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: 31/07/2017

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70716/2017-SM[BR] dated 07/07/2017

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/MISC/70175/2017	ST/70328/2017	M/s P Jain And Co 6, Nayug Market GHAZIABAD UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

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, 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
REGIONAL BENCH : ALLAHABAD
COURT No. 2

APPEAL No. ST/70328/2017ST-SM] With
MISC Application No. ST/MISC/70175/2017

(Arising out of Order-in-Appeal No. GZB-EXCUS-000-APP-981-16-17 dated 18/01/2017 passed by Commissioner of Central Excise & Service Tax (Appeals-II), Noida)

M/s P. Jain & Co. **Appellant**

Vs.

Commissioner of Central Excise & Service Tax,
Ghaziabad **Respondent**

Appearance:

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

CORAM:

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

Date of Hearing & Date of Decision : 07/07/2017

FINAL ORDER NO...70716/2017........

Per: Anil G. Shakkarwar

Heard the ld. Counsel for the appellant on Miscellaneous Application. The Miscellaneous Application is for early hearing. On enquiry, the Representative of Revenue is agreeing with final disposal of appeal. Therefore, after allowing the Miscellaneous Application, appeal is taken up for disposal. The present appeal is directed against Order-in-Appeal No. GZB-EXCUS-000-APP-981-16-17 dated 18/01/2017 passed by Commissioner of Central Excise & Service Tax (Appeals-II), Noida.

2. The brief facts of the case are that the appellants were engaged in providing Service under the category of "Chartered Accountant Services." During the course of audit, it appeared to Revenue that appellants were taking Cenvat credit on common input services such as 'Security Service & Telephone Service." Further, some of the activities of appellants were exempted from levy of Service Tax prior to 01/04/2011. Therefore, it appeared to Revenue that on the above stated services appellants were availing Cenvat credit of Service Tax paid and were not maintaining separate accounts and therefore, they were liable to pay amount under Sub-rule 3 of Rule 6 of Cenvat Credit Rules, 2004. The appellant replied to the audit objection stating that they were not availing such Cenvat credit of the Service Tax paid on input services which was attributable to the exempted service provided by them. They also gave the details about the total Service Tax paid on input services and out of which Cenvat credit availed during the Financial Years 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13. In spite of that they were issued with a Show Cause Notice dated 13/03/2015, wherein at Para 4 of the said Show Cause Notice, the contention of the appellants as to how they have taken less Cenvat credit on the above stated two common services as compared to the total Service Tax paid by the input service provider on the said input services. However, the said Show Cause Notice called upon the appellant to show cause as to why amount of Rs.4,46,749/-

should not be demanded from the appellant under Sub-rule 3 of Rule 6 read with Rule 14 of Cenvat Credit Rules, 2004. The Show Cause Notice on contest was adjudicated through Order-in-Original No. 359/Assistant Commissioner/Service Tax/GZB/2015 dated 18/11/2015, wherein the demand was confirmed and equal penalty was imposed. Being aggrieved the appellant preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal dated 18/01/2017 wherein he has rejected the appellant's appeal and upheld the said Order-in-Original dated 18/11/2015. Being aggrieved by the said order appellant is before this Tribunal.

3. The ld. Counsel for the appellant has stated that they have also demonstrated to Revenue that they did not avail the Cenvat credit attributable to the exempted service and therefore, the said Show Cause Notice is not sustainable.

4.. Heard the ld. A. R. for Revenue, who has supported the impugned Order-in-Appeal dated 18/01/2017.

5. Having considered the rival contentions and on perusal of the facts on record, I find that it is very clearly stated in Para 4 of the said Show Cause Notice that the appellant had availed less Cenvat credit as compared to the total Service Tax paid by the input service provider on the input services and appellant also stated as reflected in the said Para 4 of the said Show Cause Notice that they have not availed Cenvat credit which was attributable to the exempted services. In

such a situation, where contention of the assessee was that their transaction was covered by provisions of Sub-rule (1) of Rule 6 of Cenvat Credit Rules, 2004, it was necessary for Revenue to establish in the Show Cause Notice that the said transaction attracted provisions of Sub-rule (2) of said Rule 6 that Cenvat Credit was availed in respect of such input services to such extent that they were used for providing both taxable & exempted services and no separate account was maintained and hence provisions of Sub-rule (3) of Rule 6 ibid were invocable. I do not find from the said Show Cause Notice that Cenvat credit was availed on such quantity of input service which was used for providing exempted output service and the situation was covered by Sub-rule (1) of said Rule 6. Therefore, there was no case for invocation of Sub-rule (3) of said Rule 6. Therefore, I hold that the said Show Cause Notice dated 13/03/2015 is not sustainable. Therefore, I set aside the both impugned Order-in-Original & Order-in-Appeal and allow the appeal. The appellant shall be entitled for consequential relief, if any, as per law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member(TECHNICAL)

Ansari

प्रमाणित प्रति/Certified True Copy
10/08/17

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