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: 06/10/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71168/2017-SM[BR] dated 29/09/2017

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/70510/2017	**Tv18 Broadcast Limited** 3rd Floor ,15-16 Express Trade Tower,sector-6a,noida GAUTAM BUDH NAGAR UP
		Name and Address of Respondent
2		C E & ST-Noida Ii OFFICE OF THE COMMISSIONER CENTRAL EXCISEHOTEL FORMULE 1, WEGMANS BUSINESS PARK, KP-III, GREATER NOIDA GOTAM BUDH NAGAR U.P.-

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Copy To

3Advocate(s) / Consultant(s):

TLC Legal
19th floor,nilmal,241/242 nariman
point,Mumbai-400021

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 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No.ST/70510/2017-ST[SM]

(Arising out of Order-in-Original No.71-78/COMMISSIONER/NOIDA-II/2016-17 dated 31/03/2017 passed by Commissioner of Central Excise Noida-II)

TV 18 Broadcast Limited **Appellant**

Vs.

Commissioner of Central Excise, Noida-II **Respondent**

Appearance:

Ms. Manya Bhardwaj (Advocate) for Appellant
Shri Assistant Deputy/Additional Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 29/09/2017
Date of Decision : 29/09/2017

FINAL ORDER NO. 71168/2017.........

Per: Anil Choudhary

The issue in dispute in this appeal pertains to denial of Cenvat Credit of Rs. 11,79,178/- availed by the appellant on Outdoor catering services/canteen services during the period April, 2005 to March, 2015 and credit of Rs. 21,51,310/- availed on Rent-a-cab/Tour operator services during the period April, 2011 to March, 2013, stated by the appellant to be used by them in providing of output services.

2. The appellant was a registered assessee under the provisions of the Finance Act, 1994 and engaged in providing Broadcasting Agency Service, Advertising Agency Service,

Event management, Business Auxiliary, Development and Supply of Content and Intellectual Property Services etc. In the course of their activity they also received and availed various input services and also take Cenvat Credit on the same.

3. The appellant was issued 8 periodical show cause notices tabulated hereunder for ease of reference, by which it was proposed denial of Cenvat Credit availed in respect of various services like Rent-a-cab services, Insurance Auxiliary Services, Outdoor Catering Services, Security Agency Services, Advertising Agency Services etc., during the period April, 2005 to March, 2015.

Sr. No.	**Show Cause Notice No.**	**Date**	**Period**	**Amount of credit (Rs.)**
1	ST/MUM/Div III/Gr.VII/CERA/TV18/06/09/5442	11.08.09	April 2005 – Feb 2009	2,87,18,114/-
2.	ST/MUM/Div III/Gr.VII/CERA/TV18/06/10/7377	28.09.10	March 2009 – March 2010	89,60,946/-
3.	ST/MUM/Div III/ Gr. VII/CERA/TV18/06/10/2762	19.10.11	April 2010-March 2011	71,59,552/-
4.	V(15)Adj/NOIDA/TV18/798/12/23709	17/23.10.12	April 2011 – June 2011	29,42,202/-
5.	V(15) Adj/NOIDA/TV18/77/13	17.06.13	June 2011 – June 2012	1,56,89,526/-

	/4425-27/4425-27			
6.	V(15)Adj/NOIDA/TV18/169/2013/5123-24	12/10.03.14	July 2012 – March 2013	92,08,150/-
7.	V(15)Adj/NOIDA/TV18/190/14/818	18.02.15	April 2013 – March 2014	59,66,419/-
8.	V(15)Adj/NOIDA/TV18/157/15/102-105	25.01.16	April 2014 – March 2015	1,95,27,713/-
Total				**9,81,72,622/-**

4. The show cause notices were adjudicated on contest by the learned Commissioner vide impugned Order-in-Original dated 31.03.2017. The proposed denial with respect to other services was dropped save and except the two services of Outdoor Catering and Rent-a-cab/Tour operator services in respect of which the proposed demand was confirmed as mentioned hereinabove. As regards Rent-a-cab services, the learned Commissioner was pleased to allow the Cenvat Credit up to 31.03.2011 and thereafter in view of amendment in the definition of input service as defined in Rule 2(l) of CCR, 2004 with effect from 01 April, 2011, the credit for subsequent period was disallowed whereas with respect to Outdoor catering the total credit(s claimed for the period in question were disallowed.

