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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. ST/928 /2009, ST/S/3154/09 - CU[DB] Date **07/04/2011**

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

To :
M/S MAX NEW YORK LIFE INSURANCE CO. LTD.

11TH FLOOR, DLF SQUARE, JACARANDA MARG,
DLF CITY, PHASE-II, GURGAON, HARYANA.

M/S MAX NEW YORK LIFE INSURANCE CO. LTD. Appellant

Vs

COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX (LTU) Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/115/ 2011 CU[DB]** dated 25.03.11

passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwith Stay Order No ST/161/10

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX (LTU)
NBCC PLAZA, PUSHP VIHAR,
SECTOR-III, SAKET, NEW DELHI-
110017

2. Adv. / Consult

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
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 - 110005
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
(Customs Appeal Branch)

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

Court No. III

ST/Stay/3154/2009 in & Service Tax Appeal No.928 of 2009

[Arising out of Order-in-Original No.02/Commr./2009 dated 31.8.2009 passed by the Commissioner of Central Excise & Service Tax, New Delhi].

Date of Hearing: 25th March, 2011
Dated of decision: 25th March, 2011

For approval and signature:

Hon'ble Dr. C. Satapathy, Technical Member;
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?	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

M/s. Max New York Life Insurance Co. Ltd., Appellants

Vs.

CCE & ST, New Delhi Respondent

Appearance:
Present for the Appellant : Shri Sanjeev Sachdeva, Consultant
Present for the Respondent : Shri Sameer Jain, D.R.

Coram: Hon'ble Dr. C. Satapathy, Technical Member
Hon'ble Shri D.N. Panda, Judicial Member

Stay Order No. ST/161/11

FINAL ORDER NO. ST/115/11 **DATED**

Dr. C. Satapathy:

Heard both sides.

2. The matter had come up earlier before the Bench on a number of times, and the documents submitted by the appellants during the course of early hearing were sent to the jurisdictional Commissioner for examination and report. At the hearing today, learned Consultant appearing for the appellants states that the appellants are giving up their claim to Cenvat Credit under Rule 6(1), (2), (3) of the Cenvat credit Rules, 2004 and they are confining their prayer to grant of Cenvat credit under Rule 6(5) of the Cenvat Credit Rules, 2004. Learned D.R. appearing for the department points out that the credit under Rule 6(5) is available only if the listed services under the said Sub-rule is not exclusively used for exempted services, including non-taxable services. He further states that the appellants have submitted voluminous documents but they have to satisfy the jurisdictional Commissioner that none of the inputs gets disqualified by the restriction placed in the Sub-rule (5) itself regarding exclusive use in exempted services. Learned Consultant states that they are ready to assist the jurisdictional Commissioner and to demonstrate before him that they qualify for credit under Rule 6(5) of the Cenvat Credit Rules, 2004. As such, we set aside the impugned order and remand the matter to the original authority for fresh decision. He shall give a reasonable opportunity of hearing to the appellants and the appellants shall be free to demonstrate before him with documentary

evidence that they qualify for Cenvat credit under Rule 6(5) of the Cenvat Credit Rules, 2004.

3. Thus, the appeal is allowed by way of remand. the Stay petition also stands disposed off.

(Dictated & pronounced in the Open Court.)

(Dr. C. SATAPATHY)
TECHNICAL MEMBER

(D.N. PANDA)
JUDICIAL MEMBER

RK