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: 13/02/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70160-70162/2017-EX[DB] dated 31/01/2017

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.**

13/2/17
Asstt. Registrar/SPS

	Application	Appeal	Name and Address of Appellant
1	, E/MISC/50589/2015, E/MISC/70064/2015	E/60028/2013	**Hindustan Unilever Ltd** A-1,upside Industrial Area , Bharua,sumerpur HAMIRPUR U.P 210502
2	, E/MISC/50590/2015, E/MISC/70065/2015	E/60029/2013	**Hindustan Unilever Limited** A-1,upside Industrial Area, Orai, JALAUN U.P
3	, E/MISC/50591/2015, E/MISC/70066/2015	E/60030/2013	**Hindustan Unilever Ltd** A-1,upside Industrial Area Bharura Sumerpur HAMIRPUR U.P

	Name and Address of Respondent
4	C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005
5	C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005

6

C.C.E. & S.T.-Kanpur
117/7...SARVODYA NAGAR,
KANPUR,
UTTAR PRADESH-208005

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Other Appellants and Respondents as per Annexure

Copy To

7Advocate(s) / Consultant(s):

CEN-EX Services, Advocate
POST OFFICE BUILDING,
2ND FLOOR,
J.B.NAGAR, ANDHERI
(EAST)
MUMBAI,
MAHARASHTRA
400059

8 Bar Association, CESTAT, Allahabad

9 Director Publications, Customs, Excise, I.P. Estate, Delhi

10 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

11 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

12 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

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

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

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

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

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

18 C.D.R. 19 Office Copy 20 Guard File

13/2/17
Asstt. Registrar/SPS

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD
COURT No:- 2

Appeal Nos. : E/60028/2013 to 60030/2013 -EX[DB] with
MISC Application Nos. E/MISC/50589/2015 to 50591/2015 &
E/MISC/70064/2015 to 70066/2015

Arising out of O/O No. KNP-EXCUS-000-COM-005-13-14 dated 28.06.2013 passed by Commissioner of Central Excise & Service Tax, Kanpur.
For approval and signature:

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

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 Hindustan Unilever Limited

...APPELLANT(S)

VERSUS

Commissioner of Central Excise & Service Tax,
Kanpur.

...RESPONDENT(S)

APPEARANCE:
Ms Padmavati Patil, Advocate for the Appellant(s)
Shri Rajeev Ranjan, Joint Commissioner (AR), for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 31. 08. 2016

FINAL ORDER NO. 70160 - 70162 / 2017

Per Mr. Anil Choudhary :

The appellant, a manufacture of soap detergent etc., is in appeal against Order-in-Original No. KNP-EXCUS-000-COM-005-13-14 passed by Commissioner of Central Excise & Service Tax, Kanpur with respect of three Show Cause Notices denying Cenvat credit received by the appellant units by way of ISD Invoice issued by their Head Office, which is registered as ISD.

2. The common issue involved in the three appeals is as to whether credit of Cenvat taken on the basis of ISD Invoices issued by the Head Office of the appellant units is deniable for curable or procedural lapses like non-mention of PAN based registration number, address of service provider etc. in case where all mandatory details required to be mentioned in the ISD Invoices have been provided by way of accompanying certificate with annexures and the same finds mention on the face of the ISD Invoice so as to comply substantially with the provisions of Rule 4A of Service Tax Rules read with Rule 7 of CCR, 2004.

3. Heard the parties.

4. The period in dispute is from 1st March, 2007 to 31st March, 2010. Pointing out the relevant provisions the learned Counsel, Ms. Padmawati Patil, for the appellants states that Rule 7 of CCR, 2004 provides for manner of distribution of credit by an 'Input service distributor' (ISD) which provides two conditions namely:-

(a) The credit distributed against a document referred to in Rule 9 does not exceed the amount of Service Tax paid thereon; or

(b) Credit of Service Tax attributable to service is used in a unit exclusively engaged in manufacture of exempted good or providing of exempted services shall not be distributed.

The said Rule 7stood substituted with effect from 1st April, 2012 wherein under Clause (d) it was provided – credit of Service Tax attributable to service used by more than one unit shall be distributed pro rata on the basis of their turnover of all its units during the relevant period to the total turnover of such units which are operational in the current period, during the said relevant period.

5. Further, Rule 9 of CCR, 2004 provides that Cenvat credit shall be taken by the manufacturer on any of the following documents which includes an invoice, bill or challan issued by an 'Input service distributor' under Rule 4A of Service Tax Rules, 1944. Further, proviso to Rule 9(2) provides that if the said document does not contain all the particulars but contains the details of duty or Service Tax payable, description of the goods or taxable service, assessable value, Central Excise or Service Tax registration number of the person issuing invoice, as the case may be, name and address of the factory or warehouse or premises of first or second stage dealer or provider of taxable service, and the Central Excise Officer, as the case may be, is satisfied that the goods or services covered by the said

documents have been received and accounted for in the books of the accounts of the receiver, he may allow the Cenvat credit.

6. Rule 4A of Service Tax Rules, 1944, Sub-rule 2 provides – every input service distributor distributing credit of taxable services shall in respect of credit distributed issue an invoice/bill/challan signed by the authorized person for each of the recipient of the credit distributed and such document shall be serially numbered and shall contain following, namely:-

(i)The Name, Address & Registration Number of the person providing input services and serial number and date of bill or as the case may be, challan issued under sub-rule 1,

(ii) The Name & Address of the said input Services distributor.

