FAX : 0532-2400149

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

Dated: 22/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70841/2016-SM[BR] dated 12/02/2016

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/MISC/51006/2015	ST/343/2010	VODAFONE ESSAR SOUTH LTD. 493, MANGAL PANDEY NAGAR, UNIVERSITY ROAD, MEERUT (UP)
		Name and Address of Respondent
2		-C.C.E. MEERUT I EXCISE CHOWK,OPPOSITE CHOUDHARY CHARAN SINGH UNIVERSITY MANGAL PANDAY NAGAR, MEERUT - 250005.

Copy To

3Advocate(s) / Consultant(s): SH V.L.KUMARAN,ADV
5, JANGPURA EXTENSION
LINK ROAD, NEW DELHI

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 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

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

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

Appeal No.ST/343/2010-ST[SM]
With
ST/MISC/51006/2015

Arising out of Order-in-Appeal No.151/CE/MRT-I/2009 dated 30.11.2009 passed by Commr. (Appeals) Customs & Central Excise, Meerut-I.

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

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M/s VODAFONE ESSAR SOUTH Ltd., ...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Meerut-I ...RESPONDENT (S)

APPEARANCE

Shri Karan Sachdev, Advocate for the Appellant (s)
Shri D.K. Sinha Asstt. Commissioner, (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 12.02.2016

FINAL ORDER NO. - 70841/2016

Per Mr. Anil Choudhary :

The appellant-assessee, a registered dealer under the Central Excise Act for providing Telephone services, is in appeal against Order-in-Appeal No.151/CE/MRT-I/2009 dated 30.11.2009, passed by Commissioner (Appeals) Customs & Central Excise, Meerut-I.

2. The brief facts are that the Cenvat Credit is taken on inputs services like (i) Installation, liasioning & documentation for electricity connection at cell sites, (ii) DG Sets Maintenance & Diesel filling to keep cell site operational, (iii) House keeping/Cleaning services, (iv) Hotel Services & (v) Balloon delivery services. The total amount in dispute is Rs.16,06,644/-. Heard the parties.

3. So far installation, liaisoning & documentation for electricity connection at cell sites is concerned, the same have been disallowed on the ground that these are not a taxable service and hence credit is not available. The Ld. Commissioner (Appeals) have observed that the credit taken on this service is with respect to service charges related to documentation and liaisioning for miscellaneous services under the category of management consultancy, including installation of D.G. sets and liaison with the electricity board for the purpose of providing the electricity connection. Accordingly, it was observed that these are related to activity at the cell sites which is not covered under the category of any taxable service under the Act. Thus, reliance

have been placed on the decision of Tribunal in Bharati Televentures Vs. Commissioner of Service Tax, New Delhi, reported at 2007 (8) STR 574 (T), wherein it was held that liasoning and representation are not consultancy services under the category of 'management consultancy' services. The learned Counsel have relied on the Ruling, in the case of C.C.E., CUS & S.T. Tirupati Vs. Nutrine Confectionery Co. Ltd. 2015(38) S.T.R. 259 (Tri. Bang.), states that input service credit on post sale activities of depot operations of C & F agent was in question. Such as liaisoning work pertaining to sales tax and other matters of the company, it was held that these were 'input services' as they were incidental and ancillary to depot operations, where main function is to dispatch goods to customers. It was moreso, as there was no bifurcation of commission amount in agreement, indicating amount towards each service. Accordingly, the Tribunal observed that it was not prudent to disallow Cenvat benefit and held the service eligible for Cenvat Credit under Rule 2(l) of CCR. The learned Counsel also relies on the Ruling by the Division Bench of this Tribunal in the case of CST, Mumbai Vs. ESSEL Corporate Services Pvt. Ltd. 2015(37) S.T.R. 943 (Tri. Mumbai), wherein the assessee was a group company, Zee Telefilms Ltd. and others, and was created for working as a central hub, for all the group companies, in connection with various matters of common interest to the group, policy decision to facilitate coordination of activities etc., and the said assessee have been providing functions as required by each of the group company, including liaison with various government and statutory authorities for various works related to the group of companies along with other administrative support, banking and loan arrangement etc. It was held that these activities are taxable and these constitute management function, placing reliance on the definition of 'management consultant' as defined in Section 65(65) of the Finance Act, 1994. Accordingly, the learned Counsel stated that the issue is no longer res Integra and this ground may be allowed.

