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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.196/13/ST/17-RA /406 Date of Issue: ~~01.2022~~ 01.02.2022

ORDER NO. 02/2022-ST(WZ) /ASRA/MUMBAI DATED 27.01.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Ceylon Infotech Pvt Ltd,
1079, 1st Floor, Sadashiv Peth
Bosco Furnishings,
Near Shanipar Chowk,
Pune 411 030

Respondent: Assistant Commissioner (Refunds), Service Tax, Pune

Subject : Revision Applications filed under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. PUN-SVTAX-000-APP-299-16-17 dated 08.02.2017 passed by the Commissioner, Service Tax (Appeals) Pune

ORDER

The Revision Application has been filed by M/s Ceylon Infotech Private Limited, 1079, Sadashiv Peth, Bosco Furnishings, Near Shanipar Chowk, Pune 411 030 (hereinafter referred to as the 'applicant') against the Order-in-Appeal No. PUN-SVTAX-000-APP-299-16-17 dated 08.02.2017 passed by the Commissioner, Service Tax (Appeals) Pune.

2. The facts briefly stated are that the applicant, holders of Service Tax Registration No. AAECC7806KSD001 for services provided under the category 'Business Support Services' had filed a rebate claim of Rs. 29,13,046/-, on 16.10.2015, for the period January, 2013 to September, 2013, of service tax paid on input services used in providing taxable services exported in terms of Rule 6A of the Service Tax Rules, 1994 read with Notification No. 39/2012-ST dated 20.06.2012. The applicant had declared that the payment against such of taxable services had been received by them in convertible foreign exchange in full and the amount of service tax including cess had been paid by them to their respective input service providers and that they had not availed Cenvat credit on input services of which the said rebate had been claimed. On preliminary scrutiny of the claim filed by the applicant a deficiency memo dated 01.12.2015 was issued to them for the following deficiencies:

a. Copy of a declaration to be filed prior to the export of services had not been enclosed with the claim.

b. ST-3 Return for the period of the claim i.c. April, 2012 to March, 2013 and April, 2013 to March, 2014 revealed that Cenvat credit of Rs. 24,24,382/- had been availed by the applicant.

c. No co-relation/proof of payment made to service provider had been provided. The entries in respect of payment made to the service provider was not highlighted in the Bank statement.

d. No export invoices and correlation statement with the FIRC's thereof was enclosed with the claim to confirm that the remittance received was in respect of the services exported by the applicant.

2.1 The Appellant, vide their letter dated 06.01.2016, filed their reply to the aforementioned deficiency memo, submitting that:

a. Filing of declaration contemplated in Notification No. 39/2012-ST dated 20.06.2012 was a mere procedure and not a condition and the same was required to be condoned.

b. Input service credit shown in the ST-3 Returns filed by them was nothing but the paper credit as the same was never utilizable by the Appellant. Further, if the entire credit was reversed then the same nullified the effect of availment of the Cenvat credit.

c. All the Bank Statements and FIRC's involved in the present rebate claim have been submitted and as required they had highlighted the transactions related to the present rebate claim.

d. There were no formal, written Works Orders as all the transactions were carried out on the oral instructions of the clients.

3. Of the refund claim filed for Rs. 29,55,382/-, an amount of Rs. 29,13,046/- was rejected by the Assistant Commissioner (Refunds) Service Tax, Pune vide order-in-original No R/257/2015-16 dated 25.07.2016 on the grounds that the applicant had not fulfilled 3 major conditions to be eligible for claiming rebate under Notification No. 39/2012-ST dated 20.06.2012.

a. **The service should have been exported in terms of Rule 6A of the Rules**

(i) The applicant had submitted copies of 08 invoices raised on the foreign parties during the period March, 2013 to September, 2013 but had submitted 58 Bank Advises issued by ICICI Bank during the period April, 2013 to July 2014. The applicant had not submitted the co-relation statement of the invoices raised on foreign parties with the FINC's/Bank Advises. Thus, it was unable to conclude whether the payment shown in the Bank Advise was in respect of the 08 invoices raised during the relevant period;

