FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 30/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70066-70070/2017-SM[BR] dated 20/01/2017

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.

Asstt. Registrar

| Application | Appeal | Name and Address of Appellant |
|---|---|---|
| 1 | E/2145/2010 | **IMPETUS INFOTECH (INDIA) PVT. LTD.** D-39-40, SECTOR-59, NOIDA, G.B.NAGAR (U.P.) |
| 2 | E/2146/2010 | **IMPETUS INFOTECH (INDIA) PVT. LTD.** D-39-40, SECTOR-59, NOIDA, G.B.NAGAR (U.P.) |
| 3 | E/2147/2010 | **IMPETUS INFOTECH (INDIA) PVT. LTD.** D-39-40, SECTOR-59, NOIDA, G.B.NAGAR (U.P.) |
| 4 | E/2148/2010 | **IMPETUS INFOTECH (INDIA) PVT. LTD.** D-39-40, SECTOR-59, NOIDA, G.B.NAGAR (U.P.) |
| 5 | E/2653/2009 | **Commissioner CUSTOMS Central EXCISE and SERVICE TAX-Noida** C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH 201307 |

Name and Address of Respondent

6 -C.C.E. NOIDA
C-56/42, Sector-62, Noida-201307

-

7 Impetus Infotech India Pvt Ltd
D-27, Sector-59,,
NOIDA
,UP

8 -C.C.E. NOIDA
C-56/42, Sector-62, Noida-201307

-

9 -C.C.E. NOIDA
C-56/42, Sector-62, Noida-201307

-

10 -C.C.E. NOIDA
C-56/42, Sector-62, Noida-201307

-

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Other Appellants and Respondents as per Annexure

Copy To

11 Advocate(s) / Consultant(s):

**Anil Kumar Tiwari &**
**Praveen Kumar Tiwari**
**BRAHMADUTTA**
**CHAMBERS OF LAW,**
**111-112, G.C. COMPLEX,**
**NAYA BANS SECTOR-15,**
**OPPOSITE NIRULA'S**
**HOTEL,**
**NOIDA,**
**UTTAR PRADESH**

**Ramkrishna Adv**
**247**
**MUTTHIGANJ,ALLAHABAD**

12 Bar Association, CESTAT, Allahabad

13 Director Publications, Customs, Excise, I.P. Estate, Delhi

14 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

15 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

16 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

17 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

18 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

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

20 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

21 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

22 C.D.R. 23 Office Copy 24 Guard File

**Asstt. Registrar**

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL No.E/2653/2009 & 2145-2148/2010-EX[SM]

(Arising out of Order-in-Appeal No. 136/CE/APPL/NOIDA/09 dated 29/05/2009 & Common Order-in-Appeal No.107-110-ST/APPL/NOIDA/10 dated 31.03.2010 all orders passed by Commissioner of Central Excise & Customs (Appeals), Noida)

For approval and signature:

**Hon'ble Mr. Anil Choudhary, Member (Judicial)**

| | | |
|---|---|---|
| 1. | Whether Press Reporter 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 |

**Commissioner of Customs, C.E. & S.T., Noida**

(In Appeal No.E/2653/2009)

**M/s Impetus Infotech (India) Pvt. Ltd.**

(In Appeal No.E/2145-2148/2010) **Appellants**

Vs.

**M/s Impetus Infotech (India) Pvt. Ltd.**

(In Appeal No.E/2653/2009)

**Commissioner of Central Excise, Noida**

(In Appeal No.E/2145-2148/2010) **Respondents**

Appearance:

Shri D.K. Deb, Assistant Commissioner (AR), for Revenue
Shri Anil Tiwari, Advocate for Assessee

**CORAM:**

**Hon'ble Mr. Anil Choudhary, Member (Judicial)**

Date of Hearing : 20/01/2017
Date of Decision : 20/01/2017

FINAL ORDER NO- 70066-70070/2017

**Per: Anil Choudhary**

In the present appeals, details for the Revenue Appeal are as under:-

| Sl. No. | Tri. Appeal No. | Order-in-Appeal No. | Period Involved | Amount of Refund (Rs.) |
|---|---|---|---|---|
| 01. | E/2653/2009 | 136/CE/APPL/NOIDA/09 Dated 29.05.2009 | April, 2007 to February, 2008 | 03,95,114/- |

The details for the appeals of assessee are as under:-

| Sl. Nos. | Tri. Appeal Nso. | Order-in-Appeal Nos. | Period Involved | Amount of Refund rejected (Rs.) |
|---|---|---|---|---|
| 01. | E/2145/2010 | 107-110-ST/APPL/NOIDA/10 dated 31.03.2010 | July, 08 to Sep. 08 | 04,71,057/- |
| 02. | E/2146/2010 | 107-110-ST/APPL/NOIDA/10 dated 31.03.2010 | April 07 to Feb. 08 | 14,05,076/- |
| 03. | E/2147/2010 | 107-110-ST/APPL/NOIDA/10 dated 31.03.2010 | April 08 to June 08 | 03,34,823/- |
| 04. | E/2148/2010 | 107-110-ST/APPL/NOIDA/10 dated 31.03.2010 | Jan. 09 to Mar. 09 | 02,79,464/- |
| | | | Total | 24,90,420/- |

2. The issue in all these appeals filed by the revenue and the assessee is that the respondent assessee, on STPI 100% EOU, are engaged in providing IT enabled services being in the nature of development of software, repair and maintenance of software of the overseas clients, and services in the nature of Business Auxiliary

Service and/or Business Support Services, is not entitled to refund under Rule 5 of CCR, 2004 read with Notification No.5/2006.

3. The brief facts are that the respondent assessee is 100% EOU – STPI located at Noida engaged in providing IT enabled services in the nature of Business Auxiliary Services, Repair and Maintenance of software of the overseas clients, Business Support Services, Consulting Engineering Services for repair and maintenance of software including trouble shooting in operating systems, Customer care and Support Service for overseas clients and other like services. The assessee was granted 100%EOU status and was located in STPI by the Director Software Technology Park of India, Noida. All such IT enabled services including development and export of software are provided and/or exported via online alone, that is the goods in the nature of software or services in the nature of IT enabled services were always supplied through Information Technology Data cable or Internet Services. The assessee is also licensed under Section 58 of the Customs Act, 1962 and also received sanction to manufacture goods namely computer software under Section 65 of the Customs Act vide order dated 06/01/2005. The assessees were exclusively providing the IT enabled services to their overseas clients. As the respondents were unable to utilise the Cenvat credit taken on inputs and input services utilised in their business of export of IT enabled services, being eligible under Rule 5 of CCR, 2004 read with Notification, applied for refund of the unutilised Cenvat credit. As per the facts on record in Appeal No.E/2653/09 the refund was granted by the adjudicating

authority and such grant was upheld by learned Commissioner (Appeals). Whereas, in the other four appeals the refund claim was rejected by the Assistant Commissioner and such rejection was upheld by learned Commissioner (Appeals).

4. Heard the parties.

5. Learned A.R. for revenue have relied on the impugned order where the refund have been rejected by learned Commissioner (Appeals) and have opposed the order of Commissioner (Appeals) where the refund is granted, on the aforementioned issues as already noticed. The learned Advocate for the assessee have stated that the issue is no longer res integra and the same stands settled vide the Ruling of Hon'ble Karnataka High Court in the case of mPortal India Wireless Solutions Private Ltd. Vs C.S.T. Bangalore 2012 (27) S.T.R. 134 (Kar.). The issue before the Hon'ble High Court was whether revenue was justified in refusing to grant refund of Cenvat credit, to which the assessee was legally entitled to, on the ground that he is not registered with the Department–the Hon'ble High Court held that the assessee is 100% EOU and exported software at the relevant point of time, which was not a taxable service. However, the assessee had paid input tax on various services. According to the assessee they are entitled to refund of the accumulated Cenvat credit. The Tribunal has categorically held that even though the export of software is not a taxable service but still the assessee cannot be denied the Cenvat credit. The assessee is entitled to refund of the Cenvat credit. Similarly insofar as refund of Cenvat credit is concerned the limitation

under Section 11 B does not apply for refund of accumulated Cenvat credit. Therefore, bar of limitation cannot be a ground to refuse refund of Cenvat credit to the assessee. Further held, insofar as requirement of registration with the Department as a condition precedent for claiming Cenvat credit is concerned, learned Counsel appearing for both parties were unable to point out any provision in CCR, 2004 which imposes such restriction. In the absence of a statutory provision which prescribes that registration is mandatory and that if such a registration is not made, the assessee is not entitled to the benefit of refund, the authorities committed a serious error in rejecting the claim for refund on the ground which is not existence in law. Accordingly, the Hon'ble High Court was pleased to allow the appeal by way of remand with a direction to grant the refund, which is subject to verification of the particulars of input tax credit.

6. Having considered the rival contentions, I find that the issue herein are squarely covered by the ruling of Hon'ble Karnataka High Court in favour of the assessee on both the issues:-

i) Being grant of refund for the period when the assessee was not registered with the Service Tax Department and

ii) The ground that the service provided by the assessee was not taxable, admittedly exported, during the relevant period.

7. I further find that there is no dispute by the revenue with regard to the quantum of input tax credit taken by the assessee. Accordingly, I allow the appeals of the assessee being Appeal Nos.E/2145-2148/2010. I also direct the adjudicating authority to grant the refund

within a period of 45 days from the date of receipt of a copy of this order along with interest as per rules.

8. The Appeal No.E/2653/2009 filed by the revenue is dismissed.

(Dictated in Court)

Sd/-

**(ANIL CHOUDHARY)**
**MEMBER (JUDICIAL)**

dp

प्रमाणित प्रति / Certified True Copy
8.2.17
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