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: 23/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70870-70871/2016-SM[BR] dated 10/03/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 81(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/52789/2014 &ST/52790/2014	CITIZEN COOPERATIVE BANK LIMITED C-55/9, 2ND FLOOR, STP INDUSTRIAL AREA, SECTOR-62, NOIDA,UP

Name and Address of Respondent

2 C.C. & C.E. & S.T.-Noida
C-56/42...SECTOR 62,
NOIDA,
UTTAR PRADESH-201307

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Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s):

R. KRISHNAN
297-E, POCKET-B, PHASE-I,
MAYUR VIHAR,
DELHI-110091

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

27/10/16

ISSUED ON

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

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Single Member Bench

Appeal Nos. ST/52789/2014 and ST/52790/2014 (SM)

[Arising out of Order-in-Appeal No. NOI/EXCUS/000/APPL/254-255/13-14 dated 23/12/2013 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Noida]

For approval and signature:

Hon'ble Shri Anil Choudhary, Judicial Member

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

M.s Citizen Cooperative Bank Limited Noida **Appellant** (in both Appeals)

Vs.

C.C.E. & ST NOIDA **Respondent**

Appearance:

Present for the Appellant: Shri R. Krishnan, Advocate
Present for the Respondent: Shri S.V. Nair, Assistant Commissioner (AR)

Coram: Hon'ble Shri Anil Choudhary, Judicial Member

Date of Hearing/Decision: 10/03/2016

Final Order No. 70870-70871/2016

Per: Anil Choudhary

The appellant is a Co-operative Bank Ltd. providing taxable service under the head "Banking and other Financial Services" and is registered with the Service Tax Department. They are in appeal against Common Order-in-Appeal dated 23/12/13, whereby the appeal of the appellant assessee was allowed in part and the appeal of the Revenue was also allowed increasing the penalty under Section 76 of the Finance Act,1944 to Rs.1,94,322/-.

2. The issues involved in this Appeal are:-

(a) Whether the non disclosure of the CENVAT Credit entitlement in the service tax return is fatal to the eligibility for the benefit of CENVAT Credit when due to imperfect understanding in the early stages of availing CENVAT Credit for the first time ST-3 return was not correctly filled in (Amount involved being Rs.1,94,322/-) Showing the CENVAT Credit availed details

(b) Whether Cenvat credit can be disallowed on the input service of catering service used while providing Banking and Financial services by the appellants (amount involved being Rs.48,815/-)

(c) Whether the Appellate Commissioner was right in imposing penalty equal to the Cenvat Credit disallowance as above by allowing the department Appeal against the Order-in-Original.

(d) Whether the entire duty demand is time barred – demand pertains to 2007 and the show cause notice was issued 2012.

3. The brief facts are that the appellant Bank availed Cenvat credit on the input services received by making entries in the prescribed register. However erroneously the fact of availing Cenvat credit was not disclosed in the ST-3 Return for the period April 2007 to September 2007. From the copy of ST-3 return Annexed to the paper book, it is seen that the appellant

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have neither shown the gross taxable amount, nor shown the amount of Cenvat availed. In the column for service tax payable, they have shown the net adjusted tax payable (after adjusting the Cenvat credit availed with tax payable). In the course of audit done some time during the year 2011 it was observed that the appellant has paid service tax short, amounting to Rs.2,09,841/- for the period April to September 2007, it was also observed that Cenvat credit amounting to Rs.48,815/- availed during the financial year 2008-2009 to 2010-2011 on the input service, being 'canteen service', is not an eligible service for the appellant engaged in providing banking and other financial services. It was also observed that the difference in the service tax value shown in the ST-3 Returns as well as in the Balance-Sheet for the financial year 2006-07- to 2010-11 total difference of service tax comes to Rs.69,400/- accordingly show cause notice was issued dated 4/10/2012 for the extended period proposing to adjudicate and recover service tax short paid Rs.2,09,841/- and also for disallowing Cenvat credit availed on catering service Rs.48,815/- along with interest and further penalty was proposed under Section 76 of the Finance Act, 1994 and also under Rule 15 of Cenvat credit Rules.

