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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/167 /2011 – SM[BR] &E / STAY / 196 / 2011 –SM[BR]** Date **25/04/2011**

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

To :
**M/S NOVUS PROFESSIONAL SERVICES PRIVATE LIMITED.,**

SUITE 24, U&I CORPORAT CENTRE, 47 ECHELON,
SECTOR-32, GURGAON (HARYANA)
122001

**M/S NOVUS PROFESSIONAL SERVICES PRIVATE LIMITED.,** Appellant

Vs

**C.C.E. DELHI III** Respondent

I am directed to transmit herewith a certified copy of **Final order No. 214/2011-SM[BR]&S/159/2011** dated 28.3.2011 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 III**
UDYOG MINAR, UDYOG VIHAR,
VANIJYA NIKUNJ, PHASE V,
GURGAON - 122016 (HARYANA)

2. Adv. / Consult SHRI VIVEK SHARMA ADV.
BUILDING NO.10, 8TH FLOOR, TOWER B, DLF CYBER
CITY, PHASE II, GURGAON.

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. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

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

**COURT NO. III**

**Date of Hearing : 28.3.2011**

# Excise Stay No. 196 of 2011-SM and Excise Appeal No. 167 of 2011-SM

[Arising out of the Order-in-Appeal No. 435/BK/GGN/2010 dated 19.10.2010 passed by the Commissioner of Central Excise (Appeals), Gurgaon]

**Coram:**

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

| | | |
|---|---|---|
| 1. | Whether Press Reporter 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 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 Novus Professional Services Pvt. Ltd. Appellant

Vs.

CCE, Delhi-III Respondent

**Appearance:**

Appeared for Appellant : Shri Vivek Sharma, Advocate
Appeared for Respondent : Shri Anil Khanna, SDR

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

Final Order No. 214/2011 SM (Br) & S-159/2011 SM (Br) dated............

Per Mathew John:

The Appellant is registered as a 100% EOU exporting business support services to clients located outside India. The Appellant avails input services for providing such exported services and take Cenvat credit of tax paid on such input services. Since the Appellant was not able to utilize such credit for payment of tax on any locally provided service, the Appellant filed a refund claim under provisions of Notification 5/2006-CE (NT) dated 14-03-2006 read with Rule 5 of the Cenvat Credit Rules, 2004 for getting refund of the credit which had accumulated under their Cenvat credit account. The Assistant Commissioner by his order dated 08-09-09 sanctioned refund of Rs. 1,15,712.

2. The department filed an appeal with Commissioner (Appeal) on the ground that some of these services like Renting of Immovable Property, General Insurance, Management Consultancy etc cannot be considered as "input service used in providing output service which has been exported without payment of service tax" as envisaged in notification 5/2006-CE (NT) dated 14-03-2006. The Commissioner (Appeal) allowed the appeal filed by the department vide order dated 19-10-2010 by setting aside the refund sanctioned by the original authority. Aggrieved by the Order-in-Appeal the Appellant is before the Tribunal.

3. The Counsel for Appellant submits that the Notification 5/2006-CE (NT) dated 14-03-2006 has been amended retrospectively with effect from 14-03-2006 by section 30 of Finance Act 2010, replacing the word "used in" with the words "used for". Further the Central Board of Excise and Customs has issued detailed instructions vide D. O. letter F. No. 334/1/2010-TRU dated 26-02-2010 (para 8) in the matter. The counsel pleads that though this amendment had come into effect by the time the order was issued by the Commissioner (Appeal) the matter was not examined in the context of the amended provisions. He submits that the matter should be remitted for de-novo examination of the matter in the light of the retrospective amendment and instructions.

4. The Ld. DR agrees that there is need for a re-look in the matter.

5. Considered the submissions on both sides.

6. The Impugned Order-in-Appeal is not maintainable since the issue has not been examined in the light of amended provisions. So I set aside the order of Commissioner (Appeal) and remit the matter to the Commissioner (Appeal) to examine the matter in the light of the amended provisions and pass appropriate order.

7. The stay petition and Appeal are disposed of accordingly.

(Pronounced in open Court on 28-03-11)

(Mathew John)
Member (Technical)

RM