FAX : 0532-2400149

REGISTERED / AD

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

Dated: 26/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71157/2016-SM[BR] 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/50936/2015	ORIENT BELL LIMITED 8, INDUSTRIAL AREA, SIKANDRABAD BULANDSHAHAR 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):

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 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

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. 2

APPEAL No. E/50936/2015-EX[SM]

(Arising out of Order-in-Appeal No. NOIC/EXCUS/000/APPL/225/2014-15 dated 27/11/2014 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

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

M/s Orient Bell Limited **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri S.C. Kamra, Advocate &
Shri Kartikeya Narain, Advocate for Appellant
Shri D.K. Deb, Assistant Commissioner, (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

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

FINAL ORDER NO. 71157/2016..........

Per: Anil Choudhary

The present appeal is filed by the appellant, M/s Orient Bell Limited, against the Order-in-Appeal No. NOIC/EXCUS/000/APPL/225/2014-15 dated 27/11/2014 passed by Commissioner of Central Excise & Customs (Appeals), Noida.

2. The appellant-assessee are engaged in manufacturer of glazed ceramic tiles and vitrified tiles falling under Chapter Sub-heading 6908.90.90 & 6907.90.10 of the First Schedule to the Central Excise Tariff Act, 1985, is in appeal against disallowance of Cenvat credit availed for Rs.19,52,518/- during the period from 01/12/2010 to 30/11/2012. The details of the disallowance are as follows:-

Sr. No.	Particulars			Amount
1.	CENVAT Credit on Photocopies of courier B/E disallowed on the ground that the photocopy of the document is nowhere prescribed as valid document for availing credit			Rs.4,384/-
2.	CENVAT denied on input service availed during the period of December, 2010 to November, 2012 with the following break-up			Rs.9,21,571/-
	(i)	December, 2010 to March, 2011	Rs.1,81,201/-	
	(ii)	April, 2011 to December, 2011	Rs.5,59,991/-	
	(iii)	January, 2012 to November, 2012	Rs.1,80,379/-	
		Total	**Rs.9,21,571**	
3.	CENVAT Credit taken on the strength of Challan for deposit of service tax in the name of small service providers/contractors on the ground that prior to 01.04.2012 , GAR-7 Challan were not recognized as valid duty paying documents for availing CENVAT Credit			Rs.10,26,563/-
	TOTAL			**Rs.19,52,518/-**

3. The Show Cause Notice, dated 24/01/2013, was issued

invoking the extended period of limitation as it appeared to Revenue, pursuant to audit, that the appellant have availed inadmissible Cenvat credit on inputs/capital goods and input services in violation of Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944. Accordingly it was proposed to disallow an amount of Rs.19,52,518/- being Cenvat credit availed during the period from 01/12/2010 to 30/11/2012 under Rule 14 of Cenvat Credit Rules read with section 11A & 11A (5) of Central Excise Act, 1944. Further, penalty was also proposed under Rule 15(2) of Cenvat Credit Rules, 2004. The Show Cause Notice, was adjudicated by the Additional Commissioner on contest and the proposed demand was confirmed with equal amount of penalty. Further appropriation was allowed for Rs.4,384/- + 48,304/-, which was debited earlier. Being aggrieved the appellant preferred appeal before ld. Commissioner (Appeals), who has been pleased to reject the appeal by confirming the demand and penalty.

4. Being aggrieved the appellant is before this Tribunal.

5. Heard both the parties.

6. So far Cenvat credit of Rs.4,384/- taken on photocopies of Courier B/E, I find that the said issue is covered in favour of the appellant-assessee by precedent ruling of this Tribunal in the case of Commissioner of Central Excise *Versus* Fusion Electronics (P) Ltd. reported at 2011 (264) E.L.T 513 (Tri. – Delhi) wherein Coordinate Bench have held that Cenvat

credit is allowable on Xerox copies where input service received is not in dispute and there is no dispute of payment of service tax/duty. So far Cenvat Credit of Rs.9,21,571/- is concerned the same comprises of various services. The details are as follows:-

