

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38, M.G. Marg, CIVIL LINES, ALLAHABAD

Dated: 20/1/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70834/2016 dated 06/1/2016

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

ST/53897/2014 MANUPTRA INFORMATION
SOLUTIONS PVT LTD
B-37, SECTOR-1, NOIDA
UP-201301

Name and Address
of Respondent CCE, NOIDA
C-56/42, SECTOR-62
NOIDA

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s) SH S.C. KAMRA, ADV
B-2/210 (BASEMENT)
SAFDARJUNG ENCLAVE
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), Vaidhyaram 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 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

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

S.T.Appeal No.53897/14

Arising out of OIA No.NOI/EXCUS/000/APPL/43/2014 dated 25/02/2014 passed by the Commissioner (Appeals), Central Excise & Customs & Service Tax, Noida.

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 Manupatra Information Solutions Pvt. Ltd.

...APPELLANT(S)

VERSUS

Commissioner of C.Ex., Customs & S.Tax,Noida

RESPONDENT (S)

APPEARANCE

Shri S. C. Kamra, Adv. for the Appellant (s)
Shri Chatru Singh, Asstt.Commr. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 06.01.2016

Final ORDER NO. 70034/2016



Per Mr. Anil Choudhary :

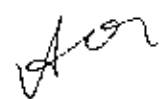
The issue in this appeal is with regard to Cenvat credit availed on common services utilized by the appellant for rendering taxable output services and clearance of exempt goods being books and CD published by them. This appeal is against order in appeal dated 25/2/14 passed by the Commissioner of Central Excise, Customs & S.Tax, Noida.

2. The brief facts are that the appellant is a publisher of law books CD which are goods and also provides output service under the classification "online information and data base service" as defined under section 65 (75) of the Finance Act, 1994. The appellant maintained the website for providing the output service which subscribers of data base access and retrieve information therefrom. That SCN dated 17/9/12 was issued, as it appeared to revenue that the appellant have utilised common input services for manufacture and clearance of exempt goods and also in providing taxable output service but have failed to either pay 5%/6% as required under Rule 6 (3)(i) or Cenvat credit in the ratio of turn over under rule 6(3) (ii) of CCR. Accordingly, the show cause notice proposed to bifurcate the common input service for the period 2007-08 to 2011-12 in the ratio of turn over, totalling to Rs.12,29,646/- along with interest and further penalty was proposed under Rule 15 of the CCR Rules, 2004. The appellant contested the show cause notice by stating that some of the services considered as common services like Internet service, web-



hosting service, content services, renting of immovable property services and manpower recruitment services, are exclusively attributable to taxable output service. As regards input service under the category renting of immovable property, the appellant contended that there are two separate rent agreements, one is for the space occupied for taxable output service for which rent is paid and the other is for cleaning of exempted goods for which no rent have been charged by the owner or the service provider. Both agreements are of even date. Further, the appellant admitted the liability for reversal on common input services like, courier service, manpower recruitment service, advertisement services et cetera and bifurcated the credit in the ratio of turn over, pursuant to issue of show cause notice and prior to passing of the order in appeal, the payment for common services was made with interest. Vide order-in-original dated 26/7/13, the proposed demand was confirmed for Rs.12,29,646/- with equal amount of penalty under Rule 15 (3) of CC Rules, 2004. Further, interest was also demanded under Rule 14 of CCR.

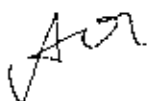
3. Being aggrieved, the appellant preferred appeal before the Id. Commissioner (Appeals). It was urged that so far the Internet service and content service is concerned, the same is exclusively attributable to taxable service as well as renting of immovable property which was occupied exclusively for taxable output service in view of separate agreement for the same. The Id. Commissioner (Appeals) observed that Internet service and content service can be used for printing of books and preparation of recorded CDs. In this age of information



technology, absence of Internet and related fields in business related to knowledge/intellect cannot be conceived. Further, the content for the books and CDs can be obtained by using the input services being Internet service and content service, and as such Internet service and content service cannot be exclusively used for taxable service. As regards, renting of the separate premises, it was noticed that the rents agreement for use of space for creation of CDs and books does not have any clause for payment of rent. It was inferred that as separate premises is used but no separate rent is being paid, hence, the Cenvat credit of service tax paid on renting of the property, also carries the component of Cenvat credit taken in respect of service tax paid in respect of the exempted goods. So far the reversal was made by the appellant in respect to other services, it was held that the same does not represent the correct figure and accordingly, the appeal was dismissed.

4. Being aggrieved, the appellant is in appeal before this Tribunal.

5. The Id. Counsel for the appellant urges that with respect to service charges paid to the Telecom Company for hosting their website through their service, are wholly attributable to taxable output service. Similarly, content service is required to convert physical data into digital data, which is a pre-requisite for online information in the computer language on the server. Accordingly these services exclusively used for the purpose of rendering outcome service which is taxable and as such, the Id. Commissioner has erred in considering that the same as common input service. So far as renting of premises,



is concerned, appellant is providing output tax service having occupied for monthly rent @ Rs.40/- per Sq/ft with effect from 1st April, 2007 and the appellant is occupying about 2083 Sq/ft. From the same landlord vide separate agreement of even date, the appellant have occupied a portion of 2nd floor in the same premises/building, which is also used by the employee of landlord and the appellant have been allowed to utilise 6 work stations without any rent from where they are doing publishing of printing books and CD which is exempted from duty. Accordingly, the Id. Counsel prays that the reversal made by them, may be accepted and the balance demand is waived, along with penalty. So far penalty is concerned, it is urged that all the transactions are properly recorded in the books of accounts maintained by them, and there was no malafide intention and/or suppression on their part.

6. The Id.A.R. for the revenue relies on the Impugned order and prays for dismissal of the appeal.

7. Having considered the rival contentions, I find that Internet service, web-hosting service and content service is wholly attributable to the activity of rendering taxable output service. Thus, the demand attributable to these input services is set aside. So far renting of premises is concerned, it is evident that the space provided on 2nd Floor of the same building is for the exempt activity of publishing of books and CDs, have been provided without rent in consideration of the rent paid Rs.40/- per Square fit vide the separate agreement for 2083 Square/ft, Thus, I remand the issue of Input rent to the



adjudicating authority, with direction to ascertain the space occupied for providing exempt activity and thereafter, re-distributed the rent in the ratio of space and accordingly, the appellant will be liable for reversal of Cenvat credit attributable to the space occupied for exempted activity.

8. So far penalty is concerned, I find that the appellants have co-operated with the revenue by providing the information, requisitioned from time to time. The issue is of interpretation of the statutes. No case is made out of deliberate default or contumacious conduct on the part of the appellant. Under such circumstances, taking lenient view, I reduce the penalty to Rs.25,000/- under Rule 15 (3) of the Cenvat Credit Rules.

9. Thus, the appeal is allowed in part and remanded in part as indicated above. The appellant is directed to appear before the adjudicating authority within a period of 8 weeks from the date of receipt of a copy of this order and seek an opportunity of hearing.

(Dictated and pronounced in the open Court)



(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy
b
21.1.16
राज्यक पंजीकरण / Asstt. Registrar
सीमाशुल्क, एम्. गे. मार्ग, एम्. सी. एम्.
अपील अधिकार / IC.E.S.T.A.T.
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