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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/2455/2009 – SM[BR]** Date **08/09/2011**

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

To :
M/S HOTLINE DISPLAY DEVICES LTD.
D-2, SECTOR-VIII, NOIDA.

M/S HOTLINE DISPLAY DEVICES LTD. Appellant

Vs

C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 580 / 2011-SM[BR]** dated 24.8.2011 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. NOIDA
C-56/42, SECTOR-62,
NOIDA-201307

2. Adv. / Consult
MR.S.D.GAUR
SB-108, SHASTRI NAGAR, GHAZIABAD.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
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 -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

Central Excise appeal No. 2455 of 2009-SM

[Arising out of Order-in-Appeal No. 117/CE/APPL/NOIDA dated 30.4.2009 passed by the Commissioner of Central Excise (Appeals), Noida]

Date of Hearing/decision: 24th August, 2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member;

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 should 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 Departmental authorities?	

M/s. Hotline Display Devices Ltd., Appellant

Vs.

CCE, Noida Respondent

Present for the Appellant : Shri S.D. Gaur, Consultant
Present for the Respondent : Shri Anil Khanna, D.R.

Coram: Hon'ble Shri D.N. Panda, Judicial Member

FINAL ORDER NO. 580/2011 SM (BR) **DATED**

FINAL ORDER NO.________ DATED

Per D.N. Panda:

Shri Gaur, learned Consultant submits that different amounts are involved in Cenvat credit claim on different counts. The authority disallowed the claim on flimsy reasons. So also penalties were levied under Section 11AC of Central Excise Act, 1944 to the extent of Rs. 23,725/- and Rs. 40,901/- under Section 11AC of Central Excise Act, 1944 and 78 of the Finance Act, 1994. While the total claim relating to Cenvat credit on service tax was Rs. 40,901/- which was disallowed, Rs. 23,725/- was disallowed discarding debit notes. He further submits that penalty of Rs. 23,725/- and Rs. 40,901/- were also not leviable since appellate authority simply confirmed order without examining various aspects of the issue.

2. Learned D.R. on the other hand supports action of the adjudicating authority.

3. Heard both sides and perused the record.

4. Reason given by the adjudicating authority for disallowance of Cenvat credit on duty count is depicted in Para 9 to 12 of his order. The claim of Cenvat credit of service tax was not established by any cogent reason or evidence under law. That made the appellant to fail on such count. Similarly, debit note claim relates to realization after provision of taxable services. The adjudicating authority

disallowed the credit on principles of law of improper evidence and levied excise duty of Rs. 23,725/-. While imposing penalty none of the authorities have given their findings as to whether there is any suppression or violation of law. When the conduct of the appellant does not appear to be an attempt to cause evasion of duty, the appellant should not suffer penalty. Accordingly, penalties under Section 11AC of Central Excise Act, 1944 to the extent of Rs. 23,725/- and Rs. 40,901/- imposed under Section 78 of the Finance Act, 1994 are waived.

4. In the result disallowance of Cenvat credit is confirmed and levy of excise duty is also confirmed. While payment of interest on the demand shall follow according to law, penalty to the above extent is waived allowing appeal partly.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK