

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

Dated: 08/08/2016

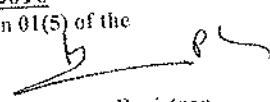
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70614-70615/2016-CU/DBI dated 05/07/2016

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/53506/2014 & ST/54531/2014	HCL TECHNOLOGIES LTD A-10, 11, SECTOR -3, NOIDA UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

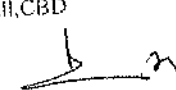
Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s):

V. Lakshmi Kumaran
5, JANGPURA EXTENTSION
LINK ROAD NEW DELHI-
110014

- 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), Vaidhyaram 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 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 17 ☒ Guard File


 Asstt. Registrar

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

S.T. Appeal Nos.53506 & 54531/14

Arising out of O/A Nos.NOI/EXCUS/000/APPL/268/13-14 dated 26.12.2013 & NOI/EXCUS/000/APPL/62/14 dated 18.03.2014 both passed by Commr. (Appeals) of Central Excise, Customs, Noida.

For approval and signature:

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

-
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 HCL Technologies Ltd.

...APPELLANT(S)

VERSUS

Commr. of Customs, C.Ex. & S.Tax, Noida

RESPONDENT (S)

APPEARANCE

S/Shri Atul Gupta & Vaibhav Dixit, both Advs. for the Appellant (s)
Shri Chatru Singh, A.R. for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 05.07.2016

Final ORDER NO. 70614-70615/2016



Per Mr. Anil Choudhary :

Both these appeals have been filed by the assessee Appellant arising out of two different orders of Commissioners (Appeals) for the same matter, arising from a common Order in Original, against which the appeal was filed by the assessee and the other by the Revenue.

2. The brief facts of the case are that appellant HCL Technology Limited having Central Excise Registration, are engaged in providing information technology service, maintenance and repair service etc. They are exporting information technology software service and business support service and availing Cenvat credit of service tax on input service. On 20/02/13, the appellant filed refund claim for Rs.14,13,72,490/ under Rule 5 of CCR read with notification no.27/2012-CE dated 18/06/12 for claiming refund of Cenvat Credit lying unutilised in their books of account for the period of April 12 to June 12. SCN dated 24/06/13 was issued proposing denial of refund claim of Rs.63,48,726 on the ground of inadmissible Cenvat Credit availed by the appellant. The appellant had contested, the SCN and the claim was adjudicated vide Order in Original dated 22/08/13 rejecting refund claim of Rs.55,30,685/ as not admissible indicated for inadmissible Cenvat credit or credit not connected to export of service. Thereafter, by applying the formula as provided in the notification, for allowing proportionate refund relatable to export turnover, refund was allowed for rupees 13,35,62,158.

3. Being aggrieved, both the appellant assessee and the Revenue preferred appeal before the Ld. Commissioner (Appeals). The assessee filed their appeal on 18/10/13 and the revenue filed their appeal on

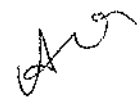
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24/12/13. The Appeal of the assessee appellant was taken up for hearing and was disposed of by order dated 26/12/13 by the Commissioner (Appeals), without fixing the appeal of the Revenue together for disposal.

4. Disposing of the appeal of the appellant assessee, the following order was passed:

"I hereby modify the O-I-O no 166/R/N-III/13-14 dated 16/08/2013 to the following extent:-

- i. The input service credit & consequent refund of Rs. 1,40,053/-, on pest control service is admissible to them, subject to the verification of the relevant documents, quantification of the exact amount involved, observance of the conditions & procedures as laid down in the law at the relevant time
- ii. I allow the Cenvat credit as well as the refund of the service tax paid on visa related services of legalization or attestation of birth certificate and degree certificate, only in respect of the employees of the appellant and not for the family. The exact amount to be refunded is to be re-quantified by the refund sanctioning authority after verification of the documents, observance of procedure and compliance of the conditions as laid down in the law during the relevant time.
- iii. The input service credit & consequent refund of Rs.7012/- on Maintenance of Automatic vending machines, is admissible to them, subject to the verification of the relevant documents, quantification of the exact amount involved, observance of



the conditions & procedures as laid down in the law at the relevant time.

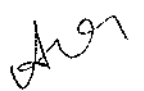
Rest of the O-I-O no 166/R/N-III/13-14 dated 16/08/2013 is upheld and the appeal is allowed to that extent only."

5. Thereafter, the appeal of Revenue was taken up and disposed of by a separate order dated 18/03/14, in which the following order was passed:

"I have already stated in the foregoing paras that the respondent has failed to establish nexus between the imported input service and the output export service. The case laws, cited by the respondent do not address to this deficiency, hence are not applicable in the present case, and therefore are distinguishable. On the basis of the above discussions & findings, I hereby order as under:-

The appeal filed by Revenue is upheld and the part of the O-I-O No, 166/R/N-III/13-14 dated 16/08/2013 which pertained to the appeal is set aside."

6. Being aggrieved the assessee appellant have filed appeals against both the separate order before this tribunal. We find that both the orders passed by the Ld. Commissioners (Appeals) are in conflict. Further, the appeal of the Revenue was pending before the Ld. Commissioners (Appeals) when the appeal of assessee was taken up and disposed of separately. It is a matter of policy and judicial discipline to hear and dispose the cross appeals arising out of the

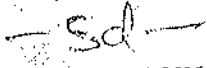


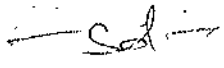
common impugned order together, for avoiding conflict in orders. Accordingly we set aside the impugned orders in both the appeals and remand the matters to the Ld. Commissioners (Appeals) with the direction to take up both the appeals together for denovo disposal and after hearing the parties to pass a reasoned order in accordance with law. The appellant-assessee is also directed to appear before Commissioners (Appeals) within a period of 60 days from the date of receipt of this order and seek an opportunity of hearing.

7. The consequential remand order (OIO) passed as directed in impugned order dated 26.12.2013, is also set aside, for the ends of justice.

8. Thus, the appeals are allowed by way of remand.

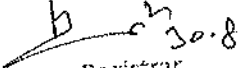
(Dictated and pronounced in the open Court)


(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)


(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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प्रमाणित प्रतिलिपि / Certified True Copy


सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एन. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001