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

Dated: 28/03/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70120/2016 SM dated 21/03/2016

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/59271/2013	DRISHTEE DEVELOPMENT &COMMUNICATION LTD KNOWLEDGE BOULEVAVD TOWER B, 8TH FLOOR PLOT NO A-8A, SECTOR-62 NOIDA(UP
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, NOIDA C-56/42, SECTOR-62 NOIDA(UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH SWETANK SHANTANU,ADV #321, C.K.DAPHTARY BLOCK SUPREME COURT OF INDIA 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,Pinjagatta 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.59271/13

Arising out of OIA No.64/ST/APPL/Noida/2013 dated 22/03/2013 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

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M/s Drishtee Development & Communication Ltd. ...APPELLANT(S)

VERSUS

Commissioner of C.Ex., Customs & S.Tax,Noida RESPONDENT (S)

APPEARANCE

Shri Pratap Shanker, Adv. for the Appellant (s)
Shri D. K. Deb, Asstt.Commr. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 21.03.2016

Final ORDER NO. 70120/2016

Per Mr. Anil Choudhary :

The appellant is in appeal against Order-in-Appeal 64/ST/APPL/Noida/2013 dated 22/03/2013 passed by the Commissioner (Appeals), Central Excise & Customs & Service Tax, Noida.

2. The brief facts are that the appellant is a service provider and is engaged in providing taxable services i.e. Business Auxiliary Services (BAS) under Service Tax Registration No.AABCD7085NST001. Vide the Certificate of Registration dated 10.11.2009, the Issuing Authority have put a remark as "this certificate is issued incorporating the changes intimated by the applicant and the previous certificate of registration being Registration No.AABCD4746QST001 issued on 03.01.2007 stands cancelled." During the course of Audit, it is noticed that the appellant have taken Cenvat credit of Rs.2,42,738/- on the strength of invoices, which was addressed to M/s Drishtee Dot Com Ltd., M-3/17, S. K. Puri, Patna, , whereas the appellant is a company registered at New Delhi having its other office at Noida, (NCR).

2.1 In reply to the show-cause notice dated 27.07.2012 issued for the extended period from April, 2007 to December, 2008, the appellant explained that they were registered as "Company" in the year, 2000, named as M/s Drishtee Dot Com Ltd. having registered office at Patna, Bihar. Subsequently, in the year, 2005, the said registered office of M/s Drishtee Dot Com Ltd. was shifted from Patna to New Delhi, under due process of law and as confirmed by the

Company Law Board vide its Order dated 21.10.2015 in respect of shifting of registered office of the company. The appellant had taken premises at Noida in the year 2004 from one M/s Elco Accoustic Electronics Pvt. Ltd.. That the appellant company also changed its name from M/s Drishtee Dot Com Ltd. to M/s Dristee Development and Communication Ltd. w.e.f. 04.01.2007, which is confirmed by the fresh or amended Certificate of Incorporation, consequent upon the change of name issued by the Registrar of Companies, N. C. R. of Delhi & Haryana dated 04.01.2007. Thereafter, on 01.04.2007, the appellant entered into a fresh agreement of rent with the same Landlord for the premises located at A-11, Sector 2, Noida, which was practically a renewal of their earlier rent agreement. Further, it appears that the rent receipts for the period April, 2007 and subsequently, the said Landlord issued of receipts or invoice erroneously in the old name of the appellant i.e. M/s Drishtee Dot Com Ltd.. It appears that vide OIO dated 30.11.2012, the Asstt.Commissioner had taken this fact on record, but erroneously, concluded that the appellant is not one, but two separate entity. First registration certificate under the Service Tax, was issued with Registration No. AABCD4746QST001 issued in the name of M/s Drishtee Dot Com Ltd. at A-11, Sector 2, Noida, whereas subsequent, registration certification dated 07.12.2009, has been issued with Regn.No.AABCD7085NST001 in the name of M/s Dristree Development and Communication Ltd. at A-8A, Sector 62, Noida. As the premises are different, it was held that the credit on which the input services utilized by one unit, cannot be availed by other unit for providing output services. Accordingly, the proposed demand was confirmed along with equal amount of penalty of Rs.2,84,501/- under Rule 15 of Cenvat Credit Rules, 2004. Being aggrieved, the appellant preferred an appeal before the ld.Commissioner (Appeals), who vide the impugned order, has been pleased to reject the appeal observing that the service tax registration is PAN based and there are two PAN numbers and thus, it is case of the two different assessee and not of the one and same assessee

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

5. The ld. Counsel for the appellant urges that the ld.Commissioner (Appeals) has erred, as in spite of the fact that the appellant pursuant to its shifting from Patna to New Delhi had taken a second PAN number under the provisions of Income Tax Law instead of getting amendment recorded in the original PAN number, and the amended registration certificate under Service Tax Act was issued with new PAN number, and they had got the old PAN number finally surrendered in December, 2012. In view of the fact that M/s Drishtee Dot Com Ltd. and M/s Drishtee Development and Communication Ltd. is one and the same company is one of the same assessee under provisions of Service Tax Act, which is evident on the face on record in view of the amendment of service of registration granted in the year, 2009, wherein the issuing authority have adequately put remark on the amended service of the existing or the earlier registration certificate under different registration number. Accordingly, he prays for allowing the appeal with consequential relief.

6. The ld.A.R. for the revenue relies on the impugned order and states that under the facts and circumstances, the appellant is responsible of the errors and confusion created. He further points out that the in view of invoices, all in the old name and in absence of adequate clarification from the service provider and further, he points out that the registration number of service provider, is also not mentioned on the invoices, accordingly, disallowance is justified.

7. Having considered the rival contentions, I find that the issue of PAN numbers and two premises had not been brought out in the SCN. It appears from the fact in OIO that the SCN was issued for disallowing Cenvat credit on rental services as there was old name of the assessee company in the invoice and also for address of Patna, Bihar. Whereas disallowance was made on the ground that there was different premises having two different registration numbers and thus two different assessee. I find that so far controversy of two different asseessee, is concerned, some in no longer existing in view of the remarks on amended registration certificate, wherein in the old registration is also mentioned, having a different PAN Number.

8. So far as controversy of two different premises are concerned, I remand the matter to the adjudicating authority with a direction to verify the details and the fact of deposit of service tax by the service provider. The appellant is also directed to produce the clarification certificate from the service provider, clarifying clerical error in the invoices meant for rental premises mentioning their registration

number etc and certifying that they have deposited the service tax. It is further held that the substantial benefit of Cenvat credit can not be denied for clerical error, which is evident on the face of record.

9. Accordingly, I allow the appeal by way of remand. The Adjudicating Authority is directed to pass a reasoned order within a period of 90 days from the date of receipt of a copy of this order. The appellant is directed to appear before the adjudicating authority with relevant documents, which they want to rely upon and seek an opportunity of hearing.

(Dictated and pronounced in the open Court)

(Anil Choudhary)
Member (Judicial)

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