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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

STAY Application No. : ST/Stay/3171/2012
Appeal No. : ST/2435/2012-CU[DB]

Dated: **17/09/2012**

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

Abn Amro Bank Nv
(now Royal Bank Of Scotland N V) 12th
Floor, Tower C, Cyber Greens, Dlf Cyber
City, Ph-iii, Sector 25a, Gurgaon.

Abn Amro Bank Nv (Appellant)

VS

C.C. & C.E. & S.T.-Noida (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/578/2012-CU[DB]**, Stay/MISC Order No. **ST/SO/941/2012** and dated **30/08/2012** passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Assistant Registrar
CUSTOMS Appeal Branch

Copy To,

1. Respondent
C.C. & C.E. & S.T.-Noida
C-56/42...SECTOR 62, NOIDA,201307

2. Advocate(s) / Consultant(s):
RUCHIRA CHAUDHARY,ADVOCATE
002, TOWER 14, THE CLOSE
NORTH,NIRVANA COUNTRY,
SECTOR 50, GURGAON.

3. C.D.R

4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-3

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-110005

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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

13. Office Copy
14. Gaurd File

Assistant Registrar
CUSTOMS Appeal Branch

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

Date of Hearing : 30.8.2012

Service Tax Stay No. 3171 of 2012 and Service Tax Appeal No. 2435 of 2012

[Arising out of the Order in-Appeal No.126/ST/APPL/Noida/419 dated 30.4.2012 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Noida)

For Approval & signature :

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri 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 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 ABN Amro Bank NV — Appellant

Vs.

CCE, Noida — Respondent

Appearance:

Appeared for Appellant : Ms. Ruchika Chaudhary, Advocate
Appeared for Respondent : Shri Amresh Jain, A.R.

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

Stay order No ST/S/941/12-Cus,
Final Order No. ST/A/578/12-Cus, dated............

Per Mathew John :

The appellants are registered under the Service Tax Laws for payment of service tax on various taxable services rendered by them and they have been taking the benefit of Cenvat Credit Rules 2004. On audit of their accounts, it was seen that they had taken unexplained Cenvat credit of Rs.47,97,751/- in the return for the period October 2005 to March 2006. On enquiries made to the appellant they informed that this credit actually pertained to services received during the period 2003-04 and the said amount was remaining unutilised. But they could not reflect ~~in~~ the same as closing balance in the ST-3 returns for periods prior to October 2005 to March 2006.

2. Revenue was of the view that this credit was taken without any basis and it is to be disallowed. A Show Cause Notice issued in this regard was adjudicated confirming the demand of Rs.47,97,751/-- along with interest and penalties.

3. The counsel for the appellant submits that they detected the unutilized credit when they migrated from their older computer software to new financial software called "SAP". During the switch over they conducted detailed reconciliation and detected unutilized credit which was lying in their accounts maintained under the old software.

4. The Counsel submits that in the earlier software they had a system by which credits were entered into the account on a provisional basis but transferred into a separate account for utilization of credit only when payments were made against the concerned invoice and also after

ensuring that all necessary particulars as required under Rule 9 of the Cenvat Credit Rules, 2004 are available. There were some cases which were entered in the provisional account for which credit was not actually taken for utilization for payment of tax. Such amounts kept in the provisional account were detected during reconciliation process while migrating from the old software to new software and credit for such amounts were taken in the returns filed for October 2005 to March 2006. The appellant submits that out of this amount they have reversed Rs.11,25,571/- because they were not able to get the full particulars necessary for claiming the credit. Presently they are disputing only the balance amount of Rs.36,72,180/- in respect of which they submit that they can give the full details of all the credits which add up to this amount and such work sheet is placed before the Tribunal. It is their contention that there is no time limit in the matter of taking Cenvat credit and since the credit claimed by them is proper, there is no reason to deny the Cenvat credit. Therefore he requests that the impugned order may be set aside to the extent of Rs.36,72,180/-.

4. Opposing the prayer, the ld. A.R. for Revenue submits that the appellants did not produce any evidence before the adjudicating authority or appellate authority to prove that the disputed credit was taken against proper invoices on which service tax has been paid. He also

points out that since there is considerable delay in taking the credit it is very difficult for Revenue to verify whether such credit was taken earlier on the same invoice.

5. Prima facie we are of the view that this is not a case of any fraudulent credit and it is a case of delay in taking credit and their books of accounts had entries relating to the disputed credit though the amounts were not reflected in their credit account from which utilization was made and such amount was not reflected in ST03 returns filed. Therefore we grant waiver of pre-deposit of dues arising from the impugned order for admission of appeal and thereafter we take up the appeal itself for disposal.

6. The appellant is now submitting that they have reversed credit of amounts for which they are not able to produce proper documents and in respect of the balance credit they will be able to show proper documents as required under Rule 9 of Cenvat Credit Rules 2004 for taking credit under Cenvat Credit Rules 2004 does not have any provision for denying Cenvat credit. The Rules do not provide for denying Cenvat credit for the reason that there has been delay in taking any credit. Therefore we feel that in this case it will be appropriate to give another opportunity to the appellant to demonstrate the eligibility for Cenvat credit of Rs.36,72,180/-. Therefore we set aside the impugned order and remand

the matter to the adjudicating authority. The adjudicating authority is required to conduct necessary verification of the statements given and the documents that is going to be produced by the appellant and then re-examine appellant's claim. The appellant should also give necessary assistance to Revenue to ensure that there is no duplication of credit against the same document having regard to the long gap between the point of time the service was availed and the time when credit has been taken.

7. Thus the stay petition is allowed. The impugned order is set aside and matter remanded for de novo adjudication.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM