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: 09/08/2017

To

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

Final Order No. A/70755/2017-SM[BR] dated 28/07/2017

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/2834/2012	**St Ericsson India Private Limited** Wireless Wing, Office Block, Ground & First Floor, Plot No.1, Knowledge Park-iii, Greater Nodia, Surajpur, Gautam Budh Nagar, Uttar Pradesh-201308
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

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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 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. 2

APPEAL No. ST/2834/2012-ST[SM]

(Arising out of Order-in-Appeal No. 150/ST/APPL/NOIDA/12/519 dated 28/05/2012 passed by Commissioner of Customs & Central Excise (Appeals), Noida)

M/s St Ericsson India Private Limited — **Appellant**

Vs.

Commissioner of Customs, Central Excise & Service Tax, Noida — **Respondent**

Appearance:

Shri Nishant Mishra, Advocate, for Appellant
Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 28/07/2017

FINAL ORDER NO. 70755/2017

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. 150/ST/APPL/NOIDA/12/519 dated 28/05/2012 passed by Commissioner of Custom & Central Excise (Appeals), Noida.

2. The brief facts of the case are that the appellant filed a refund claim for Rs.53,18,228/- on 22/11/2010 under Rule 5 of Cenvat Credit Rules, 2004 read with Notification No.05/2006-CE(NT) dated 14/03/2006 for the quarter January to March, 2010. On scrutiny of the said refund application, appellant were issued with a Show Cause Notice

dated 06/09/2011 and proposals in respect of three claims of the said refund application which are subject matter of dispute are as follows:- (a) there was proposal to deny refund of Rs.43,859/- pertaining to credit on account of Outdoor Catering Service; (b) there was proposal to deny refund of Rs.28,93,933/- since the examination of the documents submitted in respect of said claim revealed that the same were in fact debit notes issued to them by their sister concern and it was not clear from such debit notes as to how the billed service has been used by the appellant for providing output service and that the debit notes did not appear to be valid documents for taking Cenvat credit under the Cenvat Credit Rules, 2004. Therefore, there was proposal to deny the said refund. (c) there was proposal to deny refund of Rs.1,905/- in respect of Service Tax paid on Telephone Bills, where the Telephone Bills were raised in the name of individuals. The abovementioned issues were decided through Order-in-Original No. 240/R/N-III/2011-12 dated 21/12/2011, wherein the Original Authority has sanctioned refund in respect of other claims in the said application other than the three claims stated above. Being aggrieved by the said order appellant preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the said appeal through impugned Order-in-Appeal No. 150/ST/APPL/NOIDA/12/519 dated 28/05/2012. The appellant submitted before the ld. Commissioner (Appeals) that in respect of subsequent similar application for refund for the quarter October, 2010 to December, 2010, Original Authority had raised similar objections. On submission of documents such as clarification on the debit notes as to how they had satisfied with the requirements of Rule 4A of the Service Tax Rules and declaration from the company which has issued the debit notes the Original Authority has accepted similar Cenvat credit to be admissible for the period from quarter October to December, 2010 in respect of debit notes, further in respect of Outdoor Catering Service the period of quarter January to March, 2010, ld. Commissioner (Appeals) that the Cenvat credit of Service Tax paid on Outdoor Catering Service, appellant clarified to be admissible by CBEC through Circular No. 120/01/2010-ST dated 19/01/2010 and also submitted that for the subsequent period i.e. quarter October to December, 2010, Original Authority through his Order-in-Original dated 09/02/2012 allowed refund of Cenvat credit and in respect of credit taken on the Telephone Bills which were issued in the name of individuals at Para 9.3 of the said Order-in-Original dated 09/02/2012 ld. Assistant Commissioner allowed the refund. The ld. Commissioner did not appreciate the arguments and rejected the refund. Being aggrieved by the said order appellant is before this Tribunal.

3. Heard the ld. Counsel for the appellant, who has made similar submissions as stated above and submitted a copy of

CBEC Circular No. 120/01/2010-ST dated 19/01/2010. He has also taken me through the said Order-in-Original dated 09/02/2012 which is at Page 139-163 of Appeal Paper Book and prayed that the appeal may be allowed on merit.

4. Heard the ld. A. R. for Revenue who has supported the impugned Order-in-Appeal No. 150/ST/APPL/NOIDA/12/519 dated 28/05/2012.

5. Having considered the rival contentions and on perusal of the facts on record, I find through said Show Cause Notice dated 06/09/2011 at Para 6 refund of Cenvat credit of Rs.28,93,933/- was proposed to be denied on the ground that the same was based on the debit notes and that the said debit notes did not appear to be valid document for taking Cenvat credit under the Cenvat Credit Rules, 2004. The same ground was also raised through Show Cause Notice dated 06/09/2011 in respect of refund claim for the period from quarter October to December, 2010 wherein Original Authority through Order-in-Original dated 09/02/2012 for the period from quarter October to December, 2010 has held that the said debit notes were issued for valid input services and documents were also proper documents for taking credit and subsequent refund. Further, I find from CBEC Circular No. 120/01/2010-ST dated 19/01/2010 that Service Tax paid on Outdoor Catering Service was admissible as Cenvat credit. I, therefore, allow the present appeal in respect of Rs.28,93,933/- related to the debit notes and refund of

Rs.43,859/- in respect of Outdoor Catering Service. However, I do not allow this appeal for refund of Rs.1,905/- in respect of Telephone Bills, being raised in the name of individuals. However, I keep this issue open. Thus, I allow the present appeal in part in the above terms. The appellant shall be entitled for consequential relief.

(Dictated and pronounced in Court)

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

Ansari

प्रमाणित प्रति/Certified True Copy
21/08/17
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