(ii) It was also observed that in some of the invoices the amount had been charged in USD, whereas in others, in GBP. The Bank Advise however, showed that the payment had been received in USD only, indicating that the amount charged in GBP had not been received at all. In the absence of co-

relation statement, the foremost condition of export of services could not be verified.

b. The Service Tax and Cess, of which rebate was claimed, should have been paid on the input services to the provider of service

(i) The applicant had marked the debit entries in the Bank Statement against the input service invoices. On co-relating the debit entries with the respective invoices it was observed that the debited amount did not match the amount charged by the service provider in their invoices.

c. No Cenvat credit should have been availed on inputs and input services on which rebate was claimed

(i) In the refund application the Appellant had declared that no Cenvat credit had been availed by them on the input services on which rebate was claimed. However, on being pointed out that for the period April, 2012 to March, 2013 and April, 2013 to March, 2014, Cenvat credit of Rs. 24,24,382/ had been availed by them, the applicnt, vide their letter dated 06.01.2016, clarified that the Input service credit shown in the ST-3 returns filed by then was nothing more than paper credit as the same was never utilized by them; The pre-condition was of non-availment of credit. In the instant case, the Appellant had submitted a false declaration and therefore, their claim also failed to fulfill the third condition as well.

4. Being aggrieved with the impugned order, the applicant filed an appeal before the Commissioner of Service Tax (Appeals), Pune. The Appellate Authority vide Order-in-Appeal No. PUN-SVTAX-000-APP-299-16-17 dated 08.02.2017 rejected the appeal filed by the applicants.

4.1 The Appellate Authority in the impugned Order-in-appeal has averred with the findings in the order-in-original and made the following observations

a. The applicants have not submitted any substantive explanation in their appeal memo, to the findings at Paras 8,9, 10 of the O-I-O dated 25.07.2016.

b. At the time of personal hearing, applicant have categorically admitted that reversal of credit was not made by them and they did not file declaration, before the Jurisdictional Assistant Commissioner.

c. Conditions prescribed under Notification are basic requirements and its non-compliance, will entail rejection facility available the Notification, as held by the Hon'ble SC in the case of Indian Aluminum Co vs. Thane Municipal Corporation [1991 (55) ELT 454-SC)].

d. Although no time limit for claiming the rebate had been stipulated in the said Notification, the provisions governing refund/rebate of Service Tax in the Statute was Section 11B of Central Excise Act, 1944 and came into play whenever question of refund/rebate arose. The time limit of one year from the relevant date ie. date of export of services, for filing the claim was also applicable to the instant case. It was observed that since the claim related to the period 2013-14 had been filed on 16.10.2015, there was an abnormal delay in filing the claim. The judgment of Hon'ble Supreme Court in the matter of Union of India Vs. Uttam Steel Ltd.-2015(319)E.L.T. 598(S.C.) was applicable in this case.

5. Being aggrieved by the Order-in-Appeal, the applicant has filed the revision applications on the following grounds:

a. The Appellate Authority has erred treating the rebate of service tax on input services with the duties of central excise and rejecting the appeal on the ground of limitation in terms of section 11B of the Act.
b. The Judgment of Hon'ble Supreme Court in the matters of Deputy Commissioner Versus Dorcas Market Makers Pvt. Ltd reported vide 2016 (1) TMI 295 - SC [Other Citation: 2015 (325) E.L.T. A104 (SC)] where the Hon'ble Supreme Court dismissed the Revenue Appeal and upheld the Decision of Hon'ble high Court of Madras [reported vide 2015 (4) TMI 118 – Madras High Court (Other Citation: 2015 (321) E.L.T. 45 (Mad.))] was relevant to the instant case
c. That as the primary section of the very Act distinguishes the case of rebate with the refund of duties of central excise, it cannot be the case of the department to equate the with the provisions, rules and notifications of a different act namely the Finance Act, 1994 and Service Tax Rules,1994 therein.

d. The Appellate Authority has erred by wrongly constructing period of limitation in terms of Section 11B of the Act and inserting the same in the Notification No. 39/2012-ST, when there is no reference to Section 11B made in the Notification. Vide Notification No. 39/2012-ST, the Central Government provided for the conditions, limitations and procedure for granting rebate of service tax on input services. While providing for such conditions, limitations and procedure, it cannot be a case that they inadvertently forgot to mention the reference to section 11B for the time period for filing of rebate. The applicant also contended that the Notification No. 19/2004-CE(NT) providing for conditions, limitations and procedures for filing of Rebate claim in terms of Rule 18 of the Central Excise Rules, 2002 was amended to include the period of limitation in terms of Section 11B of the Act. However, no reference for the period of limitation has been made in Notification No. 39/2012-ST dated 20.06.2012. The only condition that exists in the said notification states that the claim should be filed after the services have been exported.

e. That the applicant having complied with the basic required of Rule 6A of exporting the services and receiving the payments in convertible foreign exchange, they cannot be debarred from the statutory right to receive the rebate merely for lapse of procedural compliance in this regards. The Appellate Authority has erred in drawing conclusions in the matter based on the incorrect factual positions presented by the O-I-O. It is submitted that the department has not contended that the service have not been exported. It is submitted that the Applicant has compiled with all the conditions prescribed under Notification 39/2012-ST dated 20.06.2012 for grant of rebate of service tax in input services to him and merely since they had not complied with some procedural compliance, they cannot be debarred from the rebate.

f. The applicant under the pretext that the amount of cenvat credit of service tax on the input services is required to be reported in the ST-3 has done so without any intention of utilizing the same for the payment of any tax on their output services which the applicant does not have since he is into providing of this service alone. It is contended that the Applicant was

always willing to reverse the same from the books of accounts and from the ST-3 returns. It is submitted that this alone cannot be ground for not granting the rebate to the applicant. The Applicant has reversed the said CENVAT credit from the books of accounts and passed a journal entry for reversing the same. A Chartered Accountant certificate is being submitted to verify the same.

g. The Appellate Authority has erred in ignoring the fact that the Applicant has made entire payment to the Service providers including the service tax claimed as rebate. This fact has not been verified by the Ld. Commissioner (Appeal) and has erred in relying upon the verification of the O-I-O.

h. The applicant has relied upon the following judgements

(i) Mangalore Chemicals and fertilizers Ltd vs UOI [1991 (8) TMI 83 – SC] [Other Citation: 1991 (55) E.LT. 437 (SC), and the following [1991] 83 STC 234 (SC), 1992 AIR 152, 1991 (3) SCR 336, 1992 (1) Suppl. SCC 21, 1992 (3) JT 482, 1991 (2) SCALE 662]

(ii) Order against Revision Application of Lallubhai Amichand Ltd [2011 (7) TMI 1094 GOI] [Other Citation: 2014 (311) E.L.T. 929 (G. O. I.)]

(iii) Union of India vs. A.V. Narasimalu - 1983 (13) E.L.T. 1534 (S.C.)

(iv) Commissioner of Central Excise, Delhi-I vs. Joint Secretary(RA) & Anr. 2012 (5) TMI 91 – Delhi High Court [Other Citation: 2013 (287) E.L.T. 177 (Del.)]

6. Personal hearing was scheduled in this case on 18.08.2021. Shri Anil Mishra, Advocate appeared for the hearing and gave written submissions dated 17.08.2021. He submitted that in case rebate is not sanctioned to them, cenvat credit debited due to order of the Appellate Authority should be restored back to them.

6.1 In their additional submissions dated 17.08.2021, the applicant reiterated their earlier contentions and in addition stated that in pre GST era any amount debited for the purposes of rebate, when not found admissible, was recredited to CENVAT account. The applicant also submitted that post

GST, provisions of Section 142 (6) of CGST Act, 2017 entitles cash refund of Cenvat eligible for recredit.

The further relied upon the following case laws

i) RA Order No. 1303/2013- CX - M/s. Monomaic Chemical Industries

ii) M/s Theromax Ltd V/s UOI – [2019 (2) TMI 1744] - Gujarat High Court

iii) M/s. Nahar Industrial Enterprises V/s. UOI – [2009 (235) ELT 22] (Punjab & Haryana)

iv) RA In Balkrishna Industries Ltd. [2020 (1) TMI 1313 GOI]

v) RA order in M/s. Somson Exports- [2015 (12) TMI 1641- GOI]

7. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal.

7.1 Government observes that the issue to be decided in this case is whether or not the Order in Original dated 25.07.2016 rejecting the rebate claim of service tax paid on services viz. Business Support Services, exported by the applicant has been rightly upheld by the Commissioner (Appeals) in terms of the provisions of Section 11 B of the Central Excise Act, 1944. In terms of Section 11B of Central Excise Act, 1944, the 'relevant date" means

"SECTION 11B - Claim for refund of [duty and interest, if any, paid on such duty

[Explanation. — For the purposes of this section, -

(A) .....

(B) "relevant date" means, -

(a) ....

(b) ....

(c).... ;

(d) ....

(f) in any other case, the date of payment of duty"

7.3 The applicant has contended that in the absence of any time limit prescribed under Rule 6A of the Service Tax Rules, 1994 / Notification No. 39/2012-ST dated 20.06.2012 and also in view of judgment of the Hon'ble Madras High Court in the case of Dorcas Market Makers Pvt. Ltd. reported in 2015 (321) E.L.T. 45 (Mad.) confirmed by the Hon'ble Apex Court, the rebate

of duty under Rule 6A of the Service Tax Rules 1994 should be as per the Notification No 39/2012-ST dated 20.06.2012 issued by the Central Government, which prescribes the conditions, limitations and procedures for considering the claim for refund. The applicant has further contended that there has been a wrong construction of the notification as the limitation prescribed under sub-section (1) of 11B of the Act has not been made applicable under the Notification No. 39/2012-ST dated 20.06.2012 during the relevant period and this intention is also apparent from the fact that Notification No 19/2004-(CE)-NT was amended to include the period of limitation under Section 11B of the CEA and no similar reference for the period of limitation has been made in the Notification No 39/2012-ST dated 20.06.2012.

7.4 Government observes that Hon'ble High Court, Madras dismissed writ petition filed by Hyundai Motors India Ltd. reported in [2017 (355) E.L.T. 342 (Mad.)] and upheld the rejection of rebate claim filed beyond one year of export in its order dated 18.04.2017. The Hon'ble High Court in the said Order dated 18.04.2017 cited its own Order in Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai, reported in [2015 (324) E.L.T. 270 (Mad.)], which had held that Rules cannot prescribe a different period of limitation or a different date for commencement of the period of limitation. The relevant Paragraph (20) of the order dated 18.04.2017 is extracted hereunder:-

> "8. *For examining the question, it has to be taken note of that if a substantial provision of the statutory enactment contains both the period of limitation as well as the date of commencement of the period of limitation, the rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. In this case, sub-section (1) of Section 11B stipulates a period of limitation of six months only from the relevant date. The expression "relevant date" is also defined in Explanation (B)(b) to mean the date of entry into the factory for the purpose of remake, refinement or reconditioning. Therefore, it is clear that Section 11B prescribes not only a period of limitation, but also prescribes the date of commencement of the period of limitation. Once the statutory enactment prescribes something of this nature, the rules being a subordinate legislation cannot prescribe anything different from what is prescribed in the Act. In other words, the rules can occupy a field that is left unoccupied by the statute. The rules cannot occupy a field that is already occupied by the statute."*

7.5 It is pertinent to note that despite referring to both the case laws viz. Deputy Commissioner v. Dorcas Market Makers Pvt. Ltd. [2015 (321) E.L.T. 45 (Mad.)],

and [2015 (325) E.L.T.A104 (S.C.)] (relied upon by the applicant in the present case), the Hon'ble High Court Madras in the case of M/s. Hyundai Motors India Limited vs. The Department of Revenue [2017 (355) E.L.T. 342 (Mad.)] has held that the rules cannot occupy a field that is already occupied by the statute.

