

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: 28/11/2017

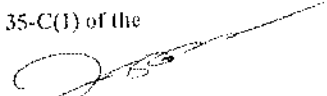
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71637/2017-SM[BR] dated 24/11/2017

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/70397/2017	Deki Electronics Ltd B-20 & 19 (rear Side), Sector-58, NOIDA UTTAR PRADESH

Name and Address of
Respondent

C.C. & C.E. & S.T.-Noida
C-56/42...SECTOR 62,
NOIDA,(UP) - 201307

Copy To

3Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD, (UP)

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, Opp ICICI Bank of Defence Colony New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaidhyaram 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

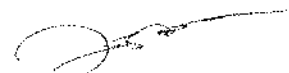
13 M/S Knowledge Processing Pvt. Ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R.

15 Office Copy

16 Second Folder Copy

17 Guard File


Asstt. Registrar

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

Ex.Appeal No.70397/17

Arising out of O/A No.NOI-EXCUS-001-APP-1717-16-17 dated 17.02.2017
passed by Commr. (Appeals) of Central Excise & Custom & S.Tax, Noida

M/s Deki Electronics Ltd.

...APPELLANT(S)

VERSUS

Commr. of Central Excise, Cus. & S.T., Noida

RESPONDENT (S)

APPEARANCE

Written Submission by the Appellant (s)
Shri Pradeep Kumar Dubey, Supdt. (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE JUDICIAL MEMBER

DATE OF HEARING/DATE OF DECISION : 24. 11. 2017

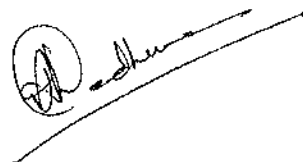
Final ORDER NO. 71637/2017

Per Mrs.Archana Wadhwa :

The appellant has made a request to decide the appeal on merit. It is seen that the appellant was availing services of man-power service provider, who instead of paying the tax of 25% of the value, paid the tax on the entire 100% of the value of services.

2. The present appellant took the credit of the same.

3. Revenue by entertaining a view that the service provider has paid the excess service tax sought to deny the credit of the same to the present appellant. Accordingly, after initiation of proceedings, the demand were confirmed with imposition of penalty, which stands upheld by the ^{appellate} original adjudicating authority.





Ex.Appeal No.70397/17

4. I find that the issue is no more res-integra. There is no dispute that the service tax provider has paid the entire 100% service tax and no objection was raised by the Revenue at the time of receipt of service tax. The credit of the service tax paid, ~~held~~ by the service provider, is available as a credit of the service recipient and the fact of service tax "**payable**" by the service provider is of no relevance. Inasmuch as the appellant had availed the credit of service tax paid by the service provider, he cannot be denied the credit on the ground that service provider should have paid the service tax of 25% of the value of services. Assessment made at the end of service provider cannot be re-opened at the service recipient's end.

5. In view of the above, I set aside the impugned order and allow the appeal with consequential relief to the appellant.

Dictated and pronounced in the open Court

Sd/-

(Archana Wadhawa)
Member(Judicial)

mm

प्रमाणित प्रतिलिपि/Certified True Copy

सहायक पंजीकर/Asstt. Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001

