REGISTERED / AD

FAX : 0532-2400149

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

Dated: 05/12/2016

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

Final Order No. A/71107/2016-EX[DB] dated 01/12/2016

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/CROSS/248/2009	E/2637/2009	CCE KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
			Name and Address of Respondent
2			GAIL INDIA LTD. PATA DIBIAPUR, DISTT. AURAYA. (U.P.),,

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

S. C. KAMRA & CO.
B-2/210 (BASEMENT),
SAFDARJUNG ENCLAVE,
NEW DELHI-110029

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 /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
E/Cross/248/2009
APPEAL No.E/2637/2009-EX[DB]

(Arising out of Order-in-Appeal No.101-ST/APPL/KNP/2009 dated 23.04.2009 passed by Commissioner (Appeals) Central Excise & Customs, Kanpur)

Commissioner of Central Excise, Kanpur — Appellant

Vs.

M/s Gail India Ltd. — Respondent

Appearance:

Shri Rajeev Ranjan, Joint Commissioner (AR) — for Appellant
Shri S.C. Kamra, Advocate — for Respondent

CORAM:

Hon'ble Shri Justice Dr. Satish Chandra, President
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 01/12/2016
Date of Decision : 01/12/2016

Final ORDER NO. 71107/2016............

Per: Dr. Satish Chandra

The present appeal is filed by the department against the impugned Order-in-Appeal No.101-ST/APPL/KNP/2009 dated 23.04.2009.

2. The issue involve in the present appeal relates to the availment of Cenvat credit, of service tax paid on the input services namely "Security Agency Services" received by the respondent herein, for the residential colony.

3. The adjudicating authority has disallowed the Cenvat credit on the ground that there is no nexus between the disputed services and final products manufactured by the respondent. The Commissioner (Appeals) has allowed the claim of the respondent. Being aggrieved, the department has filed the present appeal before this Tribunal.

4. With this background, we heard Shri Rajeev Ranjan learned A.R. for the revenue and Shri S.C. Kamra learned counsel for the Respondent-assessee.

5. After hearing the parties and on perusal of records, it appears that the issue has come up before the Tribunal in assessee's own case for the different period in Central Excise appeal No.50751/2014, where this Tribunal vide its Final Order dated 10.11.2015 has remanded the matter back to the adjudicating authority for De-novo adjudication by making the following observation:-

> "8. *Considering the submission of the respondent that expenditure towards the disputed service have been included in the cost of production of the excisable goods, on which Central Excise Duty liability has been discharged, we are of the view that same shall merit consideration as input service for the purpose of taking Cenvat credit. However, since no documentary evidences to that effect were produced by the respondent before the lower authorities, we are of the opinion that the matter is required to be remanded back to the original adjudicating authority for verification of the documents/records maintained by the respondent to demonstrate that the cost of disputed service and the service tax paid thereon is forming a part of the cost of production of the finished goods on which Central Excise duty liability has been discharged.*
>
> 9. *Therefore, by setting aside the impugned order, we demand the matter back to the adjudicating authority for de novo adjudication. During adjudication proceedings, the appellant shall produce the documentary evidence to show that*

the cost of disputed service and the service tax paid thereon are forming part of the cost of production."

6. By following the earlier decision (supra), we set aside the impugned order and remand the matter back to the original authority for fresh adjudication but by providing the reasonable opportunity to the assessee. Additional evidence may be admitted.

7. In the result, the appeal filed by the revenue is allowed by way of remand. The cross objection also stands disposed of.

(Dictated in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Justice Dr. Satish Chandra)
President

akp

प्रमाणित प्रति / Certified True Copy
8.12
सहायक रजिस्ट्रार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
35, एम. जी. मार्ग, इलाहाबाद-211001
35, M. G. MARG, ALLAHABAD-211001