IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Service Tax Appeal No. ST/55446/2014-ST[SM]
[Arising out of Order-In-Appeal No. NOI/EXCUS/000/APPL/108/14 dated: 27.05.2014 passed by CCE (Appeals) Noida]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s. H CL Technologies Ltd. …Appellant

Vs.

C.C. C.C.E. & S.T. Noida …Respondent

Appearance:
Ms. Nupur Maheshwari, (Advocate) for the Appellant
Mr. R K Gupta, DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing/ Decision. 21.07.2015

Final Order No. 54325 /2015

Per S K Mohanty:

This appeal is directed against the impugned order dated 27.05.2014 passed by the Commissioner (Appeals) Central Excise and Service Tax Noida, upholding rejection of refund claim in the adjudication order.

2. Brief facts of the case are that during the disputed period i.e. October 2012 to December 2012, the appellant had filed the refund application in terms of Rule 5 of the Cenvat Credit Rules, 2004 claiming refund of service tax paid on the input services used for exportation of the output service. The refund claim of Rs. 17,66,011/- was rejected by the original authority. In appeal, the ld. Commissioner (Appeals) has allowed the refund claim for Rs. 6,75,412/- and has disallowed the claim amount of Rs. 10,19,197/-, against which the appellant has filed the present appeal before this Tribunal. The reason for denial of the service tax refund is that there is no nexus between the input services and the output service exported by the appellant. With regard to the advertisement and sponsorship service, the grounds assigned for rejection of the refund claim are that the said service has been utilized for promotion of Brand HCL, which includes the other units apart from the appellant herein.

3. Heard the Ld. Counsel Ms. Nupur Maheshwari (Advocate) for the appellant and Sh. R K Gupta, the Ld. DR for the Revenue.

4. The Ld. Advocate submits that the eligibility of cenvat refund with regard to the disputed services are no more *res integra* in view of the decisions of the judicial forums including the recent decision of the Tribunal in the case of appellant itself. In this context, Ld. Advocate relies on the order dated 10.07.2015 passed by this Tribunal in appeal No. ST/51400/2014-ST(SM), wherein refund claim in respect of the present disputed services were allowed in favour of the present appellant.

5. Considering the fact that the appellant has already been granted the refund benefit with regard to the disputed services by this

Tribunal, I am of the view that in this case also the appellant should be allowed the refund benefit, which was denied by the ld. Commissioner (Appeals). However, with regard to visa charges, involving refund of Rs. 18,186/-, I find that the same is not eligible for refund inasmuch as such charges were incurred by the appellant for the family members of the employees, which cannot be termed as input service for the purpose of getting the refund benefit.

6. Therefore, the impugned order is set aside and the appeal is allowed, except for the refund of service tax of Rs.18,186/- attributable to the visa charges. The appeal is partly allowed.

(Dictated and pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

Neha