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

Dated: 27/08/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70716/2016-SM[BR] dated 09/03/2016

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/MISC/51778/2015	ST/52819/2015	ELCOMPONICS SALES PVT LTD C-24, PHASE-II 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

3Advocate(s) / Consultant(s):

Prabhat Kumar
B-51(BASEMENT), SARVODAYA
ENCLAVE
NEAR MOTHER
INTERNATIONAL SCHOOL
NEW DELHI

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

MA-51778/15
& S.T. Appeal No.52819/15

Arising out of OIA No.NOI/SVTAX/000/APPL-I/-6/2015-16 dated 20.04.2015 passed by Commr. of Central Excise (Appeals), Meerut I.

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

---

M/s Elcomponics Sales Pvt. Ltd.

...APPELLANT(S)

VERSUS

Commissioner of S. Tax, Noida

RESPONDENT (S)

APPEARANCE

Dr. Prabhat Kumar, Adv. for the Appellant (s)
Shri Rajeev Ranjan, Joint Commr. (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 09. 03. 2016

Final ORDER NO. 70716/2016

Per Mr. Anil Choudhary :

The appellant preferred the present appeal against order-in-appeal dated 20/4/15 passed by the Commissioner (Appeals), Central Excise, Meerut I.

2. The appellant is engaged in manufacturing of wire connector as 100% EOU and also registered as service provider under the category of "Renting of Immovable Property". The portion in which the manufacturing activity is carried out, has been bounded by the competent authority. In the same building, some portion of the floor area not required by the appellant, have been let out and the appellant received the rent and is liable to pay service tax under the category "Renting of Immovable Property". The appellant paid the service tax on the rental receipts by utilising the Cenvat credit available, arising from inputs received in the manufacturing unit. SCN dated 11/10/13 served on 14/10/13, was issued as it appeared to revenue that the appellant could not have utilised the Cenvat credit in their 100% EOU for payment of service tax under renting service, accordingly for the period September, 2008 to January, 2012, the appellant was required to show cause as to why service tax of Rs.25,84,001/- payable, should not be demanded along with interest, with further proposal to appropriate Rs.4,52,200/- paid by cash and also penalty was proposed under section 76 and 78 of the Act.

3. The appellant contested the show cause and vide OIO dated 11/9/14, the SCN was adjudicated and the proposed demand confirmed and the amount of Rs.4,53,200/- was appropriated for the

amount of Rs.36,817/- deposited, was also appropriated with interest and penalty of Rs.25,84,001/- was imposed under section 78 of the Act. Being aggrieved the appellant preferred appeal before the Commissioner (Appeals) who vide the impugned order was pleased to reject the appeal. Being aggrieved, the appellant is before this Tribunal.

4. The ld. Counsel for the appellant, states that there is no restriction in utilising the credit taken under the Cenvat Credit Rules. The appellant have rightly taken credit on the inputs under Rule 3(1) of Cenvat Credit Rules and have further rightly utilised the credit for payment of service tax under Rule 3(4) of the CCR. The ld. Counsel further states that the issue is no longer res-integra and this Tribunal in CCE,Coimbatore Vs. Luxmi Technology & Engineering Indus. Ltd. : 2011 (23) STR 265, wherein under similar facts and circumstances where the assessee was a manufacturer of components and aircraft components and was also providing service of "Renting of Immovable Property". It was held that Rule 3 (1) of CCR, enables a "manufacturer" or a provider of taxable service to take credit of specified duties and utilise them to discharge duty liability under Rule 3(4) of CCR. Credit can be utilised for payment of any duty of Excise on any final product or for payment of service tax on any output service. Thus, Rules permit taking of credit under a common pool and permit the use of the credit from the common pool for different purposes and there is no restriction placed to the effect that credit accounts should be maintained separately for use of manufacture of

excisable goods and for use of providing services, as the assessee have also registered themselves as service provider of service of "Renting of Immovable Property" and paying service tax as provider of Port service and therefore, the utilisation of credit taken by them is valid. The ld. Counsel also believes that the situation is revenue neutral as the appellant will be entitled to refund of the unutilised Cenvat credit being 100% EOU. The ld. Counsel also points out that the whole demand is for the extended period and the same is bad there being no malafide, suppression on their part.

4.1 By way of the Misc.Application, he has brought on record a copy of Audit Report for the year - 2004. Audit conducted for the period April, 2008 to November,2009 and the last date of Audit conducted was 29.12.09 and in the report, it is mentioned that the appellant haven't paid service tax on the rental income and interest was demanded for delayed payment. Subsequently, the said payment had been paid on 11.01.2010 through GAR Challan. It is further a matter of fact that the appellant have filed regular returns both under Service Tax and under Excise Act. Accordingly, he prays for admission of the additional document being Audit Report which was also filed before the ld. Commissioner (Appeals), but the same was not entertained by ld. Commissioner (Appeals).

5. The ld.A.R. for revenue relies on the impugned order. He further states that the premises rented out are separate from the EOU premises and also located in the same building. Accordingly the

rejection of utilisation of Cenvat credit for payment of service tax, is correct and accordingly, prays for rejection of the appeal.

6. Having considered the rival contentions, I find that there is no such restriction for utilisation of the Cenvat credit by a manufacturer, being 100% EOU under the Cenvat Credit Rules. Further, I find that the facts of this case are squarely covered by the earlier ruling of this Tribunal in the case of CCE,Coimbatore Vs. Luxmi Technology & Engineering Indus. Ltd. (cited supra) in favour of the appellant. I also find that extended period of limitation is not attracted in view of the earlier Audit Report for December to January, 2009-2010 and also under the fact that the whole exercise is revenue neutral. Thus, I allow the appeal and set aside the impugned order. The appellant will be entitled to consequential benefits in accordance with law. Miscellaneous application also stands allowed.

(Dictated and pronounced in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy

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