4. The appellant assessee contested the show cause notice by filing reply bringing to the notice that there was clerical error in reflecting the gross turn over and Cenvat credit in the Service Tax returns, they being new to service tax provisions and practice. It was demonstrated that there was an excess amount remitted in cash for service tax as on 31.3.2007 and also reflected in the half yearly return Rs.32,987/- and further it was shown that Cenvat credit availed during the period April to September 2007, particular in the month of July, August and September, amounted to Rs.1,94,322/- totalling

Rs.2,27,309/- and on reduction of the amount paid short Rs.2,09,841/-, there remains an excess paid amount of Rs.17,468/- (227309-209841) as on 30/9/2007. So far as Cenvat credit availed on catering service, it was stated that the appellant holds periodical meeting with their customer's in order to get the feedback from the customers, and also to redress their complaints which ultimately promotes their business of providing banking services. In the meetings, the customers are provided with snacks and tea/ coffee and accordingly on the bill of the caterer, where service tax has been levied, Cenvat credit have been rightly availed. Vide Order-in-Original dated 30/7/2013, wherein the proposed amount of Rs.2,09,841/- was confirmed along with interest and further penalty of Rs.1,04,920/- was imposed under Section 76 of the Finance Act, 1994. The proposed amount of Cenvat credit for the catering service Rs.48,815/- was also disallowed with interest and further equal amount of penalty under Rule 15 of CCR was imposed. It appears, the third issue being difference in service tax Rs.69,400/- was dropped.

5. Being aggrieved the appellant preferred appeal before the Commissioner (Appeals). The Revenue also preferred appeal before the ld. Commissioner (Appeals) for enhancement of penalty under Section 76 to 100% from the level of 50%, imposed by the adjudicating authority. Vide the impugned order the Commissioner (Appeals) allowed adjustment of Rs.32,987/-, which was paid in excess as on 31/3/2007 but disallowed the Cenvat credit and modified the demand reducing it to Rs.1,94,322/-. Allowing the Revenue's appeal the ld. Commissioner (Appeals) increased the penalty 100%, that is to Rs.1,94,322/-. So far the disallowance of Cenvat

credit on catering service is concerned, the same was upheld. Being aggrieved the appellant assessee is in appeal before the Tribunal.

6. The ld. Counsel for the appellant-assessee states that the allowability of catering service as an input service is no longer res Integra and the same have been held to be allowable in a catena of decisions of the Tribunal and High Courts more particularly in the case of Ultra Tech Cement Limited by the Honourable Bombay High Court. He further states that good customer relations is very important for the banking business and in such customer meetings where the grievances are redressed of the customers, the assessee can also promote their new services as well as they get feedback in improvement of their services. Thus the said input service is utilised in rendering their output service, and as such, the ld. Commissioner erred in upholding the disallowance. So far the issue of not allowing Cenvat credit availed on input services during the period April 2007 to September 2007, it is said that the same is against the provisions of law and the scheme of Cenvat credit. In the facts and circumstances that input services have been received and the appellant have paid for those services including the service tax, and availed the Cenvat credit in the register, only for the clerical mistake in the return, of not reflecting the amount in the proper column, Cenvat credit cannot be denied. The ld. Counsel have further emphasised that even in cases where exemption is denied in the case of Excise duty or service tax, in such cases Cenvat credit have always been allowed for calculating the net tax liability. Accordingly he prays for allowing the Cenvat credit for the period April to September 2007.

7. The learnedly A.R. relies on the impugnec that, as the assessee have made mistake by not c in the return, they are not entitled for the same and correctly raised.

8. Having considered the rival contentions I hold t availed on catering service is allowable as the same is direc ...ilised in the business of the appellant of banking and other financial services. It goes without saying that satisfied customers, will lead to increased business and development. So far the Cenvat credit is concerned for April to September 2007, the appellant have filed in the paper book details of the invoices with date etc. amount of service tax paid etc. is reflected. I hold that the appellant will be entitled to Cenvat credit for the period in question. I remand to the adjudicating authority for the limited purpose to verify the amount of Cenvat credit and allow the credit accordingly. Upon such adjustment, if any amount of tax is found to be payable, the same shall be paid by the appellant in accordance with law. Thus the appeals are allowed with consequential benefit. The penalties imposed are also set aside. I also hold that extended period of limitation is not invocable in the facts and circumstances.

9. Both the appeals are allowed.

(Dictated and pronounced in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(K. Gupta)

Certified True Copy
24.10.16
Registrar