FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

To

Dated: 21/11/2017

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71495/2017-SM[BR] dated 14/11/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Asstt. Registrar

| Application | Appeal | Name and Address of Appellant |
|---|---|---|
| 1 | ST/70272/2017 | **Uniword Telecom Limited**<br>D-149, Sector-63, Noida,<br>GAUTAM BUDDHA NAGAR<br>U.P. |
| | | Name and Address of Respondent |
| 2 | | C.C. & C.E. & S.T.-Noida<br>C-56/42...SECTOR 62,<br>NOIDA,<br>UTTAR PRADESH-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), 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 Second Folder Copy 17 Guard File

Asstt. Registrar

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

**APPEAL No. ST/70272/2017-ST[SM]**

(Arising out of Order-in-Appeal No. NOI/SVTAX/000/APPL-I/327/2016-17 dated 10/02/2017 passed by Commissioner of Central Excise (Appeals-I), Meerut)

**M/s Uniword Telecom Limited** **Appellant**

Vs.

**Commissioner of Service Tax, Noida** **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate, for Appellant
Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR), for Respondent

**CORAM:**

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

Date of Hearing : 14/11/2017
Date of Pronouncement : 17/11/2017

FINAL ORDER NO. 71495/2017

**Per: Archana Wadhwa**

The challenge in the present appeal is only to imposition of penalties.

2. After hearing both the sides, I find that the appellant is registered with Service Tax Department and also engaged in the manufacture of excisable goods. As a result of audit, it was found that the appellant has provided services under the category of "Annual Maintenance Contract" Services, but has not paid Service Tax on the same. It was also noticed that the appellant was not paying Service Tax on due date during the period October, 2009 to March, 2010. A doubt about

availability of credit of Service Tax on Input Services, was also raised.

3. For all the above, proceedings were initiated against the appellant for recovery of Service Tax amounting to Rs.14,90,358/- along with interest and imposition of penalty. The said notice culminated into an order passed by the Original Adjudicating Authority, confirming the demand along with interest and imposing penalties of equal amount.

4. The said order by the Original Adjudicating Authority stands upheld by the Commissioner (Appeals) and hence, the present appeal.

5. The appellant has contended that the credit was utilized for payment of Service Tax, in as much as, the credit accrued to them before payment of Service Tax. They also relied upon the clarification issued by the Board vide Circular No. 962/05/2012-CX.8 dated 28/03/2012. They also assailed the order on the issue for time bar.

6. It is seen that there was a short levy and the appellant has paid the same along with payment of interest. The appellant has also debited an amount of Rs.3,53,185/- belatedly and the Commissioner (Appeals) has upheld the penalty to that extent. The appellant's contention is that they have already paid the interest on the above amount. The Service Tax was not deposited, in as much as, payments were received late by them.

7. I find that the legal issues, during the relevant period, were not very clear, thus, giving doubts to the assessees. In as much as, the services were a part of the appellant's record, there was no escape for the appellant to deposit the Service Tax. In this scenario, no *mala-fide* intention can be attributed to the assessee so as to attract penal provisions. Accordingly, penalty imposed upon the appellant is set aside and the appeal is allowed to that extent.

(Pronounced in Court on....17/11/17......)

Sd/-
(Archana Wadhawa)
Member(Judicial)

*Ansari*

Certified True Copy
12/12/17
Asstt. Registrar
C.E.S.T.A.T.
M. G. MARG, ALLAHABAD-211001