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

Appeal No. ST/87207/2018

(Arising out of Order-in-Appeal No. MUM-DGPM-WRU/APP-20/17-18 dated 14th March 2018 passed by DG of Performance Management, Customs & Central Tax, Mumbai)

MS Clearcorp Dealing System India Ltd. **Appellant**

Vs.

Commissioner of CGST **Respondent**
Mumbai Central

Appearance:

Shri Vinod Awtani, C.A. for appellant
Shri S.K. Hatangadi, Asst. Commr (AR) for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing & Decision : 18.02.2019

FINAL ORDER NO. A/85349/2019

Per: S.K. Mohanty

Heard both sides and perused the records.

2. Denial of refund benefit of service tax paid on cumtax value is the subject matter of present dispute. The learned Commissioner (Appeals) vide paragraph 5.5 in the impugned order dated 14.03.2018 has held that the appellant had not produced any documentary evidence for such claim and accordingly, it is difficult to accept the submission that consideration received should be treated as cum-tax. The said impugned order was passed pursuant to the appeal filed by

Revenue against the original order dated 29.04.2016. Both in the audit report as well as in the original order, such aspects have not been disputed by the department. Further, on perusal of the certificate dated 13.02.2019 of M/s Hem K. Dave & Co., Chartered Accountant firm, I find on verification of various records namely, debit notes, ledgers and other financial records, the said Chartered Accountant firm had certified that no service tax has been charged on the debit note raised by the appellant during the disputed period. It has further been certified that no service tax has been separately reimbursed to the appellant by the service receiver M/s. Clearing Corporation of India in respect of the debit notes till date. Since based on the records maintained by the appellant, the Chartered Accountant firm has certified that no service tax has been charged by the appellant, the same in my considered opinion, should meet the ends of justice to held that the appellant should be entitled for the benefit of refund.

3. Therefore, the impugned order, to the extent it denied the refund benefit of Rs.3,10,566/- is set aside and the appeal is allowed in favour of the appellant.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

nsk