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: 12/07/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70617/2017-CU[DB] dated 06/07/2017

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/1873/2010	**COMPUTER SCIENCE CORPORATION INDIA PVT. LTD.,** C-29, SECTOR-58, NOIDA.
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Copy To

3Advocate(s) / Consultant(s):

Atul Gupta & Hrishikesh (Adv.), 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.ST/1873/2010-CU[DB]

(Arising out of Order-in-Appeal No. 310-ST/APPL/NOIDA/10 dated 30/09/2010 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

Computer Science Corporation India Pvt. Ltd.	**Appellant**
Vs.	
Commissioner of Central Excise, Noida	**Respondent**

<u>Appearance:</u>

Shri Atul Gupta (Advocate) & Shri Hrishikesh (Advocate)	for Appellant
Shri Mohd Altaf (Assistant Commissioner) AR	for Respondent

<u>CORAM:</u>

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

Date of Hearing : 06/07/2017
Date of Decision : 06/07/2017

FINAL ORDER NO....70617/2017

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. 310-ST/APPL/NOIDA/10 dated 30 September, 2010 passed by Commissioner (Appeals) Customs and Central Excise, Noida.

2. Brief facts of the case are that the appellant was a STPI Unit and was engaged in the business of providing various value added off shore BPO Solution services to their customers abroad. The services provided by the appellant qualified as export of service under the Export of Service

Rules, 2005. During the period from 01.01.2009 to 31.03.2009, the appellant availed Cenvat Credit. The credit remained unutilized as the services were exported without payment of Service Tax. On 06.08.2009 the appellant filed refund claim for refund of Rs. 9,72,19,551/- under Rule 5 of Cenvat Credit Rules, 2004. The said refund application was decided by Assistant Commissioner through Order-in-Original dated 26.02.2010 wherein the Original Authority allowed the refund of Rs. 1,90,89,899/- and rejected the claim or Rs. 7,65,47,568/- on the same date of rejection of said amount the appellant was issued with a show cause notice proposing to reject the refund claim on the ground that invoices pertaining to credit availed did not appear to be valid documents as required under the provisions of Rule 4A of Service Tax Rule, 1994. Further, it was alleged that payments to the service provider were not made during the period of claim. It was also alleged that outdoor catering services and management facility service were not input services, and some of the services were not utilized at registered premises. It was also alleged that the appellant claim of refund of Service Tax totally amounting to Rs. 4,33,94,018/- paid on the services imported but they could not provide the documentary evidences in support of tax paid on behalf of International Vendor in respect of import to services invoices for acceptance in the nature of service, value of service, place of service, mode of payment and date of service as required under Cenvat Credit Rule, 2004. The appellant contested the said show cause notice. The said show cause notice was decided through Order-in-Original dated 10.05.2010 through which refund of Rs. 4,67,76,004/- was allowed and claim for refund of Rs. 2,30,64,488/- was rejected. The appellant preferred appeal against the quantum of refund rejected before the Commissioner (Appeals). The learned Commissioner (Appeals) through impugned Order-in-Appeal dated 30.09.2010 allowed the refund of Rs. 1,11,46,012/- and disallowed the refund of Rs. 1,19,18,476/-. In respect of the refund of Rs. 14,46,652/- the learned Commissioner (Appeals) has held that the said credit has been correctly denied on the proportionate basis since the appellant was admittedly not maintaining separate records for the common input services since they were also providing exempted services prior to 15.05.2008. In respect of the balance amount, the learned Commissioner (Appeals) has held that the Adjudicating Authority had denied the credit and refund on the issue of tour arrangement, incidental expenses, hotel expenses etc. holding that they do not qualify the definition of input service as defined under Rule 2(l) of Cenvat Credit Rule, 2004. The appellant contested the issue with the plea that such services are commercially expedient for carrying out day to day activities of the appellant as well as entitled to the credit of Service Tax paid on the services so received. The learned Commissioner has stated that no document etc said to be enlisted in the accounts of appellant had been placed before him so as to decide the eligibility of the Cenvat Credit and therefore, he did not interfere with the findings of the Original Authority. Aggrieved by the said order, the appellant is before this Tribunal.

3. Heard the parties. The learned Commissioner has contended that during the limitation period for issue of demand and disallowance of inadmissible Cenvat Credit under Rule 14 of Cenvat Credit Rule, 2004 no such demand has been raised nor any show cause notice is issued for denying any credit availed by them. Therefore, the finding of Original Authority and that of learned Commissioner (Appeals) are not sustainable insofar as the same are concerned with holding that some part of the Cenvat Credit avaidled by the appellant was not admissible to them. He has relied on Final Order No. A/70877/2016-SM dated 10.08.2016 passed by this Tribunal in the case of HCL Comnet Systems and Services Ltd. v/s CCE and Final Order No. A/70385/2017-EX dated 10.04.2017 passed by this Tribunal in the case CCE, Noida v/s Free Scale Semiconductors India Pvt. Ltd. Further, the Counsel for appellant has submitted that even if the appellant was providing taxable and non-taxable output services the appellant was eligible to take full credit though at the state of providing output services the requirement to pay 6% of the

value may arise but that is not case of the Department and also relied on ruling by Hon'ble Karnataka in the case of MPortal India Wireless Solutions Pvt. Ltd. v/s CST, Bangalore reported at 2012 (27) STR 134 (Kar.).

4. The learned AR has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal on record we find that in the present case no such show cause notice issued to the appellant for denial of Cenvat Credit availed under Rule 14 of Cenvat Credit Rules, 2004 was brought to our notice by Revenue for denial of Cenvat Credit availed during the period from 01.01.2009 to 31.03.2009 a part of which was rejected for refund through the impugned Order-in-Appeal for the reason that it was held by the Original and Appellate Authority that said Cenvat Credit was not admissible to the appellant. This Tribunal in the above stated case of HCL Comnet Systems and Services Ltd. v/s CCE had held that if the show cause notice has not been issued for disallowing Cenvat Credit by invoking Rule 14 of Cenvat Credit Rule, 2004 ~~they~~ them subsequently such credit could not be denied to be refunded if the other conditions for refund are satisfied. We therefore, find it proper to remand the matter back to the file of Learned Commissioner (Appeals) with direction to re-determine the issue of refund of Rs. 1,19,18,476/- by following the ruling of Hon'ble Karnataka

High Court in the case of MPortal India Wireless Solutions Pvt. Ltd. v/s CST, Bangalore and above stated two final orders passed by this Tribunal and decide the issue afresh. We also direct the appellant to submit all the documents required and if they were already submitted to the learned Commissioner (Appeals) they may point out through which communication the same submitted and also seek if any additional document are required by the Learned Commissioner (Appeals) for examination of the issue and submit the same alongwith copies of above stated of final orders of this Tribunal and the case law in the case of MPortal India Wireless Solutions Pvt. Ltd. The learned Commissioner (Appeals) may also examine the admissibility of payment of interest on the delayed refund. The order of the Commissioner (Appeals) ~~of~~ to the extent of denial of refund of Rs. 1,19,18,476/- is set aside. In above terms the appeal is allowed by way of remand.

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

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

Ankit

प्रमाणित प्रति/Cerified True Copy
17/07/2017
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