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

COURT No. I

Appeal No. ST/85497, 85499, 85500/18

(Arising out of Order-in-Appeal No. MKK/188-190/RGD APP/2017 dated 07.11.2017 passed by Commissioner of Central Tax, Central Excise & Service Tax (Appeals), CBD Belapur, Navi Mumbai)

Commissioner CGST Belapur — **Appellant**

Vs.

XL Dynamics India P. Ltd. — **Respondent**

Appearance:

Shri Atul Sharma, Asst. Commr (AR) — for appellant
Shri Mukesh Prasad, Accounts Executive — for respondent

CORAM:

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

Date of Hearing & Decision: 19.03.2018

FINAL ORDER NO. A/86208-86210/2018

Per: M.V. Ravindran

All these three appeals are filed by Revenue against order-in-appeal No. MKK/188-190/RGD APP/2017 dated 07.11.2017.

2. Heard both sides and perused the records.

3. The case of Revenue is that the first appellate authority has remanded the matter back to adjudicating authority, which is incorrect, as per Provisions of Section 85(5) of the Finance Act, 1994, as on date, power to remand has been withdrawn.

4. On perusal of records, I find that the issue that falls for consideration is regarding refund claim filed by respondent, as an exporter of services under Notification 27/2012-CE (NT) dated 18 June 2012. Adjudicating authority has rejected the refund claim only on the ground that on the date of filing refund claim, debits were not made in CENVAT account. First appellate authority has sent the matter back to the adjudicating authority with some observation. In my considered view, adjudicating authority needs to reconsider the entire issue afresh, should also consider various records that may be produced by the respondent in support of their case that they had debited the amount subsequently. Impugned order to that extent is set aside and the matter is remanded back to the adjudicating authority, leaving all the issues open. Adjudicating authority should reconsider the issue afresh after following the principles of natural justice and respondent is at liberty to produce the documents on which they wish to rely upon in support of their refund claim.

5. Appeals are disposed of by way of remand to the adjudicating authority.

(Order dictated in Court)

(M.V. Ravindran)
Member (Judicial)

nsk