FAX : [illegible]

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

Dated: 07/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70757/2016-SM[BR] dated 10/08/2016

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/51877/2015	**HCL TECHNOLOGIES LTD** BPO DIVISION, B-34/3, SECTOR-59,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):

V. LAKSHMI KUMARAN
5, JANGPURA EXTENTSION LINK
ROAD NEW DELHI-110014
LINK ROAD,NEW DELHI,
110014

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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

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

Appeal No. : ST/51877/2015-ST[SM]

Arising out of O/A No. NOI/EXCUS/000/APPL/38/2014 dated 19.02.2014, passed by Commr. (Appeals) of Customs, Central Excise & Service 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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HCL Technologies Ltd. ...APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Noida.

....RESPONDENT(S)

APPEARANCE :

Shri Vaibahav Dixit, Advocate &
Shri Atul Gupta, Advocate for the Appellant(s)
Shri Pawan Kumar Singh, Superintendent (AR), for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 10.08.2016

FINAL ORDER NO. 70757/2016

Per Mr. Anil Choudhary :

The appellant-assessee, a BPO and exporter of services under the category of 'Business Auxiliary Service' is in appeal against Order-in-Appeal dated 19-02-2014.

2. The preliminary objection by Revenue is that the appeal is barred by limitation as the impugned order dated 19-02-2014, had been dispatched to the appellant by speed post on 23-04-2014, as per the records of Revenue. As the said dispatch of speed post was not received back there is presumption of service within one month of dispatch. The ld. Counsel for the appellant states that the appeal was heard by ld. Commissioner (Appeals) on 11-07-2014, and they never received the said order which was dispatched as per the records of Revenue. They came to know of the appeal order have been passed, on receipt of a letter dated 30-03-2015, when Superintendent (Appeals-II) informed the appellant that the appeal order was passed on 19-02-2014. This was in pursuance of a notice for payment of deposit of adjudicated demand, received by appellant on 21-02-2015, in reply to which they had taken the stand that their appeal have been heard on 11-07-2014 and they have not received any order so far. Thereafter, on the request of the appellant to provide a copy of the Order-in-Appeal, the said copy was provided to

them, vide the letter on 17-04-2015, and from this date of receipt of the impugned order, the appeal is filed in time.

3. Having considered the rival contentions, I am satisfied that the contention of the appellant is reliable in view of the correspondence referred to hereinabove. Accordingly, the objection of ld. A.R. for Revenue is waived and the appeal is taken up for hearing.

4. Heard the parties.

5. It is disputed by Revenue that the receipt of services from M/s K. Mohan Sundari who is registered under provisions of Service Tax, under the agreement dated 06-11-2007 with the appellant, for deploying competent personnel at the office premises of the appellant for providing medical services by ensuring availability of at least one nurse for every shift at the two premises, from where the appellant is rendering output services as a BPO. As the appellant operates round the clock, accordingly, the service provider is required to ensure that medical services are available to the employees of the appellant round the clock. The deployed personnel have to be professionally qualified as nurse and are required to be present in prescribed uniforms and maintain registers and

records of the services granted/provided including provision of medicines. Further, the agreement provides for ensuring availability, even on national holidays and public holidays. Including, providing of immediate medical care to any employee in case of need. The Cenvat credit have been disallowed by ld. Commissioner (Appeals), holding that the service in question is not taxable service and accordingly not eligible for Cenvat credit.

6. Having considered the rival contentions, I find that as the appellant has several employees and the availability of same in good health for rendering the output service, is essential for carrying on their business or providing output service as a BPO. In this nature, of activity the employees form the backbone of the organization for providing the service. Accordingly, it is essential for the appellant/assessee to ensure the availability of their personnel for providing service. Accordingly, to ensure that their personnel and staff are in good health for providing the output services, the appellant having used the services of doctors and nurses which may not be available otherwise at odd hours and may effect the performance of output services by their staff. Accordingly, I hold that such services received by the appellant is an essential input service for providing their output services as a

BPO which is a taxable service. Further, there is no dispute by Revenue that the service tax have not been charged and not paid on the same.

7. So far the cleaning service is concerned I hold that the same is an essential service for any business organization including that of the appellant. Clean office premises is definitely required for efficient working and to ensure good health of the management and staff of the organization. Accordingly, I hold the cleaning services are eligible input service for providing output service.

8. Thus, I set aside the impugned order and allow the appeal with consequential benefits to the appellant. The penalty imposed are also set aside.

(Dictated & pronounced in the open Court)

-Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(Ansari)

प्रमाणित प्रति / Certified True Copy
3/10/16 SPS
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