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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/1281/2010 – SM[BR]& E /STAY/1316/2010, E/CO /171 /2010-SM[BR] Date 23/09/2010

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

To :
C.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI.

C.S.T. DELHI — Appellant

Vs

M/S CHATURVEDI & PARTNERS, — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1028 /2010-SM[BR]&S / 439/2010 dated 13.9.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S CHATURVEDI & PARTNERS,
   212-A,CHIRANJIV TOWER, 43, NEHRU PLACE, NEW DELHI-110019.
   NEW DELHI.
2. Adv. / Consult SHRI D.R.BAID C.A.
   M/S RESPONDENT:-----------

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10 Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

E/Stay No.1316/10, E/Appeal No. 1281/10, E/CO 171/10-SM

(Arising out of order in appeal No.37/ST/DLH/2010 dated 2.2.22010 passed by the Commissioner of Central Excise (Appeals), New Delhi)

Date of Hearing: 13.9.2010

For approval and signature:

Hon'ble Shri M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see Under Rule 27 of the CESTAT (Procedure) Rules, 1982? Yes
2. Whether it should be released under Rule 27 of the CESTAT(Procedure) Rules, 1982 for publication in any authoritative report or not? Yes
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

CST, Delhi — Appellants

Vs

M/s Chaturvedi & Partners — Respondent

Appeared for the Appellant: Shri R.K. Gupta, SDR
Appeared for the Respondent: Shri D.R. Baid, C.A.

Coram: **Hon'ble Shri M. Veeraiyan, Member (Technical)**

Final ORDER 1028/2010 SM(BR) &
S- 439/2010 SM(BR)

Per M. Veeraiyan:

Appeal No. 1281/2010 is appeal by the Department against the order of the Commissioner (Appeals) dated 2.2.2010. Cross Objection No. 171/2010 is connected to this appeal. Excise Stay No. 1316/2010 has been filed by the department seeking stay of operation of the order of Commissioner (Appeals).

2. In the facts and circumstances of the case, the stay petition has no merits and the same is rejected. The appeal and the cross objection are taken up for final disposal.

3. The original authority denied total service tax credit of Rs.1152/- on services (Rs.712/-relating to use of mobile telephones plus Rs.440/- relating to use of landline telephones) and demanded service tax credit of Rs. 1152/- alongwith interest and imposed penalty of Rs. 1152/- under Section 76 of the Finance Act and also imposed penalty of Rs. 2,000/- under Rule 15(3) of the Cenvat Credit Rules, 2004. The Commissioner (Appeals) has set aside the order of the original authority.

4. The learned SDR reiterates the grounds of appeal.

5. The learned Chartered Accountant supports the order of the Commissioner (Appeals).

6. Cross objection does not claim any benefit other than that has been extended by the Commissioner (Appeals).

7. I have carefully considered the submissions of both the sides and perused the records. It is settled by several decisions of the Tribunal that the Cenvat credit on landline and mobile telephones used in connection with running of output services are eligible for Cenvat credit. In view of the above, denial of the credit is not justified. Therefore, order of the Commissioner (Appeals) in setting aside the order of the original authority calls for no interference.

8. In view of the above, appeal by the department is rejected. Cross objection supporting the order of the Commissioner (Appeals) is disposed of. The stay petition is also disposed of.

(M. VEERAIYAN)
Technical Member

MPS*