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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/1237/2009 – SM[BR]** Date **03/08/2011**

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

To :
M/S HOTLINE CPT LTD.
GBA 1-3, 8 GHIRONGI INDUSTRIAL AREA,
MALANPUR, DISTT. BHIND (M.P.)

M/S HOTLINE CPT LTD. Appellant
Vs
C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No. 446 / 2011 –SM[BR]** dated 14.7.2011 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. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult
MR.RAMESH NAIR
LAKSHMI VIHAR, AG- 192, SCHEME NO. 54, VIJAYNAGAR, INDORE(MP)

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)

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

Excise Appeal No. E/1237/09-SM

[Arising out of Order-in-Appeal No.IND-1/206/2008 dated 08.12.2008 passed by the Commissioner (Appeals), Central Excise & Customs, Indore].

M/s. Hotline CPT Ltd. ...Appellant

Vs.

CCE, Indore ... Respondent

Present for the Appellant :Shri.Manish Saharan, Advocate
Present for the Respondent:Shri.Anil Khanna, Advocate

Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Date of Hearing/Decision:14.07.2011

Final **ORDER NO.** 446/2011 SM (Br) **DATED:**______

PER: D.N.PANDA

The service tax paid by the appellant as a recipient of photography service was claimed to be set ~~up~~ off against excise duty liability and that has been denied by both the authorities below. Ld. Adjudicating authority found that the input service of photography claimed by the appellant was no way used in manufacture of colour picture tube for which he denied the input credit. While denying, he also came to the conclusion that photography of plants of the noticees cannot be said to be used for advertisement purpose and the assessee cannot be entitled to the credit of service tax paid on such photography service.

2. When the appellant came before the First Appellate Authority that authority by order dated 11.2.2008 at page 3 thereof considered the law and came to the conclusion that the photography of plants have neither direct or indirect role in relation to manufacture of the picture tube by appellant. Accordingly, he confirmed adjudication. Appellant has same submission before the Tribunal without bringing dependability and integrity of the photography service to the manufacture for the purpose of claiming cenvat credit on the service tax paid on photography service. The show cause notice in terms of para 5 thereof brought out that noticee had not used photography service in or in relation to manufacture/clearance of their final product. There was an opportunity for defence given by show cause notice. But the defence led could not get sanction of law.

3. Ld. DR supported order of the authorities below.

4. Heard both sides and also noticing the finding of both authorities and allegation in show cause notice as well as

finding no rebuttal evidence against the finding of authorities below, there is no scope to hold that the photography service was essential and inevitable as well as indispensable for manufacture of picture tube. Therefore, the first appellate order cannot be faulted with. Ld. Counsel prays to waive the penalty on the ground that there was no wilful intention to cause loss to Revenue.

5. The ld. DR says that only for the wrong availment of credit, penalty of Rs.10,000/- was imposed. Hearing both sides, it transpires that there was a contravention of law when wrong credit was availed. But conduct of the appellant suggests maximum penalty need not be imposed. Accordingly, the penalty imposed under Rule 15(3) of Cenvat Credit Rule 2004 is reduced to Rs.1000/- only.

6. Accordingly, appeal is partly allowed confirming adjudication but only reducing penalty to the aforesaid amount.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita