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: 28/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71666/2017-SM[BR] dated 16/11/2017

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/70014/2017	Commissioner CUSTOMS Central EXCISE and SERVICE TAX-Noida C-56/42...SECTOR 62, NOIDA, (UP) -201307
		Name and Address of Respondent
2		Virtual Employee Pvt Ltd A-39,Sector-4,, NOIDA (,UP)

--

Copy To

3Advocate(s) / Consultant(s):

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/70014/2017-ST[SM]

(Arising out of Order-in-Appeal No. NOI/SVTAX/000/APPL-I/157/2016-17 dated 19/09/2016 passed by Commissioner of Central Excise (Appeals-I), Meerut)

Commissioner of Service Tax, Noida	**Appellant**
Vs.	
M/s Virtual Employee Pvt. Ltd.	**Respondent**

Appearance:

Shri Pawan Kumar Singh, Superintendent (AR),	for Appellant
Absent,	for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing & Date of Decision : 16/11/2017

FINAL ORDER NO. 71666/2017

Per: Archana Wadhwa

Being aggrieved with the order passed by the Commissioner (Appeals), Revenue has filed the present appeal. I have heard Shri Pawan Kumar Singh, Superintendent, ld. A. R. appearing for Revenue and nobody appeared for the respondent.

2. As per the facts on record, the respondents were engaged in providing taxable services and are availing facility of the Cenvat credit in respect of input services used in providing output services. They filed a refund claim for Rs.38,260/- under Rule 5 of the Cenvat Credit Rules, 2004

read with the Notification No. 27/2012-CE (NT) dated 18/06/2012 for the period April, 2014 to june, 2014 for claiming refund of the Cenvat credit lying unutilized in their books for the relevant period.

3. The Adjudicating Authority perused the various documents submitted by the party and rejected the refund claim by holding that the input service invoices were raised on the unregistered premises at C-25, Sector 4, Noida, whereas the services were exported from unregistered premises at SDF Block K-1 & K-4, NSEZ, Noida. Further, the Bank Realization Certificates and proof regarding reversing of refund amount were not enclosed.

4. Being aggrieved, the party appealed before the Commissioner (Appeals) against the denial of credit on input services by the Adjudicating Authority. The plea of the appellant company has been accepted by the Commissioner (Appeals) by way of allowing them refund of the Cenvat Credit amounting to Rs.38,260/- on input services received by the respondent. The Commissioner (Appeals) has also agreed with the contention of the respondent regarding applicability of the provisions of Section 11BB of the Central Excise Act, 1944, regarding payment of interest on delayed refund.

5. Being aggrieved, the present appeal stand filed by the Revenue against the said order of Commissioner (Appeals).

6. It is seen that that the Commissioner (Appeals) has granted the relief to the respondents by following the Hon'ble

Karnataka High Court decision in the case of M Portal India Wireless Solutions P. Ltd. *Versus* Commissioner of Central Excise, Bangalore as reported at 2012 (27) S.T.R. 134 (Karnataka), wherein it has been stated that registration of the premises is not necessary for grant of refund. The only ground of the Revenue is that the said decision of the Hon'ble Karnataka High Court has not been accepted by them. However, they have also mentioned that no appeal has been filed against the said decision, in as much as, the amount involved was on the lower side.

7. I find no reasons to interfere in the impugned order of Commissioner (Appeals). In as much as, the Hon'ble Karnataka High Court decision is fully applicable to the disputed issue and no infirmity can be found in the order of Commissioner (Appeals). Accordingly, Revenue's appeal is rejected.

(Dictated & Pronounced in Court)

Sd/-
(Archana Wadhawa)
Member(Judicial)

Ansari

प्रमाणित प्रति/Certified True Copy
01/01/18

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