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: 15/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71030/2017-SM[BR] dated 08/09/2017

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
1	E/3705/2010	**JAYPEE PALACE HOTEL,** FATEHABAD ROAD, AGRA.
		Name and Address of Respondent
2		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.

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

S. K. Pahwa,Adv
D-75, AMAR COLONY,
LAJPAT NAGAR - IV,
NEW DELHI,
DELHI
110024

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

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad – 211 001

COURT NO. II

DATE OF HEARING : 08/09/2017.
DATE OF DECISION : 08/09/2017.

Excise Appeal No. 3705 of 2010 (SM)

[Arising out of the Order-in-Appeal No. 450-ST/APPL/KNP/2010 dated 09/09/2010 passed by The Commissioner (Appeals), Central Excise, Kanpur.]

M/s Jaypee Palace Hotel — Appellant

Versus

CCE, Kanpur — Respondent

Appearance

Shri S.K. Pahwa, Advocate – for the Appellant.

Shri Mohd. Atlaf, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No. 71030/2017 Dated : 08/09/2017

Per. Ashok Jindal :-

The appellant has a hotel engaged in providing services of mandap keeper, health club and fitness centre, beauty treatment, dry cleaner, internet café, outdoor catering, transportation of goods by road and convention services. The appellant was registered with the Service Tax Department and paying service tax on the above services. A case has been made out against the appellant that as appellant is availing Cenvat credit of the inputs/input services, therefore, they are not entitled to avail abatement of 40% on Mandap Keeper and shamiana on hiring of tent services. In that circumstances, the abatement availed by the appellant was denied. It was also held that as per Rule 6 (5) for the specified services, the availment of Cenvat credit is restricted to 20%, whereas the appellant is availing Cenvat credit on all the services on full amount. Therefore, the appellant is not entitled to avail Cenvat credit in full which is required to be restricted to 20%. In that circumstances, the show cause notice was issued to the appellant by invoking extended period of limitation as the show cause notice was issued on 10/07/2007 for the period June 2004 to March 2007 as has been issued on the summary of ER-1 return.

2. Heard the parties considered the submissions.

3. I find that in this case the claim of the appellant is that they have not availed Cenvat credit on input/input services used for the services provided by them which falls under Mandap Keeper service. As they are not availed the Cenvat credit, the appellant have been availing 40% abatement of gross value for the payments of service tax under Notification No. 10/2004 dated 09/07/2004 with effect from 10/09/2004, and after March 2006, they have not provided this service for the period post March 2006. As they have provided the services but they have not availed the Cenvat credit on input/input services used for Mandap keeper services. Therefore, they are entitled for abatement.

Ashokjwalke

4. I have gone through the record. The fact whether post March 2006 appellant has availed Cenvat credit on input/input services pertains to Mandap keeper service is required to be ascertained by the Adjudicating Authority, therefore, the matter needs examination at the end of the Adjudicating Authority.

5. For the specified services mentioned in Rule 6 (5) of Cenvat Credit Rules, 2004 the contention of the appellant is that they have not availed full Cenvat credit but availed Cenvat credit on the other services which are not specified in Rule 6 (5) of the Rules. In that circumstances, the appellant has availed only 20% of the Cenvat credit on the services, which falls under Rule 6 (5) of the Rules. I find that this fact is also to be ascertained by the Adjudicating Authority from the records of the appellant. In that circumstances, the matter needs examination with the Adjudicating Authority.

6. Cenvat credit also denied on manpower recruitment service on the premise that same do not qualify as input service as per Rule 2 (l) of Cenvat Credit Rules, 2004. I find that in the case of **CCE, Nagpur vs. Ultratech Cement Ltd.** reported in **2010 (260) E.L.T. 369 (Bom.)**, the Hon'ble High Court of Bombay held that in service provided by the appellant in the case of output service, the assessee is entitled to avail Cenvat credit. Admittedly, the service impugned has been availed by the appellant being a output service provider. Therefore, I hold that appellant is entitled to avail cenvat credit.

7. In view of the above, analysis, the matter needs for re-examination and examined at the end of the Adjudicating Authority to ascertain the fact that Cenvat credit be availed on input/input services for provided Mandap keeper service and whether the appellant has take the 20% Cenvat credit on the services fall under Rule 6 (5) of the Rule or not. Therefore, by setting aside the impugned order, the matter is remanded back to the Adjudicating Authority to decide the matter afresh. The issue of limitation kept open, the same shall be dealt by the Adjudicating Authority.

8. In these terms, the appeal is disposed of in the above terms.

(Dictated and pronounced in open court.)

Sd/-

(Ashok Jindal)

Member(Judicial)

PK

प्रमाणित प्रति/Certified True Copy

27/09/17

सहायक पंजीकार/Asstt. Registrar

38 ... ALLAHABAD-211001