5. Being aggrieved the appellant is before this Tribunal. The learned counsel for the appellant, Ms. Bhardwaj states that so far Rent-a-cab service is concerned, in view of the express denial of credit due to express exclusion from the

definition of input service with effect from 01 April, 2011, they do not press this disallowance. However, as the issue relates to interpretation, she prays that the penalties imposed are fit to be deleted. There is no finding of any contumacious conduct or mala fide on their part in taking the credit. She further prays that they have made certain payments both by way of Challan and Reversal of credit as regards Rent-a-cab services and adjustment for some of the payments have not been received, which may be directed to be given credit.

6. So far outdoor catering services is concerned she states that the issue is no longer res integra and she relies on the decision of Coordinate Bench of this Tribunal (of which I was a member) in Hindustan Coca-Cola Beverages Private Ltd v/s CCE, 2015 38 STR 129 (Tri. Mum.) wherein also the issue of outdoor catering service was involved for the period subsequent to 01 April, 2011. This Tribunal held taking notice of the ruling of the Karnataka High Court in CCE & ST v/s ACE Designers Ltd reported in 2011-TIOL-931-HC-KR-CX and also in CCE, Bangalore v/s Stanzen Toyotetsu India Private Ltd, 2011 (23) STR 444 and also on the ruling of Hon'ble Bombay High Court in the case of Coca-Cola India private Ltd v/s CCE 2009 (242) ELT 168 wherein held that input service as regard Outdoor catering forms part of cost of manufacturing and as such will be entitled for credit. This Tribunal observed that with effect from 01.04.2011, what is excluded is only the services primarily for personal use or

consumption of any employee, under Clause (C) of Rule 2(l) of CCR, 2004, when the Government has specifically used the words such as "used primarily for personal use or consumption of any employee", the same is to be given due effect to. This Tribunal also noted that with effect from 01.04.2011 another Clause (B) was also introduced by way of exclusion in Section 2(l) of CCR, 2004 without any such qualification of use of service for personal purpose or for a particular employee. This Tribunal also took notice that the Government while issuing the budget clarification and subsequent circular has clarified that what is not eligible is that service which is meant for personal use or consumption by any employee or the cost of which is included as part of salary of the employee at the cost to the company. Hence prays for allowing this ground.

7. The learned AR for Revenue relied on the impugned order.

8. Having considered the rival contentions I find that the learned Commissioner have not arrived at any finding that the Outdoor cantering service was provided with respect to any particular employee. It is admitted fact that the service was provided for all the employees in general and further as regards the Outdoor cantering services received during events is concerned, I hold that the same is also allowable as such events are meant for business promotion purposes and building of goodwill. I also notice that there is no finding by

the learned Commissioner to the contrary, save and except bald allegations.

9. Accordingly this appeal is allowed in part as follows: –

(a) The Cenvat credit on Outdoor catering service is held to be allowed for the entire period.

(b) The Rent-a-cab service disallowed after 01.04.2011 is upheld as not contested by the appellant.

(c) The Adjudicating Authority is directed to grant adjustment of the taxes paid by the assessee appellant herein by way of Reversal of credit or by way of Challan.

(d) The appellant is also directed to file a representation with a copy of this order before the learned Commissioner, who shall reconcile the claims and allow the credit of tax paid in accordance with law.

(e) So far penalty is concerned. I find that the issue relates to interpretation of the provisions of Cenvat Credit Rules and there is no misconduct or contumacious conduct on the part of the appellant in taking the credits. This is also evident from the facts on record, wherein almost 90% of the proposed credit sought to be disallowed by the show cause notices have been found to be allowable to them. Accordingly, all penalties stand deleted.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

प्रमाणित प्रति/Certified True Copy
16/10/17

Ankit

सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
... म.गां.मार्ग, इलाहाबाद-211001
... M. G. MARG, ALLAHABAD-211001