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: 15/09/2017

To

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

Final Order No. A/71018/2017-SM[BR] dated 11/09/2017

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/70891/2016	**Commissioner CUSTOMS Central EXCISE and SERVICE TAX-Noida** C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH 201307
		Name and Address of Respondent
2		State Street Hcl Services (india) Pvt Ltd A-11,sector-16,, NOIDA ,UP

--

Copy To

3 Bar Association, CESTAT, Allahabad

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

5 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

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

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

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

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

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

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

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

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad – 211 001

COURT NO. II

DATE OF HEARING/DECISION : 11/09/2017.

Service Tax Appeal No. 70891 of 2016 (SM)

[Arising out of the Order-in-Appeal No. NOI/SVTAX/000/APPL-I/620/15-16 dated 31/03/2016 passed by The Commissioner (Appeals), Central Excise (Appeals – I), Meerut.]

CCE & ST, Noida   Appellant

Versus

M/s State Street HCL Services (India) Pvt. Ltd.   Respondent

Appearance

Shri Gyanendra Tripathi, Authorized Representative (DR) – for the Appellant.

Shri Utkarsh Malviya, Advocate – for the Respondent.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No.70118/2017 Dated : 11/09/2017

Per. Ashok Jindal :-

The Revenue is in appeal against the impugned order wherein the learned Commissioner (Appeals) has sanctioned the refund claim filed by the respondent.

2. The brief facts of the case are that respondent filed refund claim under Rule 5 of Cenvat Credit Rules, 2004 readwith Notification No. 27/2012-CE (NT) dated 18/06/2012 on scrutiny

Ashok Jindal

of the said refund claim it was observed that as the invoices raised in the name of unregistered premises, therefore, respondent is not entitled to avail Cenvat credit. Consequently, they are not entitled to refund claim. In these set of facts, a show cause notice was issued and Adjudicating Authority rejected to refund claim. On appeal, the learned Commissioner (Appeals) allowed the refund claim rely on the decision of Hon'ble Karnataka High Court in the case of **mPortal India Wireless Solutions P. Ltd. vs. CST, Bangalore** reported in **2012 (27) S.T.R. 134 (Kar.)**. Aggrieved from the said order, Revenue is in appeal.

3. Heard the parties.

4. Considering the fact that at the time of availment of Cenvat credit it was not disputed that respondent is not entitled to avail Cenvat credit on the invoices raised in the name of unregistered premises. Therefore, the said issue cannot be raised at this stage.

5. Further on merit, I find that issue has been settled by the Hon'ble Allahabad High Court in the matter of **CST, Noida vs. Samsung India Electronics Pvt. Ltd.** in **CEA No. 85-87 of 2017 dated 17/07/2017** that the assessee is entitled to avail Cenvat credit although the premises are unregistered when there is no dispute service has been availed by the assessee and service tax has been paid. In that circumstances, I hold that

learned Commissioner (Appeals) has rightly allowed the refund claim.

6. In view of the above observations, I do not find any infirmity in the impugned order, the same is upheld. The appeal filed by the Revenue is dismissed.

(Dictated and pronounced in open court.)

Sd/-

(Ashok Jindal)

PK Member(Judicial)

प्रमाणित प्रति/Certified True Copy
27/09/17
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