CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH, COURT NO. 4

SERVICE TAX APPEAL NO. 86848 OF 2019

VISIBLE ALPHA SOLUTIONS INDIA PVT LTD **Appellant**

Vs.

COMMISSIONER OF SERVICE TAX,
MUMBAI EAST **Respondent**

&

SERVICE TAX APPEAL NO. 86849 OF 2019

VISIBLE ALPHA SOLUTIONS INDIA PVT LTD **Appellant**

Vs.

CC, MUMBAI EAST **Respondent**

&

SERVICE TAX APPEAL NO. 86850 OF 2019

VISIBLE ALPHA SOLUTIONS INDIA PVT LTD **Appellant**

Vs.

CC, MUMBAI EAST **Respondent**

&

SERVICE TAX APPEAL NO. 86851 OF 2019

VISIBLE ALPHA SOLUTIONS INDIA PVT LTD **Appellant**

Vs.

COMMISSIONER OF CGST & CENTRAL EXCISE,
MUMBAI EAST **Respondent**

(Arising out of Order In Appeal No. PVNS/44 TO 47/Appeals-II/ME/2019 Dated 11.03.2019 passed by Commissioner (Appeals-II).)

Appearance:
Shri Mehul Jivani, Chartered Accountant for the Appellant.

Shri S.B.P. Sinha, Superintendent for the Respondent.

CORAM:
HON'BLE MR. ANIL.G.SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 02.11.2023
Date of Decision: 02.11.2023

FINAL ORDER : 87099-87102/2023

Above stated four appeals are taken together for decision since issue involved in all of them is same and the appellant is also the same and all are arising out of common Order-In-Appeal dated 11.03.2019.

2. Brief facts of the case are that the Appellant is providing support service related to development and maintenance of data base, information technology service, outsourcing of service and data processing and data analysis services to its holding company situated in United States of America. For the quarter starting from April, 2016 to March, 2017 Appellant filed four claims for refund of accumulated CENVAT credit claiming that they were exporting the services to United States of America and said the CENVAT credit was accumulated on account of the same. Through two different Orders-In-Original, original authority observed that data was received by the Appellant and the said data was nothing but "an intangible goods made physically available" by the recipient of service electronically or through whatever means and, therefore, the goods were available for acting upon in India, and that the activity was covered by proviso to Rule 4 (a) of Place of Provision of Service Rules 2012 and, therefore, the activity of the Appellant was not export and, therefore, the refund of CENVAT credit was denied to the appellant. Aggrieved by the said orders, Appellant preferred appeal before the Learned Commissioner (Appeals). The above stated two Orders In Original were dealt with by the Learned Commissioner (Appeals) through common Order In Appeal which is the impugned order where in it was held that CBEC circular dated 04.05.2018 was not applicable to the facts of the present case and that appellant failed to make out the case that they were into processing of the data and, therefore, place of provision of service cannot be considered to be location of the service, recipient that is holding company in United States of America. Therefore, the learned Commissioner (Appeals) rejected the Appellant's appeals. Aggrieved by the said order, appellant is before this Tribunal.

3. Learned Counsel for the Appellant has submitted that for the periods prior to the present set of refund claims under similar circumstances, appellant were allowed refund of accumulated CENVAT credit. He has

submitted that for the subsequent period also, they were allowed similar refunds and only during the period of present four quarters, the view was taken by original authority that "data was intangible goods made physically available". He has submitted that data is never physically available and only it is electronically available and, therefore, question of applicability of rule 4 (a) of Place of Provision of Service rules 2012 does not arise. He has submitted that they have received proceeds in foreign currency. He has also submitted that CBEC has issued a circular on this issue bearing no. 209/1/2018/ST dated 04.05.2018 wherein under paragraph 3.1 CBEC has clarified that in the case of service where data and instructions are provided so as to development software, the place of provision is the location of the recipient of the service. He has submitted that in their case, the location of the recipient of service is USA. He has further submitted that in view of the clarification issued by CBEC, their activity is export of service and, therefore, they are eligible for subject refund.

4. Learned Authorized Representative has supported the impugned order.

5. I have carefully gone through the records and submissions made. The short point to be decided in the present set of appeals is whether electronically received data is physical goods or not. The original authority has held such data as physical goods and, therefore, held that place of provision of services is India. I am not able to appreciate the contention of original authority that intangible goods are made physically available. I note that data is electronically received by the Appellant. The resultant product is exported to United States of America and they received their remuneration in convertible foreign exchange. In view of this fact and in view of the clarification issued by the CBIC on 04.05.2018, I hold that the services involved in the present set of appeals is export of services.

6. In view of my above finding, I set aside all the four impugned Orders in Appeal and allow all the four appeals with a direction to the original authority to allow subject refund within a period of four weeks from passing this order.

(Dictated and pronounced in open court.)

(ANIL.G.SHAKKARWAR)
MEMBER (TECHNICAL)