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: 20/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/71483-71485/2017-SM[BR]** dated **11/08/2017**

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/445/2010	**EXL SERVICE.COM (INDIA) PVT. LTD.** A-48, Sector-58, Noida.
2	E/446/2010	**EXL SERVICE.COM (INDIA) PVT. LTD.** A-48, Sector-58, Noida.
3	E/2256/2010	**EXL SERVICES (INDIA) PVT. LTD.** A-48, SECTOR-58, NOIDA.
		Name and Address of Respondent
4		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307
5		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307
6		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Other Appellants and Respondents as per Annexure

Copy To

7Advocate(s) / Consultant(s):

Ms. Natasha Sarkar, (Adv.) ALD
3/1A/3 OPP AUTO SALES,Above
the Office Of Blue Dart/DHL
Courier, COLVIN ROAD, LOHIA
MARG ALLAHABAD-211001

8 Bar Association, CESTAT, Allahabad

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

10 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

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

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

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

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

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

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

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

18 C.D.R. 19 Office Copy 20 Second Folder Copy 21 Guard File

Asstt. Registrar

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

APPEAL Nos. E/445, 446 & 2256/2010-EX[SM]

(Arising out of Order-in-Appeal No. 335/CE/APPL/NOIDA/09 dated 27/11/2009 (in Appeal No. E/445/2010), Order-in-Appeal No. 336/CE/APPL/NOIDA/09 dated 26/11/2009 (in Appeal No. E/446/2010) & Order-in-Appeal No. 135/ST/APPL/NOIDA/2010 dated 22/04/2010 (in Appeal No. E/2256/2010) all passed by Commissioner of Central Excise & Customs (Appeals), Noida)

M/s EXL Services.Com (India) Pvt. Ltd. **Appellants)**

Vs.

Commissioner of Central Excise, Noida **Respondent(s)**

Appearance:

Ms. Natasha Sarkar (Advocate) for Appellant(s)
Shri Pawan Kumar Singh (Spdtd.)AR for Respondent(s)

CORAM:

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

Date of Hearing : 11/08/2017
Date of Decision : 11/08/2017

FINAL ORDER NO: 71483-71485/2017

Per: Anil Choudhary

The common issue in these appeals by the appellant assessee is whether Cenvat Credit taken by them can be disputed by the Revenue without issuing show cause notice under the provisions of Rule 14 of CCR, 2004 read with Section 73(i) of the Finance Act.

2. The details of the appeals are as follows:-

Appeal No.	Refund Application	Order-in-Original	Order-in-Appeal
E/445/2010	-Dated-	R-22/AC/Div-I/2009-	335/CE/APPL/NOIDA/09

	29.12.2008 ~Period- 01.01.2008 ~Amount- 98,73,024/-	10 dt. 30.04.2009 ~Refund denied - 35,14,921/-/ ~Refund allowed- INR 46,56,626/-	dt. 27.11.2009 ~Refund allowed- 27,47,013/- ~Refund denied- INR 2,78,251/-
E/446/2010	~Dated – ~Period – July-September, 2007 ~Amount – 90,26,866/-	R-07/AC/Div-I/2008 dt. 13.04.2009 ~Refund denied- 38,72,657/- ~Refund allowed- INR 51,54,209/-	336/CE/APPL/NOIDA/09 dt. 27.11.2009 ~Refund allowed- 20,72,883/- ~Refund denied – 17,99,774/-
E/2256/2010	~Dated- 16.07.2009 ~Period- January to March, 2009 ~Amount- 2,99,97,862/-	R-255/AC/Div-I/2009-10 dt. 24.11.2009 ~Refund denied – 19,17,379/- ~Refund allowed 2,80,80,483/-	135/ST/APPL/NOIDA/2010 dt. 22.04.2010 ~Refund allowed- 1,81,783/- ~Refund denied- 17,35,596/-

3. The appellant is a 100% EOU and is engaged in the business of providing various value added offshore BPO solution services to overseas clients which are covered under the category of 'Business Auxillary Service' for which consideration received in convertible foreign exchange. During the period under dispute the appellant availed Cenvat Credit on various input services. Since the appellant was not in a position to utilize the credit for payment of any service tax on output service, the same being exempted due to nature of export business, accordingly, being entitled, they claimed refund of Cenvat Credit under Rule 5 of Cenvat Credit Rules,

2004 read with Notification No. 5/2006 EX(NT) dated 14 March, 2006. The refund applications were adjudicated vide different Orders-in-Original wherein Cenvat Credit with respect to certain input services disallowed on various grounds and the refund claim was rejected in part and allowed in part. Being aggrieved the appellant preferred appeal before learned Commissioner (Appeals) who was pleased to allow credit on some items and sustaining disallowance of Cenvat Credit in part. Being aggrieved the appellant is before this Tribunal.

4. The learned counsel for the appellant states that the Department has not issued any show cause notice under Rule 14 of CCR, 2004 which is a condition precedent for disallowance of Cenvat Credit taken by them. Without issuing any show cause notice for disallowance of Cenvat Credit taken, the credit so taken cannot be disallowed in the refund proceedings. The learned counsel further states that the issue is no longer res-integra and the same have been held in favour of the assessee by Division Bench of this Tribunal in the case of Free Scale Semi Conductor India Private Ltd being Appeal No. E/2278/2009-EX[DB] being Final Order No. A/70385/2017-EX[DB] dated 10 April, 2017 wherein under similar facts and circumstances it was held that disallowance of Cenvat Credit without issuance of show cause notice in the refund proceedings is bad and not sustainable. Accordingly, this Tribunal dismiss the appeal of Revenue holding the

respondent-assessee Free Scale Semi Conductor entitled to consequential benefits in accordance with law.

5. The learned AR for Department have relied on the impugned orders.

6. Having considered the rival contention, I find that the issue herein is squarely covered by the precedent order of this Tribunal in Free Scale Semi Conductors India Private Ltd. (supra). I further hold that the eligibility to Cenvat Credit cannot be challenged without issue of show cause notice under the Cenvat Credit Rules as the provisions of the Finance Act read with Cenvat Credit Rules provide for an issue of show cause notice under Rule 14 of Cenvat Credit Rules, 2004 read with Section 73(i) of the Finance Act or Section 11 A of the Excise Act. In the instant appeals admittedly no show cause notice have been issued for disallowance of Cenvat Credit. Accordingly, I allow all the three appeals and set aside the impugned orders. The appellant-assessee shall be entitled to consequential benefits in accordance with law. I further direct the Adjudicating Authority to grant the balance refund within a period of 60 days from the date of receipt of a copy of this order with interest as per rules.

(Dictated and pronounced in Court)

-Sd/-

(ANIL CHOUDHARY)
Member(JUDICIAL)

Ankit

सत्यापित प्रति/Certified True Copy
12/12/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
30, एम. जी. मार्ग, इलाहाबाद-211001
30, M. G. MARG, ALLAHABAD-211001