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[DB] dated 01/12/2017

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.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
E/CROSS/40412/2012	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 Bar Association, CESTAT, Allahabad

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

5 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

6 Company Law Institute of India Pvt. Ltd., No.3 (old no.36), Vaitheyaram Street, T. Nagar, Chennai-17

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

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

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

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

13 C.D.R. 14 Office Copy 15 Second Folder Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

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. 71884/2017

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

upon them is not warranted. We accordingly find no merits in the Revenue's contention that the penalty is imposable under Section 11 AC of the Central Excise Act, 1944. In fact, we note that the Commissioner (Appeals) having set aside penalty imposed under Section 11 AC of the Central Excise Act, 1944, should have also set aside the penalty imposed under Rule 15(1) of the Cenvat Credit Rules, 2004.

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)

Sd/-
Anil.G. Shakkarwar
Member(Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Ansari

सत्यापित प्रति/Certified True Copy
05/01/18
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