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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **SERTA 13/2025**

COMMISSIONER OF CGST SOUTH DELHI .....Appellant
Through: Mr. Atul Tripathi, SSC, CBIC.

versus

VERIFONE INDIA SALES PRIVATE LIMITED .....Respondent
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

<u>O R D E R</u>

% 04.08.2025

1. This hearing has been done through hybrid mode.

<u>CM APPL. 46685/2025 (Exemption)</u>

2. Allowed, subject to all just exceptions. Application is disposed of.

<u>SERTA 13/2025</u>

3. The present appeal has been filed by the Appellant under Section 35G of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, *inter alia*, assailing the final order dated 16th April, 2025 (hereinafter, '*impugned order*') passed by the Customs, Excise And Service Tax Appellate Tribunal (hereinafter, '*CESTAT*') in ***Service Tax Appeal No. 50722 of 2019***. The same arises out of the Show Cause Notice (hereinafter, '*SCN*') dated 30th September, 2015.

4. The Respondent was engaged in the supply of PoS terminals and spare parts, which were portable devices used for the secured purpose of online payments. For the period from March 2010 to March 2012, an Audit was conducted and upon the issue raised by the Audit Officer, the Respondent

reversed the proportionate credit of Rs.6,57,523/- for the period 2010-2011 including interest of Rs.2,35,313/-. Further, for the period 2011-2012 and 2012-2013 the Respondent reversed the entire common credit with interest.

5. The SCN, however, was for the period covering February, 2010-2011 to 2014-15. The demand proposed to be raised against the Respondent was to the tune of Rs.4,34,29,598/-. The allegation against the Respondent was that the Respondent had not reversed the credit of the exempted services towards the exempted services applicable as per Rule 6 (3) of the CENVAT Credit Rules, 2004 (hereinafter, '*CCR*')

6. Moreover, there were other allegations against the Respondent that credit had been availed on the basis of photocopies without proper documentation. This SCN was adjudicated and *vide* the Order-in-Original dated 28th December, 2018, the Commissioner had confirmed the service tax demand in the following terms:-

ORDER

> *"(i) I confirm the Service Tax demand of Rs. 4,26,09,828/- (Rs. Four Crore Twenty Six Lakhs Nine Thousand Eight Hundred and Twenty Eight only) under proviso to sub-section (1) of Section 73 of the Act ibid;*
> *(ii) I confirm demand of interest under Section 75 of the Finance Act, 1994 on the on the above service tax liability at the applicable rate till the date of payment;*
> *(iii) I appropriate the sum of Rs. 25,23,370/- already deposited by the Noticee during the course of Audit (which has been acknowledged in the IAR dated 04.02.2013 issued in respect of such audit) from the total service tax demand at Sr. No. (i) above;*
> *(iv) I appropriate the interest of Rs.1,68,468/· paid by the Noticee on the amount deposited as per details in Sr. No. (iii) above from the total liability of interest on this account;*

(v) I confirm the demand of CENVAT Credit of Rs 8,19,770/- taken on photocopies/without documents by the Noticee and order recovery thereof along with applicable interest in terms of Rule 14 of the CENVAT Credit Rules, 2004;
(vi) I impose a penalty equivalent of s 4,26,09,828/- under Section 78 of the Finance Act, 1994;
(vii) I impose a penalty of Rs 8,19,770/- under Rule 15 (3) of the CENVAT Credit Rules, 2004 read with Section 78 of the Finance Act, 1994"

7. This Order-in-Original was appealed before the CESTAT wherein, the Respondent's contention was that for the period 2014-2015, the Chartered Accountant certificate was produced to show that no common credit was in fact availed of. This Chartered Accountant certificate was rejected in the Order-in-Original.

