CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 29/12/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70093-70094/2015 dated 15/12/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

30/12/15

Asstt. Registrar / SPS

Application	Appeal	Name and Address of Appellant
	E/52520&53049/2014	CCE,NOIDA C-56/42, SECTOR-62 NOIDA(UP)
	Name and Address of Respondent	ATRENTA INDIA PVT LTD A-09,SECTOR-04 NOIDA(UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise. I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisers Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

30/12/15

Asstt. Registrar/SPS
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad

DATE OF HEARING : 15/12/2015.
DATE OF DECISION: 15/12/2015.

Excise Appeal No. 52520 and 53049 of 2014 (SM)

[Arising out of the Order-in-Appeal No. NOI-EXCUS/000/APPL/01/14 dated 10/01/2014 and No. NOI-EXCUS/000/APPL/214/13/14 dated 28/10/2014 both passed by The Commissioner (Appeals), Customs & Central Excise, Noida.]

For Approval and signature :
Hon'ble Shri B. Ravichandran, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
2.	Whether it would 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 Department Authorities?	:	Yes.

CCE, Noida — Appellant

Versus

M/s Atrenta India Pvt. Ltd. — Respondent

Appearance

Shri D.S. Mann, Authorized Representative (DR) – for the appellant.

None – for the Respondent.

CORAM : **Hon'ble Shri B. Ravichandran, Member (Technical)**

Final Order No. 70093-70094/2015 Dated : 15/12/2015

Per. B. Ravichandran :-

There are two appeals by the Revenue against orders passed by the Commissioner (Appeals), Noida. The brief facts of the case are that the respondent are functioning as STPI unit and are engaged in providing IT Software Services. They were exporting their services to overseas clients. On accumulated Cenvat credit, they filed two refund claims under the provisions of Rule 5 of Cenvat Credit Rules, 2004 readwith Notification No. 5/2006-CE (NT) dated 14/03/2006. These claims were rejected by the Original authority on the ground that the respondents were not registered with the Department during the period covered by the refund claims, namely, April 2011 to September 2011 involving two quarters.

2. Aggrieved by these orders, the respondent filed appeals and the learned Commissioner (Appeals) vide the impugned orders allowed the appeals and directed the Original Authority to examine the claims and to allow them subject to verification of documents and compliance of conditions, as per law.

3. Aggrieved by the above orders, the Revenue is in appeal before the Tribunal. The learned AR submitted that the respondents were not

registered with the Department during the material time and they got registered only in December 2011. Since, the Cenvat credit scheme under the notification above-mentioned are applicable only to registered service providers, the Original Authority is correct in rejecting the claims. None appeared on behalf of the respondent, despite of notice.

4. Heard the learned AR and perused the appeal records. The only point for decision is whether or not the refund claim under Rule 5 and Notification 5/2006-CE (NT) can be considered in the absence of registration with the Department during the period of claim. It is an admitted fact that the respondent got registered with the Department on 20/12/2011 and filed these refund claims thereafter. The only ground on which these claims were rejected was that during the period covered by the refunds, the respondents were not registered with the Department. I find that a similar matter was decided by the Hon'ble High Court of Karnataka in the case of **mPortal India Wireless Solutions P. Ltd. vs. C.S.T., Bangalore** reported in **2012 (27) S.T.R. 134 (Kar.)**, which was followed the Tribunal in the party's own case vide final order dated 24/09/2013. It was held that non-registration cannot be the reason for denial of refund claims, if otherwise entitled. Considering the above settled legal position, I find no merit in the appeals filed by the Revenue and, as such, both the appeals are dismissed. As observed in the impugned order, refund claim shall be examined and allowed subject to

verification of documents and compliance of required conditions as per relevant provisions of law.

(Order dictated and pronounced in the open court).

(B. Ravichandran)
Member (Technical)

PK

प्रमाणित प्रति / Certified True Copy

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001