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: 14/02/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70165/2017-SM[BR] dated 13/02/2017

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.

14/02/17
Asstt. Registrar/SPS

| Application | Appeal | Name and Address of Appellant |
|---|---|---|
| 1 | E/50653/2015 | **Unicure India Ltd**<br>C-22 & 23, Sector-3<br>NOIDA<br>UP |
| | | Name and Address of Respondent |
| 2 | | C.C. & C.E. & S.T.-Noida<br>C-56/42...SECTOR 62,<br>NOIDA,<br>UTTAR PRADESH-201307 |

Copy To
3Advocate(s) / Consultant(s):

**G.K. BASU**
**C-28, PKT-7, KENDRIYA**
**VIHAR-2 SECTOR-82**
**NOIDA-201304**

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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy ~~16 Guard File~~

14/2/17

Asstt. Registrar/SS

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

Appeal No.E/50653/2015-EX[SM]

Arising out of Order-in-Appeal No.NOI/EXCUS/000/APPL/200/2014-15 dated 31.10.2014 passed by Commissioner (Appeals) Customs & Central Excise, 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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M/s Unicure India Ltd.

...APPELLANT(S)

**VERSUS**

C.C., C.E. & S.T., Noida

...RESPONDENT (S)

**APPEARANCE**

Shri G.K. Basu Consultant with Jayant Kumar, Advocate for the Appellant(s)
Shri B. Kumar Iyer, Supdt. (A.R.) for the Department

**CORAM:**

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

DATE OF HEARING & PRONOUNCEMENT: 23.09.2016

FINAL ORDER NO.- 70165/2017

**Per Mr. Anil Choudhary :**

The issue in this appeal is regarding allowability of Cenvat Credit in respect of some invoices address to the Head Office instead of Factory address, service tax collected by M/s Himachal Pradesh State Civil Supply Corporation, on the supplies made through the said corporation, and service tax paid for such services-sales promotion, received by the appellant.

2. The brief facts are that the appellant is a manufacturer of Medicines excisable product falling under CET Act. Pursuant to audit for the period July, 2009 to July, 2011, SCN dated 11th February, 2013 was issued, as it appeared to Revenue that appellant have availed Cenvat Credit of Rs.3,00,760 on the strength of invoices which were addressed to the head office, instead of the factory. Thus, the invoices are not addressed to the specified premises or the factory premises. Secondly, it appeared that service tax paid by the appellant to 'M/s Himachal Pradesh State civil Supply Corporation', is not allowable amounting to Rs.39,500/-, as debit note is not the prescribed document for availing Cenvat credit and it further appeared that the appellant have availed Cenvat Credit of Rs.11,87,353/-, on the strength of invoices issued by the service provider-M/s Parmeshwar & Sons, Faridabad for providing un-skilled labour for loading/unloading, delivery and small packing outside the factory of the goods, cleared from the factory and also for supply of

skilled labour for the purpose of marketing and sales promotion. The SCN was adjudicated on contest and the proposed demand was confirmed with interest and equal amount of penalty imposed being Rs.15,27,613/-. Being aggrieved, the appellant preferred an appeal before the Ld. Commissioner (Appeals), who vide the impugned order was pleased to reject the appeal.

3. Being aggrieved, the appellant is in appeal before this Tribunal. The learned counsel for the appellant urges that so far, the first issue is concerned regarding disallowance of Rs.3,00,760/- for invoices of inputs not addressed to the factory, but addressed to the head office, that is no dispute by Revenue that they have not received the inputs in the factory, nor it is disputed that they have paid the purchase value or the invoice value of the said input services. This issue is no longer res-integra and this Tribunal in several rulings have held that, while invoices are addressed to head office but the service or inputs have been received in the factory, the Cenvat Credit is allowable. So far, the second issue is concerned regarding service tax, collected on the Supply bills of the appellant, the learned counsel have taken me through the agreement of purchase between them and M/s HP State Civil Supply Corporation, wherein it is provided in Clause 18 that the Corporation shall release the payment to the supplier, on behalf of the indenting Officer, on receipt of verified Bills from the indenting Officer, on bill to bill basis. The supplier shall pay service charges to the Corporation @ 4% of the product value (excluding sales tax) of the stock supplies.

