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: 08/07/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70339/2016-SM[BR] dated 20/06/2016

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/50591/2015	**WIPRO LTD** A-23, MOHAN CO-OPERATIVE INDUSTRIAL ESTATES, NEAR SARITA VIHAR METRO STATION MATHURA ROAD,NEW DELHI-14
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA,UTTAR PRADESH- 201307

Copy To

3Advocate(s) / Consultant(s):

Vikas Khandelwal & Co, C.A
G-29, NDM-1, B-2,3,4, NETAJI SUBHASH
PLACE, RING ROAD,
PITAMPURA, DELHI-110034

5 Bar Association, CESTAT, Allahabad
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

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

S.T. Appeal No.50591/15

Arising out of O/A No.NOI/EXCUS/000/APPL/193/2014-15 dated 31.10.2014 passed by Commissioner of Central Excise (Appeals) & Customs & S.Tax, Noida.

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 Wipro Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Cus. & S.Tax, Noida

RESPONDENT (S)

APPEARANCE

Shri Vikash Khandelwal , C.A. for the Appellant (s)
Shri S. J. Sahu, A.C. (D.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 01. 12. 2015

Final - ORDER NO. 70339/2016

सीमा शुल्क उत्पाद एवं सेवा कर अपीलीय अधिकरण
CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL
सत्यमेव जयते

Per Mr. Anil Choudhary :

The Appellant, M/s Wipro Ltd., is in Appeal against Order-in-Appeal No. NOI/EXCUS/000/APPL/193/2014-15 dated 31.10.2014 passed by Commissioner of Central Excise (Appeals) & Customs & S.Tax, Noida, by which the denial of Cenvat credit of Rs.1,56,334/- have been upheld along with interest and equal amount of penalty under Section 78 of the Act.

2. The brief facts are that the appellant, a 100% EOU, is registered with the service tax Department for providing taxable services being "Business Auxiliary Services", "Information Technology Software Services", "Online Information and Data Retrival Services", "Scientific and Technical Consultancy" & "Maintenance and Repair Services" et cetera. The appellant availed Cenvat credit on inputs and input services received. As the appellant exports its output services, it is unable to utilise the input credit and accordingly, filed the refund claims under Rule 5 of CCR read with notification number 5 of 2006. In pursuance to refund claims for the quarter October,2009 to December 2009, January 2010 to March 2010 and April 2010 to June 2010, three separate show cause notices were issued proposing to deny part of the refund claim on some input services which appeared to the revenue as not admissible for want of nexus and for input services received from one M/s Chanson Motors (P) Ltd. provided under rent-a-cab Service, on the observation of the revenue, that some inquiry was pending against the said M/s Chanson Motors (P) Ltd. as regards the registration status and the collection and deposit of service tax

with the Central Exchequer. In order to get the refund expeditiously, the appellant agreed to reverse the Cenvat credit with respect to invoices of M/s Chanson India Motors (P) Ltd. and thereafter, the refund was allowed. Another show cause notice dated 19/3/13 was issued with reference to the earlier show cause notice dated 8/10/10 stating therein that the appellant have availed Cenvat credit on the invoices of M/s Chanson Motors (P) Ltd. amounting to Rs.1,56,334/- and the said invoices do not contain the registration number as mentioned in the SCN dated 8/10/2010 and accordingly, in view of the invalid nature of documents and the inadmissibility of credit being accepted by the assessee, as the assessee have reversed the credit on 5/1/2011. The show cause notice dated 19/3/2013 proposed to disallow the Cenvat credit of Rs.1,56,334/- under Rule 14. It was further proposal to appropriate the same from the deposit made on 5/1/2011 along with interest and penalty was also proposed under Rule 15. The appellant on receipt of the show cause notice filed reply dated 12/6/13 wherein they specifically mentioned that RUD-1 mentioned in the show cause notice, was not served on them as the same was not enclosed with the show-cause notice. They further prayed for dropping of the SCN as the issue is covered by the earlier SCN and the amount also stood denied to the appellant by way of grant of reduced amount of refund.

3. The SCN was adjudicated vide order-in-original dated 28/2/14 confirming the proposed demand with interest and appropriated in the same from the deposit already made and further penalty of Rs.3,12,668/- was imposed under section 78 read with rule 15 (3) of

the CCR. Being aggrieved, the appellant preferred appeal before ld. Commissioner (Appeals), who has pleased to confirm denial of credit with interest but have reduced the penalty from 200% to 100%. Being aggrieved, the appellant is before this Tribunal.

4. Heard the parties.

5. Considering the rival submissions and on perusal of record, I find that the show cause notice dated 19/3/13 is vitiated and bad as the same issue was already raised earlier vide show cause notices dated 8/10/2010, 31/12/10, and 18/5/11 and further, the appellant had already reversed the amount on 5/1/2011, as is evident on the face of the show cause notice. Further, I find that the show cause notice dated 19/3/13 is vague as it refers to earlier show cause notices wherein the allegation was that some inquiry or investigation is pending against M/s Chanson Motors (P) Ltd.. But in the subsequent show cause notice, no result of such investigation have been brought on record. Thus, the show cause notice being vague, on this is count also, the impugned order is fit to be set aside. Further, I hold that the subsequent show-cause notice is bad in law being repeat litigation of the issue already covered by the earlier show cause notices. Hence, extension period of limitation is not available to Revenue.

In this view of the matter, I set aside the impugned order and allow the appeal with consequential relief, if any, in accordance with law.

(Dictated and pronounced in the open Court)

Sd/-

(Anil Choudhary)
MEMBER (Judicial)

प्रमाणित प्रति / Certified True Copy
14.7

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

mm