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

Appeal No. E/1793/2007 – SM[BR] Date 09/02/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S URSS TECH. PVT. LTD.
B-2, JAYANTI MARKET, M.I. ROAD, JAIPUR

M/S URSS TECH. PVT. LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 138 / 2009- **SM[BR]** dated 4.2.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.PANKAJ MALIK
   CHARTERED ACCOUNTANTS 207-208, SHREE GOPAL TOWER, KRISHNA MARG, C-SCHEME, JAIPUR-

3 S.D.R
~~4 J.C.D.R~~.
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 1

Excise Appeal No. 1793 of 2007-SM

(Arising out of Order-in-Appeal No. 75/GRM/ST/JPR-I/2007 dated 03.04.2007 passed by the Commissioner of Central Excise (Appeals-I), Jaipur).

DATE OF HEARING : 03.02.2009
DATE OF DECISION : 03.02.2009

FOR APPROVAL AND SIGNATURE :

HON'BLE MS. JYOTI BALASUNDARAM, VICE-PRESIDENT

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982 ?.	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?	No
3.	Whether their Lordships wish to see the fair copy of the Order ?	seen
4.	Whether Order is to be circulated to the Departmental Authorities?	Yes

M/s URSS Tech Service Pvt. Ltd. ... **Appellant**
(Rep by Sh. Atul Gupta, CA)

versus

CCE, Jaipur ... **Respondent**
(Rep. by Sh. Sansar Chand, DR)

CORAM : HON'BLE MS. JYOTI BALASUNDARAM, VICE-PRESIDENT

Final **ORDER NO.** 138/09-SM (BR)

PER JYOTI BALASUNDARAM :

I have heard both sides on the above appeal against the order of the Commissioner (Appeals) rejecting the refund claim filed for refund of service tax on the ground that service tax credit was not admissible to the appellant in respect of the mobile phones as such phones were not installed in their premises.

2. The issue in this case stands settled by the decision of the Hon'ble Gujarat High Court in **Commissioner of Central Excise vs Excel Crop Care Ltd.,** 2008 (12) STR 436 (Guj.), holding that, the ground for denial of credit, namely, that mobiles phones were not installed in factory premises, is not germane to the relevant provisions of law and that credit is admissible unless shown that use of the cell phone was not relatable to the business. In the present case, the only ground on which it was proposed to deny Cenvat Credit on Service Tax is the non-installation of mobile phones in the appellant's premises. Neither is there any ground in the notice nor any finding that the calls made from the mobile were not relatable to the business of the assessee. In this view of the matter, the judgment of the Hon'ble Gujarat High Court squarely covers the issue in favour of the appellant. Following the same, I set aside the impugned order and allow the appeal.

(Dictated and pronounced in the open Court on the 3rd day of February, 2009)

(JYOTI BALASUNDARAM)
VICE-PRESIDENT

Golay