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: 13/03/2018

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70547/2018-SM[BR] dated 01/02/2018

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
i	E/70356/2017	**Hindustan Coca Cola Beverages Pvt Ltd** Kusum Hindipuram, Kotwali Road, NAJIBABAD U.P. 246763
		Name and Address of Respondent
:		-Cce Hapur OPPOSITE SHAHEED PARK, DELHI ROAD, MEERUT 0 UP-

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

Rahul Agarwal advocate,ALLD
74/62 Lal BahadurSshastri Marg
Opposite Head Post Office,
Allahabad-211001

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.E/70356/2017-EX[SM]

(Arising out of Order-in-Appeal No. HPR/EXCUS/000/APPL-I/321/2016-17 dated 08/02/2017 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I)

M/s Hindustan Coca Cola Beverages Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Hapur **Respondent**

Appearance:

Shri Rahul Agarwal, Advocate for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 01/02/2018
Date of Decision : 01/02/2018

FINAL ORDER NO. 70547/2018

Per: Anil Choudhary

The issue in this appeal relates to disallowance of Cenvat credit pursuant to audit, invoking the extended period of limitation.

2. The allegation in the show cause notice dated 15/01/2015 for the period March, 2010 to July, 2012 is that during audit which included scrutiny of Cenvat credit invoices, vide audit note IAR No.102/12-13 (Excise) it appeared that the appellant have taken some inadmissible Cenvat credit of service tax on the invoices which do not have

the name and address of the appellant. Thus, the said documents appeared to not proper documents for taking credit in terms of Rule 9(1) and 9(2) of Cenvat Credit Rules, 2004. Further, it appeared that the credit is not allowable as input service, as defined under Rule 2(l) of CCR, 2004. The Range Superintendent vide letter dated 17/09/2013 asked the appellant to submit their reply to the Interim Audit Report. The appellant vide letter dated 30th November, 2012 submitted their reply to the Range Office. Thereafter, SCN was issued in January, 2015 invoking the extended period of limitation. The said SCN proposed disallowance of Cenvat credit of Rs.2,97,841+ Rs.6,192/- along with interest and further penalty was proposed.

3. The proposed demands were confirmed vide Order-in-Original on contest. In impugned Order-in-Appeal dated 08.02.2017, the Learned Commissioner (Appeal) have been pleased to allow the appeal in part and allowed Cenvat credit to some extent but have been pleased to uphold the denial of Cenvat credit of Rs.36,913+2,600+6,192/-. Being aggrieved, the appellant is before this Tribunal.

4. Heard the parties.

5. Having considered the rival contentions, I find that in response to the query by the Range Superintendent in terms of the audit report in September, 2012, the appellant had filed their reply taking categorical stand on 30/11/2012. In this view of the matter, I find that the show cause notice

dated 15/01/2015 is hit by limitation and extended period of limitation is not available to the revenue. There is no allegation in the show cause notice of any concealment or suppression of facts, etc. Further, it is admitted fact that the transactions are recorded in the books of accounts maintained in the ordinary course of business. Further, the appellant had filed regular returns with the revenue. Accordingly, I hold the show cause notice is not maintainable.

6. Accordingly, the impugned order is set aside and the appeal is allowed. The appellant shall be entitled to consequential benefits, in accordance with law.

(Dictated in Court)

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

akp

Certified True Copy
15/03/18
Asstt. Registrar
(C.E.S.T.A.T.)
ALLAHABAD-211001