7.6 Further, Hon'ble High Court of Karnataka in Sansera Engineering Pvt. Ltd [2020 (371) ELT 29 (Kar.)] dated 22.11.2019, after considering applicant's argument that Notification No. 41/94-C.E. did contain the time limit referring to Section 11B of the Act and consciously, the same was omitted in the Notification No. 19/2004-C.E. (N.T.), issued superseding the previous Notification No. 41/1994-C.E, and also distinguishing both the case laws viz. Deputy Commissioner v. Dorcas Market Makers Pvt. Ltd. 2015 (321) E.L.T. 45 (Mad.), and 2015 (325) E.L.T.A104 (S.C.), held that *'claim for rebate can be made only under impugned Section 11B ibid and it is not open to subordinate legislation to dispense with requirements of Section 11B ibid'.* Hon'ble High Court of Karnataka in its judgment dated 22.11.2019 also observed as under:

> *8. The primary ground of challenge to the orders impugned is relating to the applicability of Section 11-B of the Act to the Notification No. 19/2004 issued under Rule 18 of the Rules. It is not in dispute that the Notification No. 41 of 1994/C.E. holding the field for about 10 years did prescribe the time-limit for availing the refund of duty. The omission of the time limit in the subsequent Notification 19/2004 was considered by the Hon'ble High Court of Madras in the case of Dorcas Market Makers Pvt. Ltd., supra, it was held that the rebate of duty under Rule 18 should be as per the Notification issued by the Central Government. Notification No. 19/2004 did not contain the prescription regarding limitation, a conscious decision taken by the Central Government.*
>
> *9. Much emphasis was placed by the Learned Counsel on the decision of Dorcas Market Makers Pvt. Ltd., supra. The challenge made to the said decision by the Revenue before the Hon'ble Apex Court was dismissed at the admission stage. In view of the recent judgment of the Hon'ble Apex Court in Uttam Steels supra, the decision of Dorcas Market Makers Pvt. Ltd., supra as well as the other judgments referred to by the Learned Counsel for the petitioners would not come to the aid of the petitioner. The Division Bench of the Hon'ble Madras High Court has considered the same in its later decision of M/s. Hyundai Motors India Ltd., supra*

and following the recent judgment of M/s. Uttam Steels Ltd., supra has answered the issue in favour of the Revenue.

7.7 Government also observes that Hon'ble CESTAT Principal Bench, New Delhi in Vodafone Mobile Services Limited Vs Commissioner of ST, New Delhi [2019(29) G.S.T.L. 314(Tri.-Del.)] while deciding whether the time limit prescribed under Section 11B of the Central Excise Act, 1944 is applicable to the rebate claims filed under Notification No. 11/2005-S.T., dated 19-5-2005, observed that

....."We notice that provision of Section 11B of the Central Excise Act, 1944 which deals with excise duty, has been made applicable for Service Tax vide Section 83 of the Finance Act, 1994. This would imply that the time limit of one year from the payment of tax for filing of refund claim would apply in respect of Service Tax refund also. Irrespective, there is no time limit set out in the respective notifications; it is otherwise the settled position of law that even if a law is silent on the time limit applicable, a reasonable time limited has to be read into the law. The decision of the Hon'ble High Court (Bombay) in the case of Everest Flavours Ltd. v. Union of India - 2012 (282) E.L.T. 481 (Bom.) is being relied upon. In this judgment, the decision of Hon'ble Apex Court in the case of Government of India v. Citedal Fine Pharmaceutical - 1989 (42) E.L.T. 515 (S.C.) was relied upon."

7.8 Government, applying the ratio of the judgments discussed hereinabove, holds that rebate claims filed after one year's time limit from the relevant date stipulated under Section 11B of Central Excise Act, 1944 are clearly hit by time limitation clause.

8. The Government finds that the other disputes relates to the denial of rebate claims for non fulfilment of the conditions prescribed under the Notification No. 39/2012-ST dated 20.06.2012. The government notes that these non fulfilment of conditions pertain to non availment of cenvat credit, no correlation of the payments received in convertible foreign exchange with the invoices issued and lack of documentary evidences regarding payments made to the provider of the