

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: 05/12/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71884/2017-EX(DR) dated 01/12/2017

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.

Asslt. Registrar

Application Appeal Name and Address of Appellant

1. CROUS/4012/2012 E/3029/2012 Commissioner CUSTOMS
Central EXCISE and
SERVICE TAX-Noida
C-56/42...SECTOR 62,
NOIDA,
UTTAR PRADESH
201307

Name and Address of
Respondent

Uniwod Telecom Ltd
D-149, Sector 63,,
NOIDA
UP

Copy To

- 3 The Association, CESTAT, Allahabad
- 4 Director Publications, Customs, Excise, I.P. Estate, Delhi
- 5 New Centax Publications Pvt. Ltd., 1512-B, Bhalraj Pitamahi Marg, Opp ICICI Bank of Defence Colony New Delhi-11
- 6 Company Law Institute of India Pvt. Ltd., No.2 (old no.35), Vaidhyarun Street, T. Nagar, Chennai-17
- 7 Taxman Allied Service Pvt. Ltd., 59/32, New Rohuk Road, New Delhi-110005
- 8 LAWCREX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
- 9 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
- 10 Shuk Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
- 11 The ICFAI society, 32, Nagarjuna Hill, Punjagutta Hyderabad.-500082
- 12 MES Knowledge Processing Pvt. Ltd.(taxmanagementindia.com), FF-19, 1st Floor, Cross River Mall, CBD Ground, Near Karkandooma Court, Delhi-110032
- 13 C.D.R.
- 14 Office Copy
- 15 Second Folder Copy
- 16 Guard File

Asslt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL No. E/3029/2012-EX[DB] With
CROSS Application No. E/CROSS/4042/2012

(Arising out of Order-in-Appeal No. 179/CE/APPL/Noida/2011 dated
28/06/2012 passed by Commissioner of Customs, Central Excise & Service
Tax (Appeals), Noida)

Commissioner of Customs, Central Excise & Service Tax,
Noida Appellant

Vs.

M/s Uniword Telecom Ltd. Respondent

Appearance:

Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR).

for Appellant

Shri Rajesh Chhibber (Proxy Counsel)

for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 01/12/2017

FINAL ORDER NO. 7.18841.2017.....

Per: Archana Wadhwa



Being aggrieved with that part of the impugned order passed by Commissioner (Appeals) vide which he has set aside the penalties of Rs.12,64,665/- under Section 11 AC of the Central Excise Act, 1944 but has upheld penalty of Rs.50,000/- under Rule 15(1) of the Cenvat Credit Rules, 2004, Revenue has filed the present appeal.

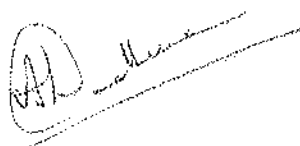
2. After hearing both the sides, we note that Revenue objected to availment of Cenvat credit of duty availed in respect of Service Tax paid on Banking & Financial Services.

dependant upon a particular date, on which such credit was not available. The assessee did not object to the same and debited the credit.

3. The Original Adjudication proceedings initiated against the assessee resulted in confirmation of such debit entry and further confirmed the interest and imposed penalty. On appeal Commissioner (Appeals) upheld the confirmation of interest and imposition of penalty under Rule 15(1) of the Cenvat Credit Rules, 2004, and set aside the penalty imposed under Section 11 AC of the Central Excise Act, 1944.

4. We note that the issue involved was a *bona-fide* issue and the appellant could have been under a *bona-fide* belief that such credit was available to them even prior to the date on which they had availed the same. There is no evidence produced by the Revenue that said availment was with any *mala-fide* intention. As soon as, the said wrong taking of credit was pointed out to the appellant they reversed the same and are not disputing the said reversal or confirmation of interest. However, they have filed Cross Objection challenging upholding of penalty of Rs.50,000/- in terms of Rule 15(1) of the Cenvat Credit Rules, 2004.

5. In as much as, we have already observed that there is no evidence reflecting upon the appellants *mala-fide* intention to avail the inadmissible credit, the imposition of penalty



6. In view of the above, we reject the Revenue's appeal and allow the Cross Objection filed by the assessee by treating the same as Cross Appeal.

7. To sum up, Revenue's appeal is rejected and Cross Objection/Appeal is allowed.

(Dictated & Pronounced in Court)

Ed/-
(Archana Wadhwa)
Member (Judicial)

संज्ञा

ਸਮਝਿਤਾ ਅਧਿਕਾਰਿਤ True Copy

सहायक पंजीयक (Asst. Registrar)
पंजीयन, न्यायशास्त्र एवं सेवा कर
अपील प्रविष्टि (C.E.S.T.A.T.)
39, एम.जी. मार्ग, दलहौज-211001
38, M. G. MARG, ALHAHADAD-211001