8. According to CESTAT, the Chartered Accountant certificate could not have been completely rejected and until and unless, there were some forgery or fake claims made in the Chartered Accountant certificate. The relevant observations of the CESTAT are set out below:-

"8. *We now take up the second issue. Learned Counsel has submitted that for the period October 2012 to March 2015, the appellant did not avail credit on common inputs/service. It has also been submitted that a CA Certificate to this effect was submitted. The adjudicating authority has rejected the appellant's contention that the CA Certificate was only for the year 2014-2015. However, a copy of the CA Certificate for October 2012 - March 2013 (dated 18.03.2019) has been submitted before us. From the date of the certificate, it is evident that this was not presented before the adjudicating authority. However, we do not find any infirmity in the said CA Certificates. It has been categorically held as follows:-*

"On the basis of examination of Audited financial

Statements, service tax returns and others relevant records produced before us for verification and based on such other necessary information and explanation provided during the course of our review for this certificate, we hereby certify that:

1. During the period October 2012 to March 2015, Company has availed the CENVAT Credit of Rs. 3.07,95.982/- as per service tax returns and attached annexure. Such input services were used for provision of taxable output services of business support services, maintenance or repair services, etc. by the company on which ser·vice tax was duly discharged.

2. The Company did not avail CENVAT Credit on input services such as clearing and forwarding, freight, marine insurance etc exclusively used for exempt services or common input services such as Chartered Accountant services, Renting of Immovable Property service, Telecommunication services for office and similar nature of services which are commonly used both for taxable and exempt services."

It is not clear as to in what form, the adjudicating authority wanted the CA Certificate to be submitted in order to satisfy the requirements of the Department. It is well settled principle that CA Certificate cannot be rejected unless it is evidenced that the same is fake or forged. Consequently, we hold that the CA Certificates submitted are acceptable to establish that no credit was availed on common input services for the period October, 2012 to March 2015.

9. As regards the availment of credit on photocopies, we find that the appellant has claimed that the original invoices were submitted to the Range Office vide their letter dated 11.03.2014, a copy of which is annexed to the appeal paper book. We note that the said letter is addressed to Superintendent, Service Tax, Range-r, Division-I, Noida and the receipt stamp of the Range date

__12 March 2014 is clearly visible.__ This contention of the appellant has been boldly rejected by the adjudicating authority holding that the letter has not been acknowledged and the signature appended is not identifiable. Once a evidence of producing the original invoices before the Jurisdictional Officer has been submitted, unless it is evidenced that the seal/signature was forged, the submission deserves to be accepted.”

9. In so far as the availment of credit on the basis of photocopies is concerned, the CESTAT noted in the impugned order that the original invoices were submitted to the concerned Department with proper acknowledgement dated 11th March, 2014. On this issue, the CESTAT has observed as under:-

> *“9. __As regards the availment of credit on photocopies, we find that the appellant has claimed that the original invoices were submitted to the Range Office vide their letter dated 11.03.2014, a copy of which is annexed to the appeal paper book. We note that the said letter is addressed to Superintendent, Service Tax, Range-I, Division-I, Noida and the receipt stamp of the Range date 12 March 2014 is clearly visible.__ This contention of the appellant has been boldly rejected by the adjudicating authority holding that the letter has not been acknowledged and the signature appended is not identifiable. Once a evidence of producing the original invoices before the Jurisdictional Officer has been submitted, unless it is evidenced that the seal/signature was forged, the submission deserves to be accepted.”*

10. Finally, on the ground of extended period of limitation, the CESTAT came to the conclusion that the manual itself being Service Tax Audit Manual,

which was issued in the year 2011, contemplates various steps to be taken by the Audit team. The Audit Team conducted a comprehensive review over a period of three to four days and hence, the CESTAT held that the extended period cannot be period availed of. The relevant portion of the impugned order reads as under:

> *"11. From the above, we note that the Audit team carries out a very comprehensive action beginning from creation of the Assessee Master file to the actual audit: of the records of an assessee. In the instant cose, it is noted that the audit was undertaken over 3-4 days in the year 2012, looking into all the records maintained by the appellant.* ***Further, as the appellant being subjected to audit from time to time we find that invocation of extended period is neither warranted not substantiated. Once all the statutory records of the appellant has been audited and the appellant· has filed this returns regularly, the Department cannot invoke the extended period."***

11. On all the abovementioned grounds, the CESTAT having passed a detailed order, this Court is of the opinion that the same does not warrant any interference as no substantive question of law arises in this matter.

12. Accordingly, the impugned order passed by the CESTAT is upheld and the present appeal is dismissed. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

AUGUST 4, 2025
sk/ck