FAX : 0532-2400149

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

Dated: 09/11/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71042/2016-SM[BR] dated 04/11/2016

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/403/2010 | CCENOIDA<br>C-56/42, SECTOR-62,<br>NOIDA-201307 |
| | | Name and Address of Respondent |
| 2 | | HCL TECHNOLOGIES LTD. -BPO,<br>B-34/3, SECTOR-59, NOIDA, DISTRICT<br>G.B.NAGAR (U.P.),, |

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

3 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar

23-11-16

ISSUED ON

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

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 2

APPEAL No. E/403/2010-EX[SM]

(Arising out of Order-in-Appeal No.337-CE/APPL/NOIDA/2009 dated 30/11/2009 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

For approval and signature:
**Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)**

| | | |
|---|---|---|
| 1. | Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | No |
| 2. | Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | Yes |
| 3. | Whether their Lordships wish to see the fair copy of the order? | Seen |
| 4. | Whether order is to be circulated to the Department Authorities? | Yes |

**Commissioner of Central Excise, Noida** **Appellant**

Vs.

**M/s HCL Technologies Ltd. – BPO.** **Respondent**

Appearance:

Shri Pawan Kumar Singh, Superintendent (AR), for Appellant
Shri Atul Gupta, Advocate, for Respondent

CORAM:

**Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)**

Date of Hearing & Date of Decision : 04/11/2016
FINAL ORDER NO. 71042/2016..........

**Per: Anil G. Shakkarwar**

The present appeal is filed by the Revenue against Order-in-Appeal No.337-CE/APPL/NOIDA/2009 dated

30/11/2009 passed by Commissioner of Central Excise & Customs (Appeals), Noida.

2. The brief facts of the case are that the respondent filed an application for refund of Service tax input Cenvat credit for the period from April, 2007 to 30th June, 2007 under Notification No. 5/2006 dated 14/03/2006 issued under Rule 5 of Cenvat Credit Rules, 2004. The refund claim was amounting to Rs.1,62,94,940/-. The Original Authority through Order-in-Original No. R-28/AC/Div-I/Noida/2009-10 dated 19/05/2009, allowed refund of Rs.60,45,871/- & rejected refund of Rs.1,02,49,069/-. Aggrieved by the said Order-in-Original the respondent preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the appeal through Order-in-Appeal No.337-CE/APPL/NOIDA/2009 dated 30/11/2009. The Appellate Authority ordered for refund of Cenvat credit accumulated on account of credit taken of Service tax paid in respect of input services such as Security Service, House Keeping Services, Outdoor Caterers Service, Transport Coordinator Service, Mediclaim Insurance Service & Rent-a-cab Service. Aggrieved by the said Order-in-Appeal Revenue has preferred appeal before this Tribunal, challenging the order passed by Commissioner (Appeals) to the extent of allowance of refund of Rs.79,048/- in respect of Outdoor Catering Service.

3. Heard the ld. D.R. who has presented the grounds of appeal.

4. Heard the ld. Counsel who has submitted a copy of ruling by Hon'ble High Court of Allahabad in their own case that is in the case of Commissioner of Central Excise, *Versus* HCL Technologies reported at 2015 (37) S.T.R. 716 (Allahabad). He has submitted that in the said ruling Hon'ble High Court of Allahabad has held that Service tax paid on Outdoor Catering Service except one which is in respect of consumption of alcoholic beverages is admissible as input service. He has further submitted that there is no allegation in the Show Cause Notice that any part of the Cenvat credit sought to be refunded was related to Service tax paid in respect of Outdoor Catering Service for consumption of alcoholic beverages.

5. I find from the ruling by Hon'ble High Court of Allahabad in the above stated case that Outdoor Catering Service except for consumption of alcoholic beverages has been held to be admissible input service. Following the said ruling, I dismiss the appeal filed by Revenue and hold that the respondent shall be entitled to consequential relief, in accordance with law.

(Dictated and pronounced in Court)

Sd/-

**(ANIL G. SHAKKARWAR)**
**MEMBER (TECHNICAL)**

प्रमाणित प्रति / Certified True Copy

17.11

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

*Ansari*