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: 14/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70974/2017-SM[BR] dated 12/09/2017

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/2011/2011	**ALLIED NIPPON LTD.** A-12, INDUSTRIAL AREA, SITE-IV, INDUSTRIAL AREA, SAHIBABAD, GHAZIABAD (U.P.)
		Name and Address of Respondent
2		-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

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. II

APPEAL No.E/2011/2011-EX[SM]

(Arising out of Order-in-Appeal No.38/ST/GZB/2011-12 dated 25/04/2011 passed by Commissioner of Customs & Central Excise (Appeals-I), Ghaziabad)

M/s Allied Nippon Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent**

Appearance:

Shri Atul Gupta, Advocate for Appellant
Shri Pawan Kumar Singh, Supdt (AR), for Respondent

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Date of Hearing : 12/09/2017
Date of Decision : 12/09/2017

FINAL ORDER NO.-70974/2017.........

Per: Ashok Jindal

The appellants filed the appeal against the order of rejecting the refund claim.

2. The brief facts of the case are that the appellant is manufacturer of excisable goods and exporting thereof. As Cenvat credit remain unutilized in their Cenvat credit account, therefore, the appellant filed refund claims under Rule 5 of Cenvat Credit Rule, 2004 for refund of unutilized Cenvat credit lying in their Cenvat credit account. The refund claim sought to be rejected on the grounds that the service providers have not paid the

Ashok Jindal

service tax under Manpower Recruitment Service. Therefore, the appellants are not entitled to avail Cenvat credit on manpower services and it was also denied on the ground that the debit notes issued by banks are not proper document for Rule 9 (2) of the Cenvat Credit Rules, 2004. Being aggrieved from the said orders, the appellant is before me.

3. The learned Counsel for the appellant submits that no show cause notice has been issued to them to deny Cenvat credit on the services of Manpower Recruitment Service and Cenvat credit availed on the basis of debit notes issued by the bank. Therefore, it cannot be disputed that they are not entitled to avail Cenvat credit. Therefore, the refund claim cannot be rejected relying on the decision of the division Bench of this Tribunal in the case of Freescale Semiconductor India (P) Ltd. vide Final Order No.A/70385/2017-CE[DB] dated 10.04.2017.

4. On the other hand learned A.R. for Revenue reiterated the findings of the impugned order.

5. Heard both sides, considered the submissions and after careful consideration of the contentions made by the learned Counsel I find that it is an admitted fact that the show cause notice had not been issued to the appellant to deny Cenvat credit on Manpower

Recruitment Service and in respect of debit note issued by the bank for service charges paid for remittances, in these circumstances at the time of filing of refund claim, the refund claim cannot be denied in view of the decision of this Tribunal in the case of Freescale Semiconductor India (P) Ltd. (supra).

6. Therefore, the impugned orders are set aside. In result, the appeal is allowed with consequential relief, if any.

(Dictated in Court)

Sd/-

(Ashok Jindal)

Member(Judicial)

akp

प्रमाणित प्रति/Certified True Copy
27/09/12
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