Sr. No.	Nature of Service	CENVAT Credit taken – Dec, 2010 to March, 2011 (Rs.)	CENVAT Credit taken – April, 2011 to Dec, 2011 (Rs.)	CENVAT Credit taken – Jan, 2012 to Nov, 2012 (Rs.)	Total (2+3+4) (Rs.)
	(1)	(2)	(3)	(4)	(5)
1.	Garden Maintenance	15,867/-	29,063/-	-	44,930
2.	Repair & Maintenance (Painting gutter + white wash)	-	2,433	-	2,433
3.	Plant Housekeeping (Manpower supply)	-	61,813	1,44,063	2,05,876
4.	Warehouse Sweeping	-	-	25,336	25,336
5.	Housekeeping services utilized at different botique/Showrooms	-	4,415	-	4,415
6.	Public Relation charges (specific category of service not mentioned	1,44,715	2,86,855	-	4,31,570
7.	Public Relation Services Organizing conferences	-	9,270	-	9,270
8.	Services for filing VAT/Income Tax Return + VAT Audit	6,723	4,071	1,994	12,788
9.	Services for common Area maintenance in Stairs	-	12,080	-	12,080
10.	Services of peon at H.O. + Services utilized for a ppty. Of Mr. Daga at Kolkata	361	2,046	-	2,407
11.	Rent-a-cab services	-	18,955	8,368	27,323
12.	WBM Service	-	3,456	-	3,456
13.	Recreational services	-	30,385	-	30,385
14.	Tractor Trolly - not Regd. Public Transport Vehicle – Inside factory	13,535	-	618	14,153
15.	Construction services - Repair	-	79,631	-	79,631

16.	Neither Service tax amount nor category of service shown in invoice (Bills of Hyatt Hotel)	-	9,382	-	9,382
17.	Repair of Battery/UPS	-	350	-	350
18.	Payment to sea court in Jaypee Green	-	3,605	-	3,605
19.	Loading/unloading of trading goods	-	2,181	-	2,181
	TOTAL (A)	**1,81,201**	**5,59,991**	**1,80,379**	**9,21,571**

So far garden maintenance is concerned the same is input service as it is a pollution control requirement and improves the asthetics and overall atmosphere and thus is an expenditure in or in relation to manufacture. Similarly, repair and maintenance, plant housekeeping, warehouse sweeping are also expenditure incurred in relation to the manufacture of dutiable output as well as essential for running the factory. So far housekeeping services are concerned it is explained that the same have been used in maintenance of their botique/showrooms and the appellant directly selles through own showrooms and shops and, accordingly, the said service is held as input service being incurred in relation to the manufacturing business. So far public relation service charges Rs.4,31,570/-, is concerned, I find that the appellant have entered into an agreement with the Ad factors, PR Private Ltd., situated at Mumbai for the objective of enhancing their Brand Value, Support to Marketing & Promotional Initiatives, Building Corporate image, Creating Awareness, so as to develop interest in the products of appellant and further the scope of service includes conducting ongoing research to identify communications and opportunities, provide consultancy on all aspects of communication needs and corporate reputation, development, suggest and assist better media relations, media monitoring/includes providing reports to the management as regards the overall industry scenario and the consumer tastes and preferences etc. Further, for such services, the agreement provides a monthly retainer's fee of Rs.2.50 lakhs + reimbursement of certain costs like - Photocopying, Postage, Courier, Car hire, Videoconferencing, Broadcasting, Preparation & Translation of Press Releases, Cost of Electronic Media Monitoring etc., etc. I also find that the bills have been raised in consonance with the agreement, as one of the bills, dated 28/02/2011, have been raised for organizing Press Conference for launch of Showroom at Hyderabad. Accordingly, I hold that the said services have been availed with respect to sales promotion, which is an eligible input service and, accordingly, the same is held to be allowable. So far the services received with respect to tax compliances like; Filing of VAT/Income Tax Returns, the same is also held to be eligible input service as tax compliances are also essential and it is important not to make errors and make timely compliances. So far the common area maintenance services received, the disallowance of service tax on bills etc., is concerned, the allegation is that the service tax amount is not reflected in the invoice/bills. The ld. counsel have taken me through the applicable bills, placed in the appeal file and I find that the court below have committed mistake of fact as service tax have been duly charged and paid in the bills raised by Hyatt Hotel. Further the service tax on repair of UPS battery, is also held as eligible input service as the same is incurred to ensure uninterrupted power supply which is essential to run the business.

7. Accordingly, I hold that all the above services are eligible to input service, save and except the service at serial number 10, 11, 18 & 19 (of the Table), total input service tax amounting to Rs.35,516/-.

8. As regards the disallowance of Cenvat credit paid by the appellant-assessee, on the basis of challans (for work done by them by their petty contractors), it is explained that such petty contractors were not well educated not well versed with service tax, hence they assisted them in depositing the service tax and the same was duly reflected in the bills, which amount was duly accounted for. I hold that the appellant-assessee is entitled to take Cenvat credit as the payment of such tax is supported both by the invoices as well as the challans, which are in procession of the appellant.

9. To sum up –

i) All input services received are held as eligible for credit except

ii) Services totaling Rs.35,516/- (being S. Nos. 10, 11, 18 & 19 of Table in Para 6 above)

10. Thus, the appeal is allowed in part as indicated above. The assessee-appellant will be entitled to consequential benefits in accordance with law. So far the penalty is concerned the same stands deleted under all sections.

(Dictated and pronounced in Court)

Sd/-

(Anil Choudhary)
Member (Judicial)

Ansari

प्रमाणित प्रति / Certified True Copy
23.12
सहायक पंजीयक / 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