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

Appeal No. ST/87255/2018

(Arising out of Order-in-Appeal No. PUN-CT-APPIII-000-368-17-18 dated 27.02.2018 passed by Commissioner of Central Tax, (Appeals), Pune II)

Commissioner of Central GST, Pune II — **Appellant**

Vs.

Druva Data Solutions Pvt. Ltd. — **Respondent**

Appearance:

Shri O.M. Shivdikar, Asst. Commr (AR) — for appellant
Shri Abhijit Saha, Advocate — for respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Date of Hearing: 17.10.2018
Date of Decision: 17.10.2018

FINAL ORDER NO. **A/87748/2018**

Per: Archana Wadhwa

Being aggrieved with the order passed by the Commissioner (Appeals), Revenue has filed the present appeal.

2. After hearing both sides, duly represented by Shri O.M. Shivdikar, Authorised Representative on behalf of Revenue and Shri Abhijit Saha, Advocate, on behalf of the represent, I find that the dispute relates to refund of accumulated unutilized CENVAT Credit, in terms of provisions of Rule 5 of Cenvat Credit

Rules, 2004, read with Notification No. 27/2012-CE (N.T) dated 18.06.2012, as amended.

3. The original appellate authority denied the refund to the extent of Rs.23.40 lakhs, on the sole ground that the services obtained by the assessee-exporter were not at their registered premises and as such, credit was not available to them. On appeal, Commissioner (Appeals) relied upon the Tribunal's decision in the case of *GE India Exports Pvt. Ltd. v. CCE & S.T, Hyderabad-II – 2016 (44) STR 693 (Tri.. – Hyd.)* laying down that the registration of the premises of the recipient cannot be adopted as a reason for denial of credit especially when receipt of the service is not in dispute.

4. Revenue in their memo of appeal has not disputed the applicability of the said decision of the Tribunal but have reiterated the same ground that the credit received at unregistered premises cannot be held to be admissible and as such the refund of the same cannot be sanctioned.

5. I find that apart from the decision of the *GE India Exports Pvt. Ltd. (supra)* relied down by the Commissioner (Appeals), the issue stand considered and decided by the Hon'ble High Court also. The Hon'ble High Court of Karnataka in the case of *mPortal India Wireless Solutions P. Ltd. v. CST, Bangalore – 2012 (27)*

STR 134 (Kar.) has held that registration with the department is not a pre-requisite condition for claiming the credit. To the same effect are the Hon'ble Allahabad High Court in the case of *Commissioner v. Curadev Pharma Pvt. Ltd. – 2017 (7) GSTL 269 (All.)* as also the decision in the case of *Commissioner v. Samsung India Electronics Pvt. Ltd. – 2017 (52) STR J253 (All.).*

6. Learned A.R appearing for Revenue draws my attention to the fact that the decisions of the Hon'ble Allhabad High Court were appealed against by Revenue before the Hon'ble Supreme Court and the appeals stand admitted. However, he fairly agrees that there is no stay of operation of the said decisions.

7. Accordingly, in view of the fact that the issue stand decided in favour of the appellant, I find no infirmity in the impugned order of Commissioner (Appeals). Accordingly, Revenue's appeal is rejected.

(Dictated & Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

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