IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1
Service Tax Appeal No. 75130 of 2022

(Arising out of Order-in-Appeal No.16-17/KOL-N/KOL/2020 dated 21.10.2020 passed by Commissioner of CGST & Central Excise, Kolkata)

Commissioner of CGST & Central Excise, Kolkata **: Appellant**
Kolkata North Commissionerate,
GST Bhawan (1st Floor), 180, Shantially, Rajdanga Main Road,
Kolkata-700 107.

VERSUS

M/s. Vikram Solar Ltd. **: Respondent**
The Chambers, 8th Floor, 1865, Rajdanga Main Road,
Kasba, Kolkata-700 107.

APPEARANCE:

Shri S.S.Chattopadhyay, Authorized Representative for the Appellant

Ms. Sneha Nandi, Advocate & Meghana Chandak, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRIASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76349 / 2024

DATE OF HEARING :08.07.2024

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Order : [Per Shri Ashok Jindal]

The revenue is in appeal against the impugned order who is aggrieved for remand order passed by the Ld. Commissioner (Appeals) in this matter.

2. The facts of the case are that the Respondent is service provider located in SEZ and domestic area. For the services rendered by SEZ unit the Respondent availed certain services for providing output services and paid services thereon. The Respondent also claimed proportionate refund of

Service Tax paid on common services availed by the domestic unit as well as the SEZ unit on the basis of the turnover.

3. The Adjudicating Authority initially denied the refund to the Respondent partly. The said order was challenged before the Ld. Commissioner (Appeals) by the Respondent and after considering the issues raised by the Respondent in the appeal to the Ld. Commissioner (Appeals), the Ld. Commissioner (Appeals) made certain observations and remanded back to the Adjudicating Authority for reconsideration of the refund claimed on the basis of the observations made by the Ld. Commissioner (Appeals) in the impugned order.

4. Against the said order, the Revenue is before us.

5. Today when the matter was called, the Ld. Authorized Representative, for the Revenue submitted that in this case the refund claim sought to be allowed by the Ld. Commissioner (Appeals) on the invoices issued by M/s. Sealand Logistics India Services Pvt. Ltd. for service tax paid by Respondent on certain services but as per the said invoices, they are not entitled to claim refund as these are not proper documents in terms of Rule 9 of Cenvat Credit Rules, 2004. An enquiry was made by the Bench through the Ld. Authorized Representative, for the Revenue to produce the invoice and he was unable to do so. Moreover, the Ld. Commissioner (Appeals) has examined the document himself which has been recorded in the impugned order and observed as under:

"6.3.4 It was also observed that the appellant had claimed refund of service tax based on the invoices/bills raised by M/s Sealand Logistic India Service Pvt Ltd where no service tax was charged and were drawn on the basis of the bill invoice cum receipt and money receipt of different service providers The appellant submitted samples of bills raised by Mis Sealand Logistics India Services Pvt. Ltd before ne for verification On scrutiny of those samples. I noticed that in such transactions Mis Sealand Logistics India Services Pvt Ltd had acted as an Intermediary and arranged different services on account of the appellant for clearance of import/export cargo. The bills of Mis Sealand Logistics India Services Pvt Ltd are found to be bills raised for the purpose of realization of value of services rendered by different service providers alongwith the taxes and other levies payable thereon Considering the peculiarity of the operations carried out at the ports for clearance of import and export cargo by the intermediaries on behalf of the importers/exporters, I conclude that the bills of M/s Sealand Logistics India Services Pvt Ltd could be considered as valid documents for the purpose of granting refund when there is no doubt about the fact that the different services provided by the services providers were actually received and utilized by the SEZ unit."

6. We do not find any infirmity in the observation made by the Ld. Commissioner(Appeals) in the impugned order at para 6.3.4 as reproduced hereinabove. Therefore, the Ld. Commissioner (Appeals) has rightly observed that the invoice issued by M/s. Sealand Logistics India Services Pvt. Ltd. are valid document for entitlement of refund claim. With remaining refund claim by the Respondent, the Ld. Commissioner (Appeals) has already clarified the fact to the Adjudicating Authority. Therefore, we do not find any merit in the

appeal filed by the Revenue. Accordingly, the same is dismissed.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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