केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

सत्यमेव जयते

केंद्रीय कर भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

7th Floor, GST Building,
Near Polytechnic,
Ambavadi, Ahmedabad-380015

☎: 079-26305065

टेलेफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/175/Ahd-I/2017-18 / 2503-07
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-454-2017-18**
दिनाँक Date : **27-03-2018** जारी करने की तारीख Date of Issue 17/04/18

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **CGST-VI/REF-51/FTI/17-18** दिनाँक: **29/11/2017** issued by Assistant Commissioner, Central Tax, Ahmedabad-South

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

FTI Technologies pvt ltd
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person a aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any countrv or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

... 2 ...

केन्द्रीय उत्पाद शुल्क आयुक्तालय, (अपील-I) OFFICE OF THE COMMISSIONER (APPEALS-I) CENTRAL EXCISE AHMEDABAD अहमदाबाद

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ–20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER IN APPEAL

M/s. FTI Technology Pvt. Ltd., 202, Abhijit-04, Near Pantaloons Showroom, Opp. Mayor's Bunglow, Law Garden, Mithakali, Ahmedabad-06 (*hereinafter referred to as the 'appellant'*) holding Service Tax Registration No. AABCF8721DSD0012 are providing taxable service under the category of "Information Technology Software Service. The appellant had filed a refund claim of Rs.29,03,625/-, on 26.07.2017, under Notification No. 27/2012-CE(NT) dt.18.06.2012 (herein after referred as the said notification) for the Cenvat Credit under Rule 5 of the Cenvat Credit Rules, 2004. The appellant was issued a Show Cause Notice as to why the refund claim should not be reduced in respect of export invoices where provision of exports were completed before 01.12.2016, consequent to the issue of Notification No. 46/2016-ST dt.09.11.2016 which came into effect from 1.12.2016. The Refund Sanctioning Authority vide OIO No. CGST-VI/REF-51/FTI/17-18 DT.30.11.2017 (herein after referred as the impugned order), rejected the refund claim of Rs. 29,03,625/-. The Appellant aggrieved by the said OIO, filed an appeal against the same, before me.

2. The facts of the case, in brief, are that the appellant had filed the refund claim of Rs.29,03,625/-, for the period from July, 2016 to June, 2017, under Notification No. 27/2012-CE(NT) dt.18.06.2012 (herein after referred as the said notification) in respect of service tax paid on the specified services used for export of services. The appellant procures SSL certificate from M/s. GMO Globalsign Certificate Service Pvt. Ltd.. SSL Certificates provide secure, encrypted communications between a website and an internet browser. SSL stands for Secure Sockets Layer, the protocol which provides the encryption. SSL Certificates are typically installed on pages that require end-users to submit sensitive information over the internet like credit card details or passwords eg. pages include payment pages, online forms and login pages. An organization needs to install the SSL Certificate onto its web server to initiate a secure session with browsers. Once a secure connection is established, all web traffic between the web server and the web browser will be secure. Subsequently, the appellant exports these certificate to their foreign customers. On perusal of the records, it appeared that the service provided by the appellant was classifiable as on-line information and database access or retrieval service as defined under Section 65 (75) of the Finance Act, 1994. Section 65(75) of the Finance Act, 1994, states that –

refund in respect of export invoices where provision of services were completed before 1.12.2016, as the claimant was located in taxable territory. The Refund Sanctioning Authority observed that the claimant can claim refund of only the unutilized Cenvat credit in respect of those export invoices where the provisions of said service were completed after 30.11.2016, as per the Point of Taxation Rules, 2011. The Refund Sanctioning Authority found that the appellant was eligible for refund of unutilized Cenvat Credit pertaining to SSL certificates downloaded from the appellant's site from 1.12.2016 to 30.06.2016, valued at Rs.3,61,23,300/-, but found that the appellant had availed the Cenvat credit as per the copy of Tran-1, which amounted to double benefit. And the Refund sanctioning authority also found that the appellant should pay the service tax on 'Online information and database access or retrieval services' for SSL certificates exported before 01.12.2016, which was substantially higher than the refund claimed by the appellant. In the light of the above, the Refund Sanctioning Authority rejected the appellant's refund of Rs.29,03,625/-, vide the impugned order.

4. Being aggrieved by the impugned order dt. 30.11.2017, the appellant has filed this appeal before me on the grounds that (i) the Adjudicating Authority has erred in classifying the service of the appellant as Online information and database access or retrieval services instead of Information and Technology Software services; (ii) the services of Online information and database access or retrieval services and Information Technology Services are different and the appellant is engaged in the sales and installation of SSL certificates which form a part of the Information Technology Services; (iii) the Show Cause the appellant has filed this appeal before me on the grounds that (i) the refund sanctioning authority has erred in refund sanctioning authority Notice mentioned only partial rejection of the refund claim, while the impugned order has fully rejected the claim; and (iv) the refund sanctioning authority has erred in classifying the place of provision of service of Information Technology software services as being provided to its customers from India.

5. During the personal hearing, Shri Nehal Vasa, CA, authorised by the appellant, appeared before me and reiterated the grounds of appeal. He also submitted additional submission where they emphasized on the laws determining classification of taxable services.

6. I have carefully gone through the facts of the case on record, grounds of appeal in the Appeal Memorandum, additional submissions and oral submissions made by the appellant at the time of personal hearing.

7. I find that the two basic things to be decided in this matter are – (i) whether the services provided by the appellant are covered under Online information and database access or retrieval services or under Information Technology Service, and (ii) whether the appellant's refund claim can be rejected, for the period prior to 1.12.2016 and for the period from 1.12.2016, due to the place of provision of the service provided by them as per the Place of Provision of Service Rules, 2012.

8. The appellant is engaged in the business of providing sales and services of SSL Certificates. The appellant works as an authorised reseller of M/s. GMO Globalsign Certificate Pvt. Ltd., and sells SSL certificates to its customers based in US, UK, Europe and Australia. The appellant does not have a contract with M/s. GMO Globalsign Certificate Pvt. Ltd. The appellant purchases software from local offices of SSL certificate manufacturers and sell the same to its customers, alongwith installation and other related services. The SSL certificates through the appellant are downloaded online by both, Indian and foreign customers. The appellant charges service tax on the SSL certificates sold in the Indian market and also exports to foreign customers, wherein no service tax is being paid. The entire process of purchase, sale, downloading and installation of SSL certificates is online. SSL certificate does not have a licence number, but it has a expiry date of 1 year, 2 years or 3 years, as issued by the SSL certificate manufacturer. SSL certificates are software files that digitally bind a cryptographic key to an organization's details. When installed on a web server, it activates the padlock and the https protocol and allows secure connections from a web server to a browser. On verification of the characteristics of a SSL certificate in the internet, I was lead to the website of M/s. GMO Globalsign, wherein they have clarified about an SSL certificate as indicated below :

"*What is an SSL Certificate?*

SSL Certificates are small data files that digitally bind a cryptographic key to an organization's details. When installed on a web server, it activates the padlock and the https protocol and allows secure connections from a web server to a browser. Typically, SSL is used to secure credit card transactions, data transfer and logins, and more recently is becoming the norm when securing browsing of social med

"on-line information and database access or retrieval" means providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;"

In the present case the appellant is the service provider and the service recipients are outside India. As per Rule 9 of the Place of Provision of Service Rules, 2012, for four specified services, the location of the service provider is the place of provision of service. The Place of Provision Rules, 2012, (herein after referred as the 'said rules') which came in to force from 1.07.2012, were introduced vide Notification No. 28/2012-ST dt.20.06.2012. As per rule 3 of the said rules, generally the place of provision of a service shall be the location of the recipient of service. However, Rule 9 of the said Rules states that –

"9. The place of provision of following services shall be the location of the service provider :-

(a) Services provided by a banking company or a financial institution, or a non-banking financial company, to account holders;

(b) Online information and database access or retrieval services;

(c) Intermediary services;

(d) Service consisting of hiring of means of transport, upto a period of one month."

