IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

APPEAL No.ST/86270/2018

(Arising out of Order-in-Appeal No. PUN-CT-APP-II-000-281-17-18 dated 02/01/2018 passed by the Commissioner of Central Tax (Appeals), Pune-II)

Calsoft Pvt. Ltd. : **Appellant**

VS

CCE & ST, Pune : **Respondent**

Appearance

Shri. Sachiin Bulkarni, Advocate for Appellant
Shri. S.B. Mane, Asst. Comm. (AR) for respondent

CORAM:

Hon'ble Shri S K Mohanty, Member (Judicial)

Date of hearing :14/01/2019
Date of decision:14/01/2019

ORDER NO. A/86810 / 2019

1. Heard both sides and perused the records.

2. This is the second round of litigation before the Tribunal. In the initial round, the appellant had filed appeal before the Tribunal against the order No.PUN-SVTAX-000-PP-124-15-16 DT. 09/10/2015 passed by the Commissioner of Service Tax (Appeals), Pune. The appeal bearing No.ST/85028/2016 came up for hearing before the Tribunal on 21/07/2017 and by order No.A/88705/17/SMB, the appeal was disposed of with a direction to the Commissioner (Appeals) for verification of the FIRC receipt by the appellant. Pursuant to such

order dated 21/07/2017, the learned Commissioner (Appeals) took up *denovo* proceedings and passed the present impugned order dated 02/01/2018, recording the following observations:

> *"I allow the appeal filed by the appellant only to the extent of eligibility of FIRCs is concerned and direct the respondent to re-quantify the refund claim considering the FIRCs, in dispute, as valid, for forming the export turnover and allow the refund claim accordingly. The order-in-original dated 05/06/2015 is therefore modified to that extent only and the appeal filed by the appellant is disposed of accordingly".*

4. On perusal of the impugned order, I find that the learned Commissioner (Appeals) has only confined his findings to the eligibility aspect of FIRC benefit availed by the appellant. However, with regard to the merit of the case, on which the initial appeal was filed before him was not considered. Since, the Tribunal vide order dated 21/07/2017 has not set aside the earlier order dated 09/10/2015, the Commissioner (Appeals) ought to have considered the submissions made before him in the ground of appeal filed by the appellants. Since the Commissioner (Appeals) has not discussed the merits of the case and solely recorded the findings regarding the genuineness of eligibility of FIRC, I am of the view that ends of justice would be met, if the matter is remanded to the Commissioner (Appeals) for deciding the appeal afresh on the basis of the documents/records available before him.

5. Therefore, after setting aside the impugned order, the matter is remanded to the Commissioner (Appeals) for deciding the appeal afresh. Needless to say that opportunity of personal hearing should be granted to the appellant before deciding the appeal.

6. In result, the appeal is allowed by way of remand.

(Pronounced and dictated incourt)

(S K Mohanty*)*
Member (Judicial)

PJ