CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 55967-56036 of 2013

(Arising out of Order-in-Appeal No. 184-185(RDN)ST/JPR-II/2012 dated 03.12.2012 passed by the Commissioner of Central Excise, Jaipur-II)

DATE OF HEARING : 09.02.2017
DATE OF DECISION : 09.02.2017

M/s Wolkem India Ltd. …. Appellants
(Rep. by Sh. Kumar Vikram, Adv.)

VERSUS

CCE, Jaipur-II …. Respondent
(Rep by Dr. Neha Garg, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 50828-50829/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

Both the appeals are filed by the assessee-Appellants against the order-in-appeal no. 184-185(RDN)ST/JPR-II/2012 dated 03.12.2012 passed by the Commissioner of Central Excise (Appeals), Jaipur-II.

2. The brief facts of the case are that, the assessee-Appellants is 100% EOU. The assessee-Appellants had claimed the refund for service tax paid on services used in the export of services which was denied by the

lower authorities. Being aggrieved, the assessee-Appellants has filed the present appeals.

3. With this background, we have heard Shri Kumar Vikaram, learned counsel for the assessee-Appellants and Dr. Neha Garg, learned DR for the Department. We have also perused the bulky record as well as the written submissions of the assessee-Appellants.

4. From the record, it appears that the lower authorities have denied the claim of the assessee-Appellants for the reason that the original invoices were not produced before the authorities below. During the course of arguments, the learned counsel for the assessee-Appellants submits that the said documents were produced but without certification by the Chartered Accountant, so no cognizance was taken. At this stage, he produced the original vouchers which were duly certified by the Chartered Accountant. The learned counsel also submits that he is ready to furnish the original documents duly certified by the Chartered Accountant. On the other hand, learned DR for the Department submits that the original documents were not produced before the lower authorities.

5. After considering the totality of the facts and circumstances of the case, it may be mentioned that when the primary evidence is not available for any reason, then the secondary evidence is admissible as per Section 63 of the Indian Evidence Act, 1872. Hence, in the interest of justice, we set aside the impugned order and remand the matter to the original authority for deciding the issue afresh alongwith other issues involved in the present appeals by providing reasonable opportunity to the assessee-Appellants to adduce necessary evidence, if need be, as per law,

with a direction to the assessee-Appellants to produce the original invoices duly authenticated by the Chartered Accountant.

6. In the result, both the appeals filed by the assessee-Appellants are allowed by way of remand.

(Dictated & pronounced in the open court)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

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