Accordingly, the services pertaining to online information and database has been defined at sub-rule (l) of Rule 2 of the said Rules, as –

"online information and database access or retrieval services" means providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;"

Besides, sub-rule 1(ccd) of Rule 2 of the Service Tax Rules, 1994, defines online information and database as -

'(ccd) "online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology and includes electronic services such as, -

(i) advertising on the internet;
(ii) providing cloud services;
(iii) provision of e-books, movie, music, software and other intangibles via telecommunication networks or internet;
(iv) providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;
(v) online supplies of digital content (movies, television shows, music, etc.);
(vi) digital data storage; and
(vii) online gaming;"

The clarification of the appellant was sought by the refund claim sanctioning authority with reference to their claim, and based on such clarification, it

was observed that the appellant procures SSL certificate, commonly known as anti-virus software in bulk quantity and subsequently the appellant exported these certificate to their foreign customers. It appeared that the service provided by the appellant was classifiable as on-line information and database access or retrieval service as defined under Section 65(75) of the Finance Act, 1994. In the instant case, the appellant was the service provider and service recipients were outside India and the place of provision of service was the location of the appellant i.e. taxable territory of India. As per Notification No. 27/2012-CE(NT) dt. 18.06.2012, an assessee who exported services could claim the refund of the balance of Cenvat credit available in his Cenvat Credit Account at the end of every quarter of the year, as per the procedure prescribed in the said Notification. As the place of provision of service in the instant case of the appellant was the location of the appellant i.e. taxable territory of India, the said service was not considered as an export of service and therefore, the refund sanctioning authority felt that the appellant should be denied the refund of the cenvat credit as there was not export of services.

3. Subsequently, vide Notification No. 46/2016 dt. 9.11.2016, certain amendments were made in the Place of Provision of Services Rules, 2012, which came in to effect from 1.12.2016. The amendment indicated in Para 2 of the Notification No. 46/2016-ST, stated that –

"2. In the Place of Provision of Services Rules, 2012,-

(i) in rule 2, for clause (l), following clause shall be substituted, namely:-

'(l) "online information and database access or retrieval services" has the same meaning as assigned to it in clause (ccd) of sub-rule 1 of rule 2 of the Service Tax Rules, 1994;";

(ii) in rule 3, in the proviso, after the words "in case", the words "of services other than online information and database access or retrieval services, where" shall be inserted;

(iii) *in rule 9, clause (b) shall be omitted."*

Accordingly, from 1.12.2016, the place of provision of Service for 'Online information and database access or retrieval services' was the location of the receiver of Service as per Rule 3 of the Place of Provision Rules, 2012, just like any other service, and therefore the service provided by the appellant in the instant case from 1.12.2016 onwards was considered as an export of service. The refund sanctioning authority, issued a Show Cause Notice to the appellant asking as to why their refund claim of Rs.29,03,625/-, for the period from July, 2016 to June, 2017, should not be reduced in respect of export invoices where provision of exports were completed before 01.12.2016. The Refund Sanctioning Authority vide the impugned order dt. 30.11.2017, concluded that the appellant cannot claim

sites.

SSL Certificates bind together:

- *A domain name, server name or hostname.*
- *An organizational identity (i.e. company name) and location."*

Thus, it is evident from the above that SSL certificates are small data files, that secures browsing, credit card transactions, data transfers, logins and similar activites from one web browser to another browser. Upon purchase by the customer, the SSL certificate is installed on their website, and a level of security is provided to the data, browsing, transactions on the website. The appellant has contended that their service is in relation resale of the right to use of information technology software supplied electronically which is covered under Information Technology Software Services. The department however felt that the appellant's services were covered under the Online Information Database Access or Retrieval (OIDAR) Services on the basis that the SSL certificates are downloaded from the appellant's site by their customers with minimum human intervention as prescribed in OIDAR. The website of GMO Globalsign also clarified that SSL Certificates are data files which are downloaded by their customers. Online Information and Database Access or Retrieval is defined in Rule 2(1) (ccd) as :

'(ccd) "online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology and includes electronic services such as, -

(i) advertising on the internet;
(ii) providing cloud services;
(iii) provision of e-books, movie, music, software and other intangibles via telecommunication networks or internet;
(iii) providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;
(iv) online supplies of digital content (movies, television shows, music, etc.);
(v) digital data storage; and
(vi) *online gaming;'*

Besides, Circular No. 202/12/2016-Service Tax dt. 9.11.2016, clearly states at Sl. No. 16 the indicative list of OIDAR services, wherein at No.2 mentioned below, the list of services includible in Online Information and Database Access or Retrieval Services are shown.

