The appellant was regularly paying service tax and was filing ST-3 returns. The appellant was also providing room accommodation as well as sale of

food from its restaurant, which became taxable (service tax) under Finance Act, 2011. The business activity of services commenced in the year 2008-09. Revenue initially enquired details for period 4/2007 to 3/2010 and sometime in August, 2011 and thereafter show cause notice dated 12.7.2011 was issued and it appears that the appellant failed to provide documents/information leading to issuance of summons and in the statement of Shri V. S. Gusain (Manager-Finance) stated that they are not maintaining any separate account/inventory in respect of utilisation of input credit and input for taxable and non-taxable services. Further it appears that the appellant failed to submit the desired information in spite of reminders and on the basis of information provided , it appears that the appellant was availing cenvat credit of service tax paid on the input services like architecture service, site formation service, management consultancy service, etc. These were being utilised for providing total output services relating to the hotel business which include taxable service for which registration has been taken and non-taxable /exempted services like room accommodation, restaurant, bar, wet cleaning(laundry service), etc. Further it appears that appellants have utilized the common input service for which credit is availed for taxable as well as exempted services provided by them. Further, it appears that the appellant has not followed the procedure as required for maintaining separate account under Rule 6(2) of Cenvat Credit Rules, 2004 and hence is liable to pay the required percentage, by way of reversal, under Rule 6(3) on the exempted service provided. In respect of some input service and inputs on which credit was availed , the documents being defective and there being discrepancy with respect to certain details, like name of the consignee not mentioned or incomplete name mentioned, credit taken on bill-cum -receipt, name of the consignee's hand-written etc., details of which are given in Annexure A to the show cause notice. Accordingly, the appellant was required to show cause as to why the amount of Rs.90,11,674/- should not be demanded and recovered in terms of Rule 6 (3) read with Rule 6(3A) read with Rule 14 of Cenvat Credit Rules, 2004 read with proviso to Section 73(1) of the Finance Act, 1994. Further the amount of Rs.29,88,886/- should not be demanded and recovered for inadmissible /wrong availment of cenvat credit under the provision of Rule 14 and further the amount of Rs.81,189/- reversed by the appellant out of the amount of Rs.29,88,886/- should not be appropriated and why interest and penalties under Rule 15(3) read with Section 78 and personal penalty on Vijender Singh Gusain, Senior Manager (Finance) should not be demanded and recovered under Rule 15 ibid.

4. The appellant contested the show cause notice and the same was adjudicated . The proposed demand with respect to reversal of cenvat credit under Rule 6 (3) read with Rule 6(3A) was confirmed , against proposed demand of Rs.29,88,886/-, confirmed Rs.21,45,284/- on account of discrepancy of documents with regard to input credit and Rs.15,393/- in respect of credit pertaining to capital goods used exclusively for providing exempted services.

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5. Being aggrieved, the appellants are before this Tribunal.

6. The first ground urged is that the activity of providing room accommodation, restaurant, wet cleaning were neither exempted services nor the same were taxable services and therefore, Rule 6 of Cenvat Credit Rules, 2004 is not applicable. Ld. Counsel states that on plain reading of Rule 2(e) of CCR, 2004 that "exempted service" means taxable services which are exempt from the whole of the service tax leviable thereon and includes services on which no service tax is leviable under Section 66 of the Finance Act. He further emphasises that the words used are "leviable" and "not levied". As such the tax has been levied on the services in question in the Finance Act, 2011, the tax was very much leviable on the services for room accommodation and food through restaurant, wet cleaning etc. As such those services do not fall under the exempted services prior to passing of the Finance Act, 2011. In this view of the matter, there is no applicability of Rule 6 in their case.

7. Opposing the contention, the ld. A.R. for Revenue relies on the ruling of coordinate Bench of this Tribunal in the case of Idea Cellular Ltd. Vs. C.C.E., Rohtak - 2009 (18) STR 712 (Tri-Del.) wherein para 3.1 it has been pleaded by the assessee that 'inter connectivity/network access service, 'roaming service' and 'infrastructure use service' are not 'exempted services' as the same are not taxable. This Tribunal did not agree with this contention observing that the expression 'exempted services' covers not only the services taxable under Section 66 of the Act, which are fully

exempted from service tax by some exemption notification issued under Section 93, but also those services which are not taxable under Section 66 of the Act. Accordingly the Tribunal treated the said services as exempted services.

