CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.405

Service Tax Appeal No. 89957 of 2018

(Arising out of Order-in-Appeal No. PK/334 to 336/ME/2018 dated 24/04/2018 passed by the Commissioner of CGST & Central Excise(Appeals), Mumbai.)

M/s Dolby Technology India Private Limited ....Appellant
Solitaire Corporative Parks S-14
4Th Floor 167 Guru Hargovindji
Marg Chakal
Andheri East, Mumbai
Maharashtra-400093

VERSUS

C.C.G.ST., Mumbai East ....Respondent
Null 9th Floor, Lotus, Parel, Lotus Infocentre,
Near Parel Station, Parel East,
Mumbai,
Maharashtra-400012

WITH

Service Tax Appeal No. 89981 of 2018

(Arising out of Order-in-Appeal No. PK/334 TO 336/ME/2018 dated 24/04/2018 passed by the Commissioner of CGST & Central Excise(Appeals), Mumbai.)

M/s Dolby Technology India Private Limited ....Appellant
Solitaire Corporative Parks S-14
4Th Floor 167 Guru Hargovindji
Marg Chakal
Andheri East, Mumbai
Maharashtra-400093

VERSUS

C.C.G.ST., Mumbai East ....Respondent
Null 9th Floor, Lotus, Parel, Lotus Infocentre,
Near Parel Station, Parel East,
Mumbai,
Maharashtra-400012

WITH

Service Tax Appeal No. 85982 of 2019

(Arising out of Order-in-Appeal No. PK/334 TO 336/ME/2018 dated 24/04/2018 passed by the Commissioner of CGST & Central Excise(Appeals), Mumbai.)

M/s Dolby Technology India Private Limited ....Appellant
Solitaire Corporative Parks S-14
4[Th] Floor 167 Guru Hargovindji
Marg Chakal
Andheri East, Mumbai
Maharashtra-400093

VERSUS

C.C.G.ST., Mumbai East ....Respondent
Null 9[th] Floor, Lotus, Parel, Lotus Infocentre,
Near Parel Station, Parel East,
Mumbai,
Maharashtra-400012

APPERANCE:

Mr. Abhijit Saha, Advocate for the Appellant
Mr. Dilip Shinde, Assistant Commissioner Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. 87042-87044/2021

Date of Hearing: 02.11.2021
Date of Decision: 02.11.2021

Per: Dr. S.K. Pati

Learned Counsel for the appellant & Learned DR are present. An application for acceptance of additional evidence on record filed on 27/08/2021 is taken up for consideration. Learned Counsel for the appellant, Mr. Abhijit Saha submitted that the Commissioner(Appeals) has referred to the terms of agreement executed between appellant and its overseas customer in para 5 of his order in internal page no. 3 but ultimately decided at para 5.4.1 of his order that in the absence of service agreement between the service provider and the service receiver, which appellant agreed during personal hearing to provide but failed, it can only be concluded that Appellant had provided service in relation to consumer audio and video products in Indian market for which place of provision of service, as per terms of Rule 4(A) could be treated as India and not export of services and therefore, refund of unutilized credit under Notification No. 27/2012-CE(NT) dated 18/06/2012 was rightly rejected as not covered under Rule 5 of the Cenvat Credit Rules, 2004. This being the sole ground for refusal of the claim of refund, the agreement copy dated 01/04/2014 annexed to the appeal memo as Exhibit-V may be accepted as an additional piece of evidence as per Rule 23 of the CESTAT Procedure Rules, 1982. Since in this exhibit filed, signature of both the parties are absent, learned Counsel for the Appellant is directed to submit an authenticated true copy of the same typed on the required stamp paper.

2. The appeals are also heard and in view of observation made by the Commissioner(Appeals) that in the absence of agreement between service provider and service receiver, place of provision of service cannot be properly determined for which he had held it to be in India, the said order is hereby set aside and these three appeals are remanded back to him for hearing afresh on the basis of additional documentary proof namely the above referred agreement and to dispose of the Appeals within three months as huge amount of refund claim running over crores of rupees is pending.

(Order pronounced in the open Court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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