(iii) The Name & Address of the recipient of the credit distributed

(iv) The amount of the credit distributed.

7. According to the SCN issued on the appellants invoking the extended period being SCN dated 02-04-2012, the main allegations of Revenue are – ISD Invoices show non-PAN based registration numbers of the distributor that is the Head Office of the appellant, service providers are not having PAN based registration numbers, address of service providers not mentioned in ISD Invoices and credit have been distributed equally to almost all the units, and also objected to the inter unit distribution of the services received. The ld. Counsel for the appellant has explained that during the relevant

period under the provisions there was no such restriction on inter unit adjustment of the credit received and accordingly the same is correctly availed. So far as, ISD number of the distributor is concerned the pan based registration number was allotted sometime in the year 03-10-2011, and accordingly before the date of allotment of PAN based registration number they could not have used the same. It has also been pointed out that the scheme of PAN based registration number came into practice since 2007 only. According, no adverse inference could have been drawn for the use of non-PAN based registration number which was allotted sometime in January, 2005. Similarly, the service providers are also having non-PAN based registration number, cannot be a reason for disallowance of the Cenvat credit in the hands of the appellants. The ld. Counsel also relies on the rulings of this Tribunal on this issue in the case of Commissioner of Central Excise, Vapi *Versus* Jindal Photo Ltd. reported at 2009 (240) E.L.T. 728 (Tri. – Ahmedabad) . So far as the issue of 'address of service providers not mentioned in the ISD Invoices are concerned,' it has been explained that appellants received services from several service providers and the invoices range between 3,000 to 10,000 in the given period. Therefore, full address of each of the service provider could not have been included in the ISD Invoices as otherwise the ISD Invoice will become very bulky to handle. In order to avoid the same, only registration numbers of the service providers were given. However, the appellant does maintain a database of such service providers with the complete address and same was provided to Revenue during the course of enquiry and adjudication proceedings. It is not the case of Revenue that appellant failed to provide any of the details of the service providers to Revenue at any stage. The ld. Counsel has also taken us through the sample of ISD Invoices which have been annexed in the appeal Paper Book. From perusal of the invoice dated 27-11-2008 for the period September, 2008 issued by the Head Office (ISD) of the appellant, we find that it contains full address of the issuer or ISD, it contains the ISD number, date, and the same is addressed to Hamirpur Unit, then it contains the amount distributed and on the face of the invoice in the footnotes it have been mentioned - (i) The amount of Service Tax entitlement reflects the credit on input services paid and accounted for centrally at the Head Office,

(ii) The credit claimed on the invoices have been issued by registered Service Tax assessee,

(iii) Service Tax has been claimed as credit for such amount which has been paid and attributable to the dutiable goods manufactured by the company's own factories,

(iv) Input Services incurred for a particular class of goods have been identified and allocated proportionately on the basis of proportionate quantity of goods manufactured at the respective factories/units, common service which cannot be related to any particulars of goods manufactured, has been allocated on the basis of dispatch quantities for the given period to all dutiable goods, no credit of Service Tax has been claimed for goods manufactured in units located in Area based exemption, &

(v) These ISD Invoice is to be read with certificate of even date issued by the Chartered Accountant of the Company at Mumbai. In the annex CA Certificate, it is mentioned that pursuant to the examination of the records of the appellant ISD along with reports received from various factories & offices, 'It is certified that the information given in the enclosed statement is in accordance therewith. The statement covers services availed by the company, and paid and accounted for, at their Head Office situated at Mumbai and entitled to distribution of Service Tax credit, as attributable to the goods manufactured by them.' Further, the gross amount eligible for distribution has been given, further Annexure-2 to the certificate is the distribution of credit-unit wise, wherein the appellants units are also there, also annexed category wise summary of service tax paid and distributed for the relevant period along with party wise summary of service tax paid and distributed for the relevant period, wherein the relevant columns are, name of the service provider, registration number, tax amount paid, tax amount eligible for credit distribution and the credit was distributed. Accordingly, it is prayed that in view of the substantial compliance made, the Cenvat credit so distributed by ISD Invoice should not been disallowed, accordingly the ld. Counsel prays for allowing the appeal with consequential benefits.

8. The ld. AR for Revenue relies on the impugned order, and relying on the findings of ld. Commissioner have emphasized that in the matters of

procedure where the statue provides a particular thing to be done in a particular way, the same should be done accordingly, otherwise not done at all.

9. Having considered the rival contentions and on perusal of the records we are satisfied that the appellants have made substantial compliance with the provisions of taking Cenvat credit read with the provisions for Input service distribution, as already noticed hereinabove. Whatever, minor infarction of the Rules has occurred, it appears to be due to the bulk nature of the data and there appears to be no deliberate disobedience of law. In this view of the matter, we hold that the appellants are entitled to Cenvat credit received from their Head Office/input service distributor. Further, under the facts and circumstances of this case, we hold that there is no contumacious conduct or deliberate defiance of law and accordingly we hold that the extended period of limitation is not attracted. Thus, the appeal is allowed with consequential benefits in accordance with law. Impugned order is set aside & the six Miscellaneous Applications are also disposed of.

(Dictated and pronounced in the open Court)

-Sd/-	-Sd/-
(ANIL G. SHAKKARWAR)	(ANIL CHOUDHARY)
Member (TECHNICAL)	Member(JUDICIAL)

(Ansari)

प्रमाणित प्रति / Certified True Copy
22.02.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
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38, M. G. MARG, ALLAHABAD-211001