IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

COURT No. I

Appeal No. ST/346/2010

(Arising out of Order-in-Appeal No. PIII/VM/49/2010 dated 15.03.2010 passed by Commissioner of Central & Excise Customs (Appeals), Pune III)

TIBCO Software India Pvt. Ltd. **Appellant**
Vs.

Commissioner of Central Excise Pune III **Respondent**

Appearance:

Shri Vinay Jain, C.A. for appellant
Shri Dilip Shinde, Asst. Commr (AR) for respondent

CORAM:

Hon'ble Mr. M.V. Ravindran, Member (Judicial)

Date of Hearing & Decision: 21.03.2018

FINAL ORDER NO. A/86190/2018

Per: M.V. Ravindran

This appeal is directed against order-in-appeal No. PIII/VM/49/2010 dated 15.03.2010.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the issue is regarding denial of refund of service tax paid on input services on the following three counts:-

(a) Services have been utilized before the registration

(b) Invoices are drawn in the name of their marketing office at Mumbai and

(c) The credit in respect of some services like rent-a-cab, personal insurance and catering services are not eligible to them.

4. Learned Counsel submits that as regard the refund of CENVAT Credit of service tax paid on first two counts the issue is covered by the decision of the Hon'ble Karnataka High Court in the case of *mPortal India Wireless Solutions Pvt. Ltd. - 2012 (27) STR 134 (Kar)* as also the Hon'ble Allahabad High Court has upheld the Tribunal's decision in the case of Samsung India Electronics Pvt. Ltd. reported as 2017 (52) STR J253 (All.) As regards of refund of CENVAT Credit [sl.(c) above], the amount being very meager, they are not contesting the same.

5. On careful consideration of the submission made, I find that there is no dispute as to the fact that the appellant has rendered output service which are exported from the place of removal where the registration was obtained on 23.07.2008 but the refund was claimed on the services received prior to that

date as also there is no dispute to the invoices are in the name of the market office of the appellant at Mumbai.

6. I find that the submission of the learned Counsel was correct in stating that the issue of claiming refund of service tax paid on various services received prior to the registration of the unit is covered by the judgement of the Hon'ble Karnataka High Court in the case of *mPortal India Wireless Solutions Pvt. Ltd.* (supra) which has been followed by the bench in the case of *CST v. Lionbridge Technologies Pvt. Ltd. - 2016 (42) STR 929* (T) and J.P. Morgan Services India Pvt. Ltd. - 2016 (42) STR 579 (T). Respectfully following, I hold that the impugned order to that extent it denies refund claim stating that the services has been utilized before the registration, is unsustainable. I also find, refund is denied on the ground that invoices was drawn in the name of their marketing office in Mumbai. It is undisputed that that the output services are provided prior to the registration of the unit if that be so the ratio of the judgement of the Tribunal in the case of Samsung India Electronics Pvt. Ltd. (supra) will apply which has been upheld by Hon'ble Allahabad High Court as stated herein above will apply; Hon'ble High Court of Allahabad in the case of *CCE v. Curadev Pharma (P) Ltd. – 2017 (7) GSTL 269 (All)* has held the same view. The impugned order to that extent it denies the CENVAT Credit on these two points is set aside.

7. As regard the CENVAT Credit on the third point, since the matter is not contested, refund is correctly denied.

8. Appeal stand disposed of as indicate above.

(Order dictated in Court)

(M.V. Ravindran)
Member (Judicial)

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