

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

Dated: 08/08/2016

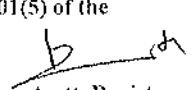
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70610-70611/2016-SM[BR] dated 20/07/2016

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/52660- 52661/2015	TRINAYANI CEMENT (P) LTD 680/3, PATANWA, BASANT NAGAR CHANDAULI UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Allahabad 38...MG MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s):

PRASHANT SHUKLA ADV
 S-I, PLOT NO.437, SECTOR-4
 VAISHALI, GHAZIABAD-201010

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 Rohak Road, New Delhi-110005

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

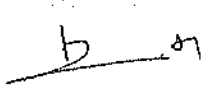
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

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

15 C.D.R. 16 Office Copy ☒ Guard File

 Asstt. Registrar

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD**

ST Appeal Nos.52660-52661/2015

Arising out of O/A Nos.54/CE/ALLD/2015 & 68/ST/ALLD/2015, both dated 16.04.2015 passed by Commr. of Central Excise & S. Tax, Allahabad.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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- | | |
|--|--------|
| 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 His Lordship wishes to see the fair copy of the Order? | : Seen |
| 4. Whether Order is to be circulated to the Departmental Authorities? | : Yes |
-

M/s Trinayani Cement Pvt. Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, & S.T. Allahabad

...RESPONDENT (S)

APPEARANCE

Shri Prashant Shukla Advocate for the Appellant (s)
Shri Sanjay Hasija, Supdt., (A.R.) for the Department

Asr

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 21.12.2015

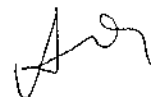
FINAL ORDER NO. 70610-70611/2015



Per Mr. ANIL CHOUDHARY :

These appeals have been filed by the manufacturer- assessee against a common in Order-in-Appeal No. 54/CE/ALLD/2015 & 68/ST/ALLD/2015 dated 16.4.2015 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Allahabad.

2. The issue in this appeals is whether the Cenvat Credit availed on manufacturing activity, can be utilized for discharging the deemed liability on payment made for technical know-how to the provider of service located outside India.
3. The brief facts are that the appellant is engaged in manufacturing of excisable goods (i.e. cement) and paying excise duty thereon. The appellant has received technical know-how from an Austrian company in terms of agreement dated 18.06.2007 for its manufacturing activities. The appellant was of the view that supply of know-how is not exigible to service tax, being permanent transfer of IPR as per MOF DR Circular No.B2/8/2004-TRU dated 10.09.2004. When the Department had asked it to pay service tax on receiving of know-how being receiver of taxable "intellectual property right service" from a person located outside India, it had paid service tax of Rs.26,61,438/- by utilizing the cenvat credit available to it, and also paid interest by challan to avoid any dispute with the Department. The appellant has taken the cenvat credit of the tax paid on receiving of alleged service of know-how being "input



service" for manufacturing of excisable goods. In the show cause notice dated 12.10.2012, the Id. Jt. Commissioner had demanded service tax of Rs.26,61,438/- again, on receiving of know-how by alleging that Cenvat credit had wrongly been utilized for payment of service tax on the service received because service received cannot be construed as "output service" as defined under the Rule 2(p) of the Cenvat Credit Rules, 2004. In the adjudication order, he had confirmed the demand by invoking the Rule 5 of Taxation of Services (Provided from outside India and Received in India) Rules, 2006 (in short "Import of Service Rules"), though this rule was not invoked in the show cause notice. The Jt. Commissioner had ignored the binding precedents in which identical issue has been settled in favour of the appellant. The Id. Commissioner (A) has upheld the order of Joint Commissioner by simply relying upon circulars- F.No.B1/4/2006-TRU dated 19.04.2006 and F.No.345/1/2008-TRU dated 27.06.2008, by referring to Collector V. Dhiren Chemical Industries, 2002 (139) E.L.T. 3 (S.C.)

4. Another show cause notice was issued, under the Central Excise Act for denying the Cenvat Credit taken of Rs.26,61,438/-, as it appeared to Revenue that the appellant have not paid the service tax on Import of service in cash, and have wrongly paid the same by debit to Cenvat Credit account.
5. The learned Counsel for the appellant has raised the following grounds among others, that the impugned order in appeal is



cryptic and bad in law, as it ignores the rulings cited before him of this Tribunal in the case of *Kansara Modler Ltd. Vs. CCE, 2013 (32) STR 209 and Final Order No.1218/2012 (SM) dated 23.08.2012*, on identical issue. Wherein, this Tribunal has held that Rule 5 of Import of Service Rules, does not restrict utilization of Cenvat credit. Further, the Hon'ble High Court of Punjab & Haryana in the case of *CCE Vs. Nahar Industrial Pvt. Ltd., 2012 (25) STR 129*, has held that once the assessee became the output service provider, in view of the legal provisions, then they are eligible for utilizing the credit taken on inputs and input services for discharge of service tax liability on the output service. This Tribunal, in the case of *Kansara Modler Ltd. (Supra.)* held as follows:-

6. " If we read Rule 2(q) of Cenvat Credit Rules with Rule 2(1)(d)(iv), we find that appellant is a person liable to service tax, once appellant is liable to pay service tax he becomes provider of taxable service under Rule 2(r) and consequently becomes output service provider under Rule 2(p) of the Cenvat Credit Rules. Revenue is also relying on Rule 5 of Taxation of Services (Provided from outside India and Received in India) Rules. We find that Rule 5 refers to availing of Cenvat credit and not to utilization of credit. We are therefore of the view that the finding of the Commissioner not treating the appellant as output service provider, is not correct and accordingly we set aside the impugned order and allow the appeal."

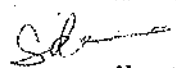
Accordingly, the learned counsel prays for allowing the appeals with consequential benefits.

6. The learned A.R. for Revenue relies on the impugned orders.



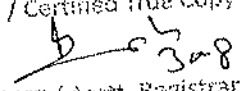
7. Having considered the rival contentions, I find that the issue in the appeal is squarely covered by the precedent ruling of this Tribunal, in the case of *Kansara Modler Ltd. (Supra)*, and the Hon'ble High Court of Punjab and Haryana in *Nahar Industrial Pvt. Ltd. (Supra)*. Accordingly, I hold that the appellant is the person, liable to pay service tax for the technical know-how, which is received from outside India, as such, he is provider of taxable service under Rule 2(r) and consequently, becomes output service provider under Rule 2(p) of CCR. Further, Rule 5 of Taxation of Service (Provided from Outside India & Received in India), Rules 2006, refers to availing of Cenvat Credit and not to utilization of credit. Accordingly, I hold that the Ld. Commissioner (Appeals) is in error in not treating the appellant as output service provider. Accordingly, these appeals are allowed with consequential benefits. The impugned orders are set aside.

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


(Anil Choudhary)
MEMBER (Judicial)

(Mishra)

प्रमाणित प्रती / Certified True Copy


सहायक पंजीकार / Asstt. Registrar
सीमा शुल्क, उद्योग शुल्क एवं सेवा कर
अपील अधिवक्ता / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, अलीहाबाद-211001
38, M. G. MARG, ALIHAABAD-211001