4. Considering the precedent decisions relied upon by the Counsel for the appellant, I find that the services in question is taxable service and accordingly, the Ld. Commissioner (Appeals) have erred in not allowing the credit for the same. It is not in dispute that service tax have not been paid on the said service. Accordingly, Cenvat Credit is allowable on the same for the amount involved Rs.6,35,655/-

5. So far, D.G. set maintenance and diesel filling to keep cell sites operational, the same have been denied on the ground that it being a temporary arrangement, is not essential for output service. Further, invoices indicate material cost and no service element. The Ld. Commissioner (Appeals) have observed that the documentary evidences of billing raised for D.G. maintenance and filling services, on strength of which the credit was availed by the appellant, indicated that the service provider billed for material cost only and there was no mention of the

nature of any kind of service being provided. The maintenance of D.G. set installed at the cell site, in any case is a stopgap temporary arrangement, to maintain proper power supply during power failure by the Electricity Board, which cannot be considered to be related to or essential to providing Telecommunication services to the customers on a day-to-day basis.

6. I have carefully considered the rival submissions, I find that the appellant, is a provider of Mobile Telecom service, needs to keep its tower operational even during power failure to provide good quality of service to their customers/subscribers. These towers are located quite often scattered over a large geographical area and accordingly, the service availed for maintenance of the D.G. sets including filling in fuel etc. I hold that same is essential service for providing the Telecom service. Accordingly, I allow the input credit on the D.G. sets maintenance and Diesel filling activity provided by the service providers to the appellant and allow the Cenvat Credit Rs.8,25,071/-.

7. The next issue is of House cleaning services. This service have been held to be having not nexus with the provision of output services. Further, observing that the category of service is not mentioned in the invoices in question in the impugned order. I find that Housekeeping and gardening services, wherein employer spends money to maintain their factory premises in an eco friendly manner and have paid services tax on such services,

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the same forms part of the cost of final products and accordingly, same would fall within the ambit of input services. It has been so held by the Hon'ble Madras High Court in the case of CCE, & S.T. LTU, Chennai Vs. Rane TRW Steering Systems Ltd. 2015(39) S.T.R. 13 (Mad.). Accordingly, I set aside the finding of Ld. Commissioner and allow the Cenvat Credit of Rs.16,595/- on Housekeeping/Cleaning services availed by the appellant.

8. Hotel services availed by the appellant, used by their employees for business purposes, have been disallowed on the ground that same is in the nature of Mandap Keeper Service. The learned Counsel have stated that the said services have been availed in connection with travel and accordingly, the Ld. Commissioner have erred and disallowed the same. Further, reliance is placed on the Ruling of the Karnatka High Court in the case of Toyota Kirloskar Motor Pvt. Ltd. Vs. C.C.E., LTU 2011(24) S.T.R. 645 (Kar.), wherein even the celebration of State day (Rajyothsav day) was held to be an eligible input service as the same was important for maintaining good employer employee relations. Further in the case of Tata Management Training Centre Vs. C.C.E. 2015(38) S.T.R. 157 (Tri.-Mumbai). It have been held that even broker services, utilized for purchase/lease of flats for procuring residential accommodation for the faculty of the assessee who was paying service tax under the head commercial training or coaching services, management consultancy or

convention services was allowable, as no taxable service could be provided without the faculty being available for the same.

9. Accordingly, I hold that the Hotel services have been availed for the business travel etc. of the appellant company and the same is necessary for providing the output services. Accordingly, the Cenvat Credit of Rs.1,28,897/-, is held allowable.

10. The next item in dispute is Balloon delivery services, Cenvat Credit of Rs.426/-. Having considered the rival contentions, I find that the said expenses relates to delivery of 43 packets of Balloons being hiring charges for delivery to Meerut-I+Courier charges+ agency charges paid to Communique Marketing Solutions Pvt. Ltd., who have a valid service tax registration and have been interested by the appellant as a regular marketing/sales promotion vender. Finding that the same relates to marketing and sales promotion by making the name of the company widely known among the probable customers. I find the same as an eligible input service and accordingly, the Cenvat Credit of Rs.426, is held allowable for the same.

11. Thus, the appeal is allowed as indicated above. The appellant will be entitled to consequential benefits in accordance with Law. The Misc. Application (MA No.51006/2015) also stands disposed of.

(Dictated & Pronounced in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

सत्यापित प्रति / Certified True Copy

2.5.10

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