8. Ld. Counsel for the asessee further contends that service is exempt only when the service is one of the services as defined in Section 65(105) of the Act. It is further contended that without admitting that the service is exempt service, by virtue of Rule 6(2), they have maintained separate records of the input services utilised towards exempted services as well as taxable service. Ld. Counsel further draws attention to para 24 of the impugned order wherein the authorities have taken notice of the contention that the appellant has made investment in their Wing I relating to taxable services to the tune of Rs.88.84 crores and on Wing II Rs.103.78 crores in respect of service tax where credit has not been availed as they were not providing taxable service from the same. The appellant has bifurcated the total premises in Wing I and Wing II stating that from lower basement to 1st floor the same are taxable , the service from floor 1st floor to 2nd floor it utilises towards non-taxable services like room accommodation, its hotel , restaurant etc. Further, the appellant have paid service tax on the output services in accordance with the scheme of the Act or Rule. The appellant has also produced Chartered Accountant's certificate in support of their contention as to non-availment of cenvat credit, for proportionate hotel space utilised for non-taxable service. Ld. Counsel further states that even otherwise also, they have taken

modvat credit of common input services amounting to Rs.3,22,80,600/-. Out of this credit pertaining to services mentioned in Rule 6(5) of the CCR , 2004 amounting to Rs.3,06,09,592/- leaving balance amount of Rs.17,29,098/-. Rule 6(3A) of the CCR , 2004 provides for bifurcation of common cenvat credit taken towards taxable activity and non-taxable activity and the same was bifurcated on the ratio of turnover of non-taxable portion which comes to Rs.10,68,865/- (as demonstrated in Para C-5 of Statement of facts) which can be said to be maximum amount reversible under Rule 6(3A) of the CCR, 2004. Ld. Counsel further points out that the ld. Commissioner has rejected their contention as regards to separate account maintained only on the ground of statement of Shri Vijender Singh Gusain, Senior Manager (Finance) stating they have not maintained inventory/separate account. For appreciation answer & the question to the officer, the same are reproduced below:

Q. Whether you have maintained separate account/inventory for utilisation of input services credit for taxable & non-taxable output services?

A. No, we are not maintaining separate A/c /inventory.

Q. Whether you have reversed proportionate cenvat credit in respect of input services utilised for providing non-taxable output services?

A. No, we have not done so.

9. Ld. Counsel further states that no adverse inference can be drawn from the said statement in view of the admitted fact that they have not taken proportionate cenvat credit with respect to Wing II or the area occupied for non-taxable service. Thus, there was no question of reversal. Ld. Counsel further states that the extended period is not invocable and whole demand is time barred. The appellant is maintaining proper registers of transactions and making timely compliance by filing returns.

10. So far as the second issue is concerned (Rs.21,45,284/-) as regards the document on which cenvat credit has been taken are deficient, it is urged that the document relating to imports are concerned, the same have to be~~en~~ read as a whole, i.e. set of bill of entry with invoices, bill of lading and the shipping documents. Ld. Counsel demonstrates from one set of document at page 244 in Volume III of the paper book wherein invoices of Container Corporation of India shows name of the appellant, Magnum Ventures Ltd. giving importer code, bill of entry number etc. and when the same is read with the bill of entry at page 246 wherein column , name is given with address etc. Details of goods. It is further seen that details of service tax paid is given in the bill of the Container Corporation of India which have been paid. So far as invoices of R.K. Suri, a freight forwarder is concerned the defect pointed out is that name of the consignee is not mentioned, as it appears from the invoice in the paper book, the name of the appellant is there and as such there is no defect. Further the service tax, bill number, amount of service tax etc. were also

given. As regards the services availed from MEC Electric Contracts (P) Ltd., the allegation is that the same has been taken on the basis of covering letter. The ld. Counsel demonstrates from the sample invoice in page 321 - 329 of the paper books, Volume IV, we have seen along with the covering letter, the total bill amount towards final bill dated 21.9.2009, the bill is also available ,it contains service tax number and the amount of service tax is also duly mentioned which have been paid by the appellants. Thus it appears that there is error in raising objection. We find that most of the objections are not tenable as the service provider of input can raise demand under various names being bill/debit note/invoice etc. What is relevant is, it should contain the name of the service provider and the service recipient along with tax amount and the fact of payment having been made. We find that there is none of the grounds for rejection.

11. Ld. A.R. for Revenue relies on the impugned order.

12. Having considered the rival contentions we hold that the appellant is maintaining separate account as required under Rule 6(2) of the CCR, 2004 and there is no contrary finding save and except as alleged by the ld. Commissioner that in the statement of Senior Manager (finance), he did not state unambiguously.

13. In view of the clinching documentary evidence, no reliance can be placed on unambiguous statement of the officers. Accordingly we hold that the appellant has fulfilled the condition of Rule 6(2) of CCR and set aside the demand of Rs.91,11,674/-. We also set aside the demand of Rs.21,45,284/-as we find that the

objections of the ld. Commissioner are not tenable in the light of the findings recorded above. Accordingly, we also set aside the penalties imposed on the company and its officers. Thus the impugned order is set aside save and except the amount of Rs.15,393/- relating to credit pertaining to capital goods used exclusively for providing exempted services which are not contested by the appellant. Thus the appellant is entitled to consequential relief, if any, in accordance with law.

14. The appeals are partly allowed.

- Sd -

(Anil Choudhary)
Judicial Member

- Sd -

(C.J. Mathew)
Technical Member

scd/

प्रमाणित प्रति / Certified True Copy
14.7.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपीलीय अधिकरण / (C.E.S.T.A.T.)
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