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

Dated: 05/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70930/2016-SM[BR] dated 21/06/2016

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/50024/2015	U K PAINTS INDIA PVT LTD VILLAGE DEVLA SURAJPUR DADRI ROAD GREATER NOIDA UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Copy To

3 Advocate(s) / Consultant(s):

Naveen Mullick
B-388, Mera Bagh,
New Delhi-110063

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 M/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

7/10/16

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

Ex.Appeal No.50024/15

Arising out of OIA No.NOI/EXCUS/000/Appl./158/13-14 dated 30/07/2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Noida.

For approval and signature:

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

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 U.K.Paints Pvt. Ltd.

...APPELLANT(S)

VERSUS

Commissioner of C.Ex. & S.Tax, Noida

RESPONDENT (S)

APPEARANCE

Shri Parth Mullick, Advocate for the Appellant (s)
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 21.06.2016

Final ORDER NO. 70930/2016

Per Mr. Anil Choudhary :

The appellant, a manufacturer of resin, paints and varnish, are in appeal against the order of the ld. Commissioner (Appeals) Customs, Excise and Service Tax, Noida against Order dated 5/9/14 by which Cenvat credit of Rs.94,239/- have been disallowed on the ground that the address of the service provider given in the invoice is not their registered address as per the Registration Certificate.

2. The issue in this appeal is whether Cenvat credit can be denied to the appellant for defect or change in address of the service provider in the invoice issued by them for services provided to the appellant under the provisions of Rule 9(1) and 9 (2) of Cenvat Credit Rules, 2004 read with Rule 4 A of the Service Tax Rules.

3. Heard the parties. The issue relates to the disallowance of Cenvat credit for the period 2009-10 to 2011-12 on some invoices on the allegation that billing has been done by the service provider from the address other than as mentioned in STD Code and/or Registration Certificate.

4. SCN dated 6/3/12 was issued to the appellant, wherein it was proposed to disallow the Cenvat credit invoking the extended period of limitation for the reason that the address on the invoices for input services was different totaling Rs.94,239/- and for Rs.43,943/- disallowable on invoices which did not contain the PAN based service tax registration number.

5. Pursuant to remand in the earlier round by this Tribunal vide Final Order No.A/52394/2014 – SMB dated 2/6/14, this Tribunal had remanded the issue to the Commissioner (Appeals) with a direction to re-appreciate the evidence after hearing the appellant in accordance with law. Thereafter, by the impugned order the ld. Commissioner (Appeals) have been pleased to allow the Cenvat credit of Rs.43,943/- on the invoices not containing the PAN based registration number of the service provider. So far the Cenvat credit disallowed for defect in address of the service provider is concerned, it has been observed that the invoices issued from such premises are not proper documents in terms of Rule 9 of CCR for availing credit of service tax.

4. Having considered the rival contentions, I find that Rule 9(2) which reads as follows :

> "(2) No Cenvat credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document :
>
> Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service assessable value, Central Excise or Service Tax Registration Number of the person issuing the invoice, as the case may be, name and address of the factory or warehouse or premises of first stage or second stage dealers or provider of taxable service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied

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that the goods or services covered by the said document have been received and accounted for in the books of account of the receiver, he may allow the Cenvat Credit."

Rule 4A of Service Tax Rules, 1994, reads as under:

"According to Rule 4A of Service Tax Rules, 1994, every person providing taxable service shall issue an invoice, a bill or, as the case may be, a Challan signed by such person.......................... and such invoice, bill or, as the case may be, Challan shall be serially numbered and shall contain the following, namely :-

(i) The name, address and the registration number of such person ;

(ii) The name, address of the person receiving taxable service ;

(iii) Description, classification and value of taxable service provided or to be provided ; and

(iv) The service tax payable thereon."

5. From a plain reading of the proviso to Rule 9(2) of CCR, it is evident that discretion has been vested in the adjudicating authority, wherever there were some defects in the document or invoice of input service, et cetera like defect in particulars, it is provided that if the material particulars are contained in the invoice like the details of duty or service tax payable, description of the service, service tax registration number of the provider, and name and address of the provider of taxable service, then the adjudicating authority if satisfied that the goods or services covered by the said documents have been received and accounted for in the books of account of the receiver, he

may allow the Cenvat credit. From the facts on record, I find there is no dispute as to the receiving of service by the appellant and payment of service tax by them. Further, the appellant have led evidences before the ld. Commissioner (Appeals) that the service provider have deposited the returns with the Department and have also annexed the challans indicating full payment of tax by the service provider. I find that the ld. Commissioner (Appeals) has failed to consider the same and record the finding as to why the input services credit is still not allowable under the proviso to Rule 9(2) of CCR, 2004. Having considered the evidence on record, I am satisfied that the appellant is entitled to Cenvat credit of Rs.94,239/- and accordingly, I allow the appeal and set aside the impugned order to the extent it disallows Cenvat credit of Rs.94,239. The appellant will be entitled consequential benefit if any. The penalty retained by Commissioner (Appeals) is also set aside.

(Dictated and pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

सत्यापित प्रति / Certified True Copy

25.10.16

सहायक रजिस्ट्रार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
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