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: 11/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70907/2017-CU[DB] dated 31/08/2017

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/396/2012	**ST-ERICSSON INDIA PRIVATE LIMITED** Wireless Wing, Office Block, Ground &First floor, Plot No 1, Knowledge Park-II, Greatar Noida, Surajpur, Gautam Budh Nagar, UP
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

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. I

APPEAL No.ST/396/2012-CU[DB]

(Arising out of Order-in-Appeal No. 297-ST/APPL/NOIDA/11 dated 20/12/2011 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

M/s ST-Ericsson India Private Ltd., **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri Nishant Mishra, Advocate for Appellant
Shri Rajeev Ranjan, Joint Commissioner, (AR) &
Shri Pawan Kumar Singh, Supdt (AR), for Respondent

CORAM:

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

Date of Hearing : 31/08/2017
Date of Decision : 31/08/2017

FINAL ORDER NO-70907/2017

Per: Anil Choudhary

The issue in this appeal relates to whether the appellant, an exporter of services is entitled to Cenvat credit for the services received at their unregistered premises which was subsequently included in their Centralized Registration-Certificate and further whether they are entitled to rebate on the services exported.

2. As per the show cause notice dated 03/06/2011 appellant took Cenvat credit of about Rs.1,06,09,205/-

with respect to business premises, pursuant to transfer of business by M/s NF Wirless (P) Ltd. to them. The said Cenvat credit by transfer appeared to be in contravention of Rule 10(3) of the Cenvat Credit Rules, 2004. It was further observed that the Cenvat credit, so transferred, appears to have been utilised for payment of service tax on export of services by the appellant. It was further noticed that export invoices for services provided by them, have been issued from their premises situated at Ferns Icon Level-5, Survey No.28 & 36/5 Doddaakundi Village, KR Puram, Hobli, Bangalore, which is not included in the centralized registration certificate issued to them.

3. Heard the parties.

4. We find that the learned Commissioner (Appeals) on the issue of invoices raised and Cenvat credit taken, at the alleged, unregistered premises at Bangalore, he have held as follows:-

> "Now, coming to the second issue relating to the rejection of the rebate claim of the appellants on the ground that the premises of the appellants at Hobli, from where the export invoices were issued by the appellants, were not included in the Centralized Service Tax Registration of the appellants at the relevant time, I find that the said premises of the appellants were included in the Centralized Service Tax Registration of the appellants only 21/06/2011 whereas the export invoices were issued by the appellants from the said premises on 28/11/2009 and 31/12/2009. This implies that the Service Tax

paid by the appellants against the export invoices, issued from the said premises at the relevant time, through the Cenvat credit, earned by the appellants as a result of transfer of business from M/s NFW, was wrong ab-initio as the said credit was not eligible for utilization at the location which was not yet registered. I do not agree with the argument put forth by the appellants in this regard that the aforesaid Notification does not mandate registration as a mandatory requirement, is also devoid of merit as the said notification presupposes this requirement because in STR-1 form of rebate claim, annexed to the said notification, Registration No. is required to be mentioned by the claimant of the rebate. Presuming that the appellants did not have the transfer of Cenvat credit as had by them, the other option that would have been available to the appellants for discharging the Service Tax liability on the export invoices was to deposit the Service Tax through GAR-7, which could not have been possible without the Service Tax Registration No. Therefore, the requirement of registration is not a procedural one as contended by the appellants. This aspect does not afford me any ground for disagreement with the adjudicating authority on this count.'

Accordingly, the learned Commissioner (Appeals) was pleased to reject the appeal.

5. Being aggrieved the appellant preferred appeal before this Tribunal and have urged that the issue is no longer res-integra. Further, he relies on a Single Member Bench ruling of this Tribunal in the case of Commissioner of Central Excise and Service Tax Vs Samsung India Electronics Pvt. Ltd. reported at 2017 (52) S.T.R. 497 (Tri.-All.) wherein under similar facts Cenvat credit was received at unregistered premises which was not covered in the list of premises in the Centralized

Registration Certificate, wherein this Tribunal relying on the ruling of Hon'ble Karnataka High Court in the case of mPortal India Wireless Solutions Pvt. Ltd. reported at 2012 (27) S.T.R. 134 (Kar.) had held that there is no condition precedent for availing Cenvat credit that services receive premises have to be registered. The said ruling in Samsung was challenged by the revenue before the Hon'ble Allahabad High Court and vide its judgement the High Court, reported at 2017 (52) S.T.R. J253 (All.), wherein the question before the High Court was whether the Tribunal was correct in allowing the Cenvat credit of the services used at unregistered premises and refund thereof, in this case Hon'ble Allahabad High Court have relied on its earlier judgement in the case of Atrenta India Pvt. Ltd. reported at 2017 (48) STR 361 (All.) held that the provisions of Cenvat Credit Rules do not stipulate registration as a condition precedent for eligibility to claim Cenvat credit and refund/rebate thereof. The Hon'ble High Court also observed that where refund is otherwise admissible, interpretation to deny refund of the rebate to party, by Department cannot be legally sustainable.

6. Accordingly, we find that the issue herein is squarely covered by the aforementioned rulings of the

Hon'ble High Courts. Accordingly, we allow this appeal and set aside the impugned order, to that extend of denial the Cenvat credit and rebate thereof. We also take notice that there are factual errors in the impugned order, as the appellant was registered and had mentioned the registration number, in the refund application, in form STR-1. We also direct the Adjudicating Authority, to grant rebate to the appellant, within a period of 60 days from the date of receipt of a copy of this order.

(Dictated in Court)

-Sd/-	**-Sd/-**
(ANIL G. SHAKKARWAR)	**(ANIL CHOUDHARY)**
Member (TECHNICAL)	**Member(JUDICIAL)**

akp

प्रमाणित प्रति/Certified True Copy
14/09/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
34, एम. जी. मार्ग, इलाहाबाद-211001
34 M. G. MARG, ALLAHABAD-211001