"2. *Supply of software and updating thereof;*

(a) Accessing or downloading software (including procurement/accountancy programmes and anti-virus software) plus updates;

(b) software to block banner adverts showing, otherwise known as Bannerblockers;

(c) download drivers, such as software that interfaces computers with peripheral equipment (such as printers);

(d) online automated installation of filters on websites;

(e) online automated installation of firewalls."

On observing the above list in the Circular, it is noticed that most of the services covered are very similar to the service provided by the appellant. Especially, 2(a), (d) and (e) could cover the service provided by the appellant. The service provided by the appellant requires transfer to data files to their customers in electronic form through computer network and which is completely automated & requires minimal human intervention. As such, the service provided by the appellant should be covered under Online Information and Database Access or Retrieval Services. The appellant's contention that it should be covered under Information Technology Software Services does not hold ground as the definition of the same indicated at Section 65B (28) clearly states that it covers only representation of data in machine readable form, capable of manipulation or provide interactivity to the user by means of a computer. As such, the Adjudicating Authority has correctly covered the services of the appellant under Online Information and Database Access or Retrieval Services.

9. Now, the next question that arises is whether the appellant's refund claim can be rejected by the sanctioning authority, due to the place of provision rules indicating the place of provision as the location of the Service provider, which in this case would be the location of the appellant i.e. within Indian territory. The appellant has claimed the refund under Notification No. 27/2012-CE(NT) dt.18.06.2012. The said notification is a mode of export incentive to the exporters to return back to them the incidence of duty borne on the inputs utilized for exports. The primary condition of such incentives is that the goods should be exported and foreign remittance consequent to the export should have been received. If such basic criterion are fulfilled, there should be no reason to reject the refund of an exporter just because the Place of Provision Rules describes the place of provision of such service as the location of the service provider i.e. India. The purpose of the Place of Provision Rules is not to stop any export incentive but to determine the taxable person and location of such taxable person. The intent of the law makers when they made the Place of Provision Rules was never to deny the benefit provided under Notification No. 27/2012-CE(NT), to the exporters and therefore the refund cannot be denied to the appellant, on such grounds. In the case of Ratnamani Metals and Tubes Ltd. v/s. UOI [cited at 2016(339) ELT 509 (Guj.)], the hon'ble High Court of Gujarat at Para 19 stated as below :

"It can thus be seen that in all these cases, for different reasons the Government of India provides export incentives at specified rates of the value of the exports. The intention is to make the exports viable, more competitive and to neutralise certain inherent handicap faced by the industry in the specified areas. These export incentive schemes have nothing to do with offset of duty element of imported raw

materials or inputs used in export products, unlike as in the case of DEPB.

20. *Thus, under these schemes, the Government of India having realised that exports in question require added incentive, provides for the same in form of credit at specified rate of FOB value of the export which credit can be utilised for payment of customs duty. To disqualify such payment for the purpose of duty drawback would indirectly amount to denying the benefit of the export incentive scheme itself."*

Thus, it is amply clear that the export incentive in the form of refund of unutilized Cenvat credit under Notification No. 27/2012-CE(NT) is an act by the Government to neutralize the difficulties faced by the exporters and it has nothing to do with the location under the Place of Provision Rules, as long as the services are exported and foreign remittance is realised. The original authority is directed to look into my observation and decide the issue a fresh following the principle of natural justice.

10. I, therefore, set aside the impugned order dt.30.11.2017, and allow the appeal by way of remand.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

11. The appeal filed by the appellant, stands disposed off on above terms.

(उमा शंकर)
आयुक्त (अपील्स)

ATTESTED

(R.R. NATHAN)
SUPERINTENDENT,
CENTRAL TAX APPEALS, AHMEDABAD.

To,

M/s. FTI Technology Pvt. Ltd.,
202, Abhijit-04, Near Pantaloons Showroom,
Opp. Mayor's Bungalow, Nr. Law Garden,
Mithakali,
Ahmedabad-06.

Copy to:

1) The Chief Commissioner, Central Tax, GST, Ahmedabad Zone.
2) The Commissioner, CGST, Ahmedabad (South).
3) The Dy./Asst. Commissioner, Division-VI, CGST, Commissionerate-Ahmedabad(South).
4) The Asst. Commissioner(System), CGST, Hqrs., Ahmedabad(South).
5) Guard File.
6) P.A. File.