The Corporation shall deduct the service charges, from the payment to be released to the supplier and the balance payment shall be made through cheques/draft. Further, draft charges payable to bank shall be recovered from the supplier and the Corporation shall also deduct service tax on service charges amount, from the payment of the suppliers in accordance with the provisions of service tax Act, as notified by the government of India from time to time. Further, perusal of the 'Bill' or 'payment advice' or challan issued by the M/s HP State Civil Supplies Corporation dated 26.03.2011, it is seen that the same is properly numbered and also contains the service tax registration number of the Corporation, the same is addressed to the appellant mentioning that it is for payment of medicine supplies to Government Hospitals and Medical Institutions. Further, in the details in the form of table, the total Bill amount along with Bill numbers is given thereby, service charges have been shown at the agreed rate and service tax thereon. Further, deduction for security, etc. are shown and the net amount payable have been reflected and further details of the D.D number, date etc. is given. Accordingly, it is evident that service charges have been collected by the Corporation under the agreement between the parties, as the Corporation is providing the service of distributing the product of the appellant in the remote corners of the State of Himachal Pradesh and as such the appellant is benefited by the said service and accordingly paid the service charges along with service tax thereon. The learned counsel also points out that it is not disputed by the revenue that service charges and service tax have been paid to the registered supplier of service. The learned counsel further states that Rule 9 of Cenvat Credit Rules, 2004 read with rule 4 A of Service Tax Rules, 1994, provides that every person providing taxable service is required to issue invoice, Bill, or as the case may be, challan, signed by such person in respect of the taxable service provided or to be provided and such invoices/bills/challan may be serially numbered and contain the particulars bills, names and address and registration number of such person, name and address of the person receiving the taxable service, description and value of taxable service provided or agreed to be provided and the service tax payable thereon. Accordingly, all the conditions being fulfilled the disallowance of Cenvat Credit is bad and the same is fit to be allowed.

4. The Ld. AR for Revenue relies on the impugned order. He further takes me through the Para-6, 7 & 8 of the impugned order, wherein the Commissioner(Appeals) have observed that he finds that as per Sub-Rule 1 of Rule 9 of CCR, 2004, the prescribed document for Cenvat credit is an invoice of the manufacturer or service provider, and Sub Rule 2 to Rule 9, provides that no Cenvat Credit under Sub Rule 1 shall be taken unless all the particulars as prescribed under the Rules, as the case may be, are contained in the said documents. Further, the Commissioner (Appeals) found the debit note (not containing any of the aforesaid particulars) of the service provider and the letter issued by M/s Himachal Pradesh State Civil Supply Corporation, not containing the description of the service provider,

registration number etc., is not the proper document for availment of Cenvat Credit as per the CCR, 2004. Further, the findings are recorded that the said Corporation is acting as Commission/Sales agent on behalf of the appellants for sale of the products in the state of Himachal Pradesh, which is evident from condition number 18 of the agreement/letter dated 17.02.2009, wherein it is recorded that the Corporation shall charge, service charges on the product value of the stock supplied. Regarding the services received from Parmeshwar & Sons, it is observed that the same does not fall under Sales Promotion Service, relying on the ruling of Hon'ble Gujarat High Court in the case of CCE Vs. Cadilla Health Care Ltd. reported in 2013(30) STR 3.

5. Having carefully considered the rival contentions. I hold that so far the first issue is concerned regarding liability of Cenvat credit on invoices issued to Head Office, instead of factory premises, I hold the same is allowable and accordingly, the Cenvat Credit of Rs.3,00,760 is held allowable to the appellant. So far, the second issue is concerned regarding Cenvat Credit on service tax paid for the services, provided by M/s HP State Civil Supply Corporation, I hold that all the information as required in terms of Rule 9 CCR, 2004 read with Rule 4 A of ST Rules are fulfilled and as such, I hold that the appellant is entitled to the Cenvat Credit of Rs.39,500/- in question. So for, the third issue is concerned regarding the availability of Cenvat credit of Rs.11,87,353/-, I find that from the perusal of invoices on record, and the agreement between the

parties that it is basically an agreement to provide manpower for specified purposes being packing, forwarding or marketing or sales promotion. It is not disputed by Revenue that the appellant have not received the deployment of manpower by the service provider for the work of the appellant. Further, I find that the service provider is registered and have raised proper bills which contained, prima facie, particulars required and the appellant have made the payment by cheque through the banking channel, which prima facie satisfies the authenticity of the transaction. There appears to have been some dispute as to nomenclatures of the services received, as the appellant in their reply to SCN, claimed the service to be towards sales promotion. But on perusal of the records and on appreciation of explanations and submissions, I find that what the appellant has received is 'supply of manpower' from the service provider for the work in the nature of packing, forwarding, sales promotion and/or marketing which are all taxable services under the provisions of Service Tax Act and the Rules, accordingly, I hold that the appellant is entitled to Cenvat credit of Rs.11,87,353/-.

6. Thus, the appeal is allowed with consequential benefits. The impugned order is set aside.

(Dictated and Pronounced in the open Court)

Sd/-

**(ANIL CHOUDHARY)**
**MEMBER (JUDICIAL)**

Mishra

प्रमाणित प्रति / Certified True Copy
21/02/17
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