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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/2964/2009 – SM[BR] **Date 30/11/2011**

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

To :
M/S ELKAY TELELINKS LTD.
PLOT NO. 141, SECTOR-24, FARIDABAD (HARYANA)

M/S ELKAY TELELINKS LTD. Appellant
Vs
C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No. 852 / 2011 –SM[BR]** dated 11.11.2011 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. DELHI IV
NEW CGO COMPLEX, NH-IV,
FARIDABAD, HARYANA 121001.

2. Adv. / Consult
MR.R.C.GUPTA , ADV
LEGUM JIRIS, (A LAW FIRM), "AASHIRWAD" #557, SECTOR-19,
FARIDABAD(HR)

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 (Haryana)
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
PRINCIPAL BENCH, NEW DELHI
Court No.III

E/Appeal No.2964/2009

(Arising out of order in appeal No.2964/09 dated 18.8.09 passed by the Commissioner of Central Excise (Appeals), Faridabad)

Date of Hearing: 11.11.2011

For Approval and signature:

Hon'ble Mr.Mathew John, Technical Member

1.	Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982?	Yes
2.	Whether it would 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 Department Authorities?	No

M/s Elkay Telelinks — Appellants

Vs

CCE, Faridabad — Respondent

Appeared for the Appellant: Shri R.C. Gupta, Advocate
Appeared for the Respondent: Ms. R. Jagdev , SDR

Coram: **Hon'ble Mr. Mathew John, Member (Technical)**

Final ORDER . 852/2011 SM (BR)

Per Mathew John:

In this case, the appellants are manufacturers of excisable goods and they availed the benefit of Cenvat credit under Cenvat Credit Rules, 2004. During the period 2005 to 1.4.2008, they had taken

Cenvat credit for service tax paid on outward transportation of goods up to the place of their buyers. Revenue was of the view that they were not eligible for such credit in view of the definition of input service under rule 2(l) of Cenvat Credit Rules, 2004. Therefore, a show cause notice was issued proposing to recover an amount of Rs. 1,43,637/- and proposing penalty under Rule 15 of Cenvat Creit Rules, 2004 and the matter was adjudicated confirming the said demand along with appropriate interest and penalty of Rs. 10,000/- under Rule 15(3) of Cenvat Credit Rules, 2004. The appeal field by the appellant with the Commissioner (Appeals) was rejected. Aggrieved by the order of the Commissioner (Appeals), the appellants have filed this appeal before the Tribunal.

2. The Counsel for the appellants submits that all the supplies made by them to their buyers of FOR destination basis. He relies on the decision of the Karnataka High Court n the case of CCE Vs ABB Ltd reported at 2011-TIOL-395-HC-KAR-ST. The matter is now stands settled by this decision and they are eligible for cenvat credit for the period prior to 1.4.2008.

3. The learned SDR is not able to explain why the benefit cannot be given.

4. Considering the above position, the appeal is allowed by setting aside the impugned order with consequential relief.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Technical Member

MPS*