REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: 23/06/2015

To

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

Final Order No. **ST/A/51965/2015-CU[DB]** dated **16/06/2015**

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(CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	ST/Stay/54086/2014	ST/53652/2014	**Tanay Landcon India Private Limited** C-39, Lajpat Marg, C-scheme, JAIPUR RAJASTHAN 302001
			Name and Address of Respondent
2			C.C.E. & S.T.-Jaipur-i NCR BUILDING, STATUE CIRCLE, C-SCHEME, JAIPUR, RAJASTHAN-302005

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

TARUN GULATI/SPARSH BHARGAVA/RAGHURAM SRINIVASAN
PDS LEGAL, OFFICE NO.7, FIRST FLOOR, ATMA RAM MANSION,SCINDIA HOUSE, K.G.MARG, NEW DELHI-110001

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
14 C.D.R. **15** Office Copy **16** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 16/06/2015.

Service Tax Stay Application No. 54086 of 2014 in Appeal No. 53652 of 2014

[Arising out of the Order-in-Original No. JAI-EXCUS-001-COM-137-13-14 dated 28/03/2014 passed by The Commissioner of Central Excise, Jaipur – I.]

For Approval and signature :
Hon'ble Shri Justice G. Raghuram, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s Tanay Landcon India Pvt. Ltd. — Appellant

Versus

CST & ST, Jaipur — Respondent

Appearance

S/Shri Tarun Gulati, Sparsh Bhargava and Anupam Mishra, Advocates – for the appellant.

Shri Amresh Jain, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Justice G. Raghuram, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No. 51965/2015 Dated : 16/06/2015

Per. Justice G. Raghuram :-

As we shall establish in the following analysis, the impugned order is grossly perverse and benefit of minimal analysis of relevant facts and the material on record.

2. On 18/10/12, show cause notice was issued to the appellant/ assessee proposing recovery of Rs. 73,68,121/- for irregular/ unauthorized availment of Cenvat credit in violation of Rule 6 of the Cenvat Credit Rules, 2004, on the ground the appellant was providing both taxable and exempted services but failed to maintain separate accounts in respect of these services and availed Cenvat credit on inputs which were commonly used for both taxable and exempted services.

3. In response, the assessee vide the response dated 4th February 2014 clearly and categorically pleaded in paragraph 6 (c) of the reply that the allegation of availment of Cenvat credit on common inputs and common input services is incorrect and baseless and it had availed credit only in respect of inputs and input services used for providing taxable services. Appellant also categorically pleaded that the show cause notice failed to reveal any basis for the allegation of irregular availment of credit on inputs related to both taxable and exempted services.

4. In the adjudication order, after reproducing contents of the show cause notice in paragraph 1 to 8, the response of the

assessee is set out in paragraphs 9 to 22 including contentions urged by the appellant during personal hearing. In para 16 of the impugned order, the specific contention of the appellant regarding non-availment of Cenvat credit on common inputs and input services used for both taxable and exempted goods is duly noticed. The impugned order sets out the provisions of Rule 6 in para 25. In para 26, the order jumps to the conclusion, un-substantiated by any evidentiary analysis, that the appellant failed to establish or prove that credit was not availed on inputs and input services used for providing both taxable and exempted services.

5. In para 27 the Authority records an observation that the appellant did not dispute to be engaged in providing both taxable and exempted services and to have availed Cenvat credit on input/input services such as cement, insurance of vehicle, advertising services which are common. We find no basis whatsoever for this conclusion recorded by the Authority. The appellant nowhere admitted to have availed Cenvat credit on common inputs/input services used for providing both texable and exempted output services. This finding by the Authority, of an admission by the appellant is perverse, contrary to the categorical denial by the appellant, of availment of common inputs/input services as contained in para 6 (c) of its reply dated 04/2/14 to the show cause notice and is therefore a finding which is contrary to the record.

6. In para 27, the Authority observes that "it is not the duty of the Department to establish that the appellant have not maintained

separate records". This observation is fallacious. Revenue had alleged that the appellant failed to maintain separate accounts. The appellant disputed this allegation and specifically pleaded to have maintained separate accounts and to have used only, those inputs/input services which were used for providing texable services. If there was a doubt either regarding maintenance of separate accounts or utilizing credit on common inputs/input services, as required under Rule 6 (2) of the Cenvat Credit Rules, the authorities ought to have summoned the appellants records or should have verified from the appellant's premises, whether assessee had incorrectly pleaded to have maintained separate records while it did not. In the absence of any such notice issued and in view of the failure to have inspected the appellant's records, law does not authorize a conclusion of non- maintenance of separate accounts, without any basis. The mis-conception substrating the impugned order, that it is the appellant's burden to establish maintenance of separate accounts, when Revenue alleges such non-maintenance and alleges utilization of credit on common inputs, is fatal to the validity of the impugned order.

7. Learned DR would contend that the show cause notice dated 18/10/12 is accompanied by three RUDs i.e., Annexure A, the Assessee's letter dated 04/1/11 and IAR No. 906 of 2010; that these RUD's constitute the basis for issuance of the show cause notice and these are conclusive proof of the fact that the appellant failed to maintain separate accounts in respect of taxable and exempted services and of availment of credit on common inputs

and input services. This is a contention that is stated to be rejected. An Annexure to a show cause notice do not per-se provide a legal basis for a conclusion in an adjudication that the appellant violated provisions of Rule 6 (2) by failing to maintain separate accounts in respect of taxable and exempted services or had utilized common inputs/input services. There is not a single sentence in the entire adjudication order which records the evidence or material on the basis of which the Adjudicating Authority records the finding that the appellant failed to maintain separate accounts. We have earlier noticed that in para 27 it is observed that it is not the burden of Revenue to establish that the appellant maintained separate accounts. In the absence of the Adjudicating Authority recording a clear finding that the assessee failed to maintain separate accounts and on the basis of some evidence in support of such conclusion, the inference of a failure to maintain separate accounts, is a finding of fact based on no evidence. It is therefore perverse. We have earlier also noticed a mis-statement of fact in para 27, i.e., the observation that the appellant admitted to have availed Cenvat credit on common inputs and input services.

8. For the aforesaid reasons, the impugned order cannot be sustained.

9. Learned Counsel for the appellant refers to the judgment of this Tribunal in **Okay Glass Industries vs. CCE, Kanpur** reported in **2015 – TIOL – 428 – CESTAT – DEL.** to alternatively urge that even if the appellant had availed Cenvat credit on inputs or input services which were common to both taxable and exempted

services, the demand could legally be confined only to the extent of the credit availed on exempted services. Learned Counsel has provided an executive summary whereby it is claimed that the total credit availed during the period 2008-2009 to September 2010 is Rs. 3,17,604/- including Rs. 1,36,218/- availed in respect of capital goods on which no reversal is required to made under Rule 6 (4); and that a credit of Rs. 1,81,386/- is alone, if at all, attributable to inputs and input services which amount is in fact relatable to inputs/input services used for taxable services, but not inputs or input services used for providing non-taxable services. On the basis of this submission it is contended, that if it was found that the appellant had availed credit on inputs and input services which are common to both taxable and exempted services, the demand should be restricted to Rs. 1,81,386/-, which is the position that obtains on the basis of **Okay Glass Industries vs. CCE, Kanpur** (supra).

10. On the analysis above, we set aside the impugned order. Normally we would have allowed the appeal in toto based on the perverse finding in para 27 of the order inference of availment of credit on common inputs/input services based on an admission (non-existent) of the appellant, of having availed Cenvat credit on common inputs and input services of both taxable and exempted services and the other finding regarding the burden of proof being on appellant to establish that it had not maintained separate records. However, such a course of disposition of an appeal would not enable adjudicating authorities to pursue judicial discipline in

recording adjudication orders and eschew perversity in adjudicating functions.

11. The principal is too well established that reasons are the links between material on which conclusions are based and the eventual conclusions, vide **Union of India vs. M.L. Capoor – AIR 1974 SC 87**.

12. In the circumstances, we quash the impugned order and remit the matter to the respondent for passing a fresh adjudication order in the light of the observations herein. The respondent shall record the material/evidentionary basis for a conclusion that the appellant failed to maintain separate accounts as mandated by Rule 6 (2) of the Cenvat Credit Rules, 2004 and for a conclusion that it had utilized credit of inputs/input services utilized for providing exempted output services, if the respondent is satisfied that such conclusions are warranted. No costs.

(Dictated and pronounced in open court)

(Justice G. Raghuram)
President

(Rakesh Kumar)
Member (Technical)

PK