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: 07/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70760-70761/2016-SM[BR] dated 31/08/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/70081-70082/2016	**CONTATA SOLUTIONS PVT LTD** A-37, SECTOR-4, NOIDA U.P.
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-NOIDA C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

NISHANT MISHRA AND SUDARSHAN SINGH ADVOCATES
B2-3/4-31, SAROJANI APARTMENTS,
SAROJANI NAIDU 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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors 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 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH: ALLAHABAD

SINGLE MEMBER BENCH

ST/70081/2016-ST(SM), ST/70082/2016-ST(SM)

Dated of Hearing/decision: 31/8/2016

[Arising out of Order-in-Appeal NO. NOI/SVTAX/000/APPEALS-I/275/2015-16 dated 12.10.2015 passed by Commissioner (Appeals), Central Excise, Meerut]

For approval and signature:

Hon'ble Shri Anil G. Shakkarwar, 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?	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

Contata Solutions Pvt. Ltd — Appellant

Vs.

C.C. & C.E. & S.T. Noida — Respondent

Appearance:
Present for the Appellant: Shri Nishant Mishra, Advocate
Present for the Respondent: Shri Rajeev Ranjan (Joint Commissioner) A.R.

Coram: Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

Final Order No. 70760-7[illegible]/2016

सीमा शुल्क उत्पाद एवं सेवा कर अपीलीय अधिकरण
CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per: Anil G. Shakkarwar

These two appeals filed by assessee have the same issue but for different periods. Therefore, they are taken up together for decision.

2. The appellant is provider of taxable service namely Information Technology Software Services and registered with the department. The appellant on 9/5/2014 filed a refund claim amounting to Rs.4,98,117/- under Notification No. 27/2012-CE(NT) dated 18.6.2012 issued under Rule 5 of the Cenvat Credit Rules, 2004 for the quarter from April, 2013 to June, 2013. The original authority allowed the said refund through Order-in-Original No. 04-STD-I/2015-16 dated 1.4.2015. The appellants filed another similar refund claim amounting to Rs.4,19,552/- for the quarter July, 2013 to September, 2013 on 29.8.2014 which was allowed to them by original authority through Order-in-Original No. 5/STD-I/2015-2016 dated 1/4/2015. Revenue preferred appeals before Commissioner (Appeals) against both the said Orders-in-Original claiming that the relevant dated in the instant case for the purpose of Section 11 B of the Central Excise Act, 1944 is the date of payment of duty and the refunds allowed were partly hit by limitation taking date of payment of duty as relevant date. The Commissioner (Appeals) decided the appeal arising out of said Order-in-Original No. 4/STD-I/2015-16 through Order-in-Appeal No. 275/2015-16 dated 12.10.2015 which is impugned order for Appeal No. ST/70081/2016. The Commissioner (Appeals) decided the appeal arising out of Order-in-Original No.

05/STD-I/2015-16 through Order-in-Appeal No. 274/2015-16 dated 12/10/2015 which is impugned order for Appeal No. ST/70082/2016. Both the Order-in-Appeal are similar wherein appellate authority has held that the relevant date under section 11B of the Central Excise Act, 1944 is date of export of service and partially allowed refund out of claim allowed by the original authority and disallowed the balance claim. Aggrieved by said two Order-in-Appeals the appellant is before this Tribunal.

3. The ground of appeal inter alia include that explanation B to said Section 11B does not specify the case of refund of accumulated Cenvat credit arising on account of exportation of output service where no service tax is payable for provision of service within taxable territory and that they have relied upon the finding by this Tribunal in the case of Hyundai Motor India Engg. (P) Ltd. reported at 2015 (39) S.T.R. 1019 (Tri.-Bang.) which was affirmed by Hon'ble High Court of Andhra Pradesh at Hyderabad as reported at 2015 (39) STR 984 (A.P.).

4. The ld. Counsel for appellant has argued that the present issue is related to provision under Section 11B of Central Excise Act, 1944 made applicable for refund under Rule 5 of Cenvat Credit Rules, 2004 through Notification No. 27/2012 and there is no specific relevant date in the said Section for the refund of Cenvat credit accumulated due to export when there is no payment of Service Tax in the taxable territory. He has submitted that this Tribunal in the case of Bechtel

India Pvt. Ltd Vs. Commissioner of Central Excise, Delhi reported in 2014 (34) S.T.R. 437 (Tri.-Del.), has taken into consideration condition 6 of Notification No. 5/2006, dated 14.3.2006, Section 11B of Central Excise Act, 1944 and Rule 3 of Export of Services Rules, 2005 and held that in circumstances the date of provision of service when the recipient of such services is located outside India is the date on which payment is received by the service provider in convertable foreign exchange for providing such services. He has further submitted that similar view has been taken in the above stated case of Hyundai Motor India Engg. (P) Ltd. by this Tribunal and the said findings of this Tribunal were affirmed by Hon'ble High Court of Andhra Pradesh at Hyderabad through above stated case law in the case of Commissioner Hyderabad Vs. Hyundai Motor India Engg. Pvt. Ltd reported at 2015 (39) S.T.R. 984 (Andhra Pradesh). Further he has submitted that in the case of claim submitted on 9.5.2014 the date of receipt of foreign exchange were 19.6.2013, 24.7.2013 and 5.9.2013. Similarly in the case of refund claim filed on 29.2.2014 the dates of receipt of foreign exchange were 4.10.2013, 31.10.2013 and 03.12.2013. Therefore all the claim are within limitation.

5. Ld. D.R for Revenue has supported the impugned Order-in-Appeal.

6. I have taken rival contention into consideration and I am of the view that all the above stated case laws relied upon by the ld. Counsel are squarely applicable in the circumstance of this case. As

held in the said case laws the relevant date for the purpose of Section 11B for the purpose of Refund of accumulated Cenvat Credit is not the date when service is provided but the date on which payment for service provided is received in foreign exchange. As submitted by ld. Counsel for appellant and taking the date of foreign exchange receipt into consideration in both the appeals as relevant date both the claims for refund were filed within the period of limitation of one year. Therefore I hold that both the applications for refund of accumulated Cenvat credit filed on 9.5.2014 and 29.8.2014 are within the period of limitation. Therefore, I set aside both the Orders-in-Appeal impugned and order that Orders-in-Original in the two appeals are restored. In above terms, both the appeals are allowed.

(Dictated and pronounced in the open Court)

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

(K. Gupta)

प्रमाणित प्रति / Certified True Copy
3/10/16 /SPS
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