CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

<u>Appeal(s) Involved:</u>

ST/21099/2018-SM, ST/21100/2018-SM

[Arising out of Order-in-Appeal Nos. 341 & 342/2018 dated 04/04/2018 passed by the Commissioner of Central Tax, Bangalore-I (Appeals)]

Micron Semiconductor India Pvt. Ltd. The Millenia Tower C, Level Plaza No. 1 & 2, Murphy Road, Ulsoor Bangalore – 560 008 Karnataka	**Appellant(s)**

Versus

Commissioner of Central Tax, Bangalore East BMTC Building Old Airport Road, Domlur, Bangalore – 560 071 Karnataka	**Respondent(s)**

<u>Appearance:</u>

Mr. Harish Bindumadhavan, Advocate Prestige Trade Tower Level 14, 46 Palace Road, High Grounds, Bangalore – 560 001 Karnataka	For the Appellant
Mrs. Kavita Podwal, Superintendent (AR)	For the Respondent

Date of Hearing: 12/10/2018
Date of Decision: 12/10/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

<u>Final Order Nos. 21608 - 21609 / 2018</u>

Per: S.S GARG

These two appeals are directed against the common impugned order dated 04.04.2018 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has remanded the matter to the original adjudicating authority for fresh adjudication after giving certain directions to the original authority. Since the issue involved in both the appeals is identical, therefore both the appeals are being disposed of by this common order. The particulars of both the appeals are given herein below:

Appeal No.	**ST/21099/2018**	**ST/21100/2018**
Period of Dispute	April 2015 to June 2015	July 2015 to September 2015
Refund claimed	Rs. 4,87,302/-	Rs. 5,37,298/-
Order-in-Original No.& date	No. 15/2017 dated 27.12.2017	No. 24/2017 dated 12.01.2018
Refund rejected	Rs. 1,85,748/-	Rs. 1,32,194/-
Order-in-Appeal No. & date	341/2018 dated 04.04.2018	342/2018 dated 04.04.2018

2. Briefly the facts of the present case are that the appellant is a wholly owned subsidiary of Micron Technology Inc. USA and is in the business of providing software development, research and development services to Micron Technology Inc. USA in the production of memory devices, storage and imaging conductor. Appellant entered into an agreement with Micron Technology Inc., USA on 12th July 2006 for rendering software development and technical and general services. Appellant has also entered into an agreement with Micron Semiconductor Asia Pvt. Ltd., Singapore for providing Marketing and Sales support services whereby the appellant promotes and markets the products of Micron Technology USA and Singapore. According to the appellant the services rendered by the appellant fall in the category of

‘Information Technology Software Service’ and Marketing and Sales Support Services fall under the category of ‘Business Auxiliary Service’. Appellant filed refund claims as per provisions of Rule 5 of Cenvat Credit Rules 2004 read with Notification No. 27/2012 dated 18.06.2012. Thereafter show-cause notices were issued to the appellant for rejection of refund claim on various grounds. After following the due process, the original authority sanctioned refund of Rs. 3,01,554/- (Rupees Three Lakhs One Thousand Five Hundred and Fifty Four only) and Rs. 4,05,104/- (Rupees Four Lakhs Five Thousand One Hundred and Four only) for the respective period of April 2015 to June 2015 and July 2015 to September 2015. Aggrieved by the said order, appellant filed appeal for the refund which was rejected on the ground that the services of the appellant relating to Sales and Marketing in respect of the products owned by their principal in India fall in the definition of ‘intermediary service’.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same is contrary to the facts of the case and the decisions of various Courts. He further submitted that the impugned order is a non-speaking order and has been passed in violation of the principles of natural justice. He further submitted that the impugned order has failed to even read the Order-in-Original passed on the appellant’s facts let alone make any reference to the Order-in-Original or the facts of the appellant or the grounds of appeal raised by the appellant. He further

submitted that the Order-in-Original was passed as a speaking order sanctioning a part of the refund and rejecting a part of the refund. He further submitted that the impugned order discusses general principle pertaining to refund claim and related proceedings, the impugned order merely provides generic guidelines to the Department as to how to adjudicate refund matter. He further submitted that the Order-in-Original has also travelled beyond the allegation in the show-cause notice and therefore not sustainable in law. He further submitted that the impugned order is non-speaking to the extent as the learned Commissioner (Appeals) has neither reasoned the facts provided by the appellant nor provided valid and reasonable reasons in arriving at the conclusion for specific reasons. In support of his submission, he relied upon the following decisions:

a. *S.N. Mukherjee Vs. Union of India – 1990 SCR Supl. (1) 44*
b. *Testeels Ltd. Vs. N.M. Desai, Conciliation Officer and another AIR 1970 Guj.1*
c. *Excel India Pvt. Ltd. Vs. CST, Bangalore – 2007 (7) S.T.R. 542 (Tri.-Bang.)*
d. *J.M. Ramachandra & Sons Vs. CEGAT – 2002 (139) E.L.T. 36 (Del.)*
e. *State of Punjab Vs. Bhag Singh – 2004 (164) E.L.T. 137 (SC)*
f. *Information Technology Park Ltd. Vs. CST, Bangalore – 2010-TIOL-304-CESTAT-BANG.*
g. *CCE, Indore Vs. M/s. Engineers Combine – 2009-TIOL-546-CESTAT-DEL.*

4.1. He further submitted that the impugned order is passed in gross violation of the principle of natural justice as the said order was passed without affording an opportunity of personal hearing before passing the impugned order. In support of this submission, he relied upon the following decisions:

a. *Harman Steel Industries Vs. Commercial Tax Officer, Kancheepuram and another [2006] 146 STC 292 (Mad.)*
b. *Vummaneni Mineral Water Products (P) Limited Vs. Commercial Tax Officer and others [2005] 139 STC 355 (AP)*
c. *S.B. International Limited Vs. Commr. of Customs, Calcutta – 2004 178 ELT 1123 Cal.*
d. *Salem Textiles Limited Vs. Superintendent of Central Excise – 2004 (178) E.L.T. 102 (Mad.)*

5. On the other hand the learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the impugned order has been passed without giving proper reasons and without considering the facts involved in the case. Further I find that the Commissioner (Appeals) has only given general principles for granting the refund without adverting to the facts of the present case. Further I also find that the impugned order has been passed without affording an opportunity of hearing. I also find that in view of the various decisions relied upon by the appellant cited supra, I am of the view that the impugned order which is passed in complete violation of the

principles of natural justice and without considering the facts and the grounds of appeal is liable to be set aside and I do so. After setting aside the impugned order, I remand back the case to the Commissioner (Appeals) to pass a *De novo* order after considering the facts and the grounds of appeal and after affording an opportunity of hearing to the appellant. The Commissioner (Appeals) is directed to dispose of the appeals within a period of three months from the date of receipt of the certified copy of this order. Both the appeals are disposed of by way of remand.

(Operative portion of the Order was pronounced
in Open Court on **12/10/2018**)

(S.S GARG)
JUDICIAL MEMBER

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