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: 19/04/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70385/2017-EX[DB] dated 10/04/2017

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/2278/2009	C.C.E, NOIDA C-56/42, Sector-62, Noida-201307
		Name and Address of Respondent
2		FREE SCALE SEMICONDUCTORS INDIA (P) LTD Plot No 15,16&18, Sector-16, Noida.,,

Copy To
3Advocate(s) / Consultant(s):

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO SALES,Above the Office Of Blue Dart/DHL Courier, COLVIN ROAD, LOHIA MARG ALLAHABAD-211001

4 Bar Association, CESTAT, Allahabad

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

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

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

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

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

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

/

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No.E/2278/2009-EX[DB]

(Arising out of Order-in-Appeal No. 115-116/CE/NOIDA/09 dated 29/04/2009 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

Commissioner of Central Excise, Noida	**Appellant**
Vs.	
M/s Free Scale Semiconductors India (P) Ltd.	**Respondent**

Appearance:

Shri D.K. Deb, Assistant Commissioner (AR),	for Appellant
Shri Hrishikesh, Advocate	for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing	:	10/04/2017
Date of Decision	:	10/04/2017

FINAL ORDER NO.-70385/2017.........

Per: Anil Choudhary

The present appeal is filed by the revenue against Order-in-Appeal No. 115-116/CE/NOIDA/09 dated 29/04/2009 passed by Commissioner of Central Excise & Customs (Appeals), Noida.

2. The respondent M/s Free Scale Semiconductors India (P) Ltd. is a STPI unit having Customs License dated 30th May, 2006, issued by the Divisional Assistant Commissioner and is a 100% EOU. The respondent is registered for providing services under the category of

A

Business Auxiliary Services to their parent company in USA. The respondent filed two refund claims on 22nd April, 2008 under Rule 5 of CCR read with Rule 5/2006-ST for Rs.4,84,382/- and Rs.4,81,547/- on the ground that during the month of April, 2007 & May, 2007 respondent exported services amounting to 28,43,423/- and 29,60,084/- USD to USA in respect of input services received and consumed for rendering output services exported.

3. Heard the parties.

4. The grounds taken by revenue in the appeal is that the respondent-assessee during the material period was not providing any taxable service in the terms of Finance Act, 1994 and hence it could not be considered as an output service provider as per Rule 2(p) of CCR 2004 and hence there was no input service on which Cenvat credit of service tax could be taken under Rule 2 (l)(i) and rule 6 (1) of CCR, 2004.

5. The said ground is not sustainable for the reason that had such Cenvat credit been not admissible, the Revenue could have issued show cause notice for recovery of such inadmissible Cenvat credit whereas the fact is that no such show cause notices were issued for recovery of said Cenvat credit.

6. Further, we find that the ground before us is misconceived as the refund of Cenvat credit taken by the manufacturer or provider of

taxable service, is admissible to both. Thus, we find no merits in the grounds of appeal filed by revenue and the same is dismissed. The respondent-assessee is entitled for consequential benefits, in accordance with law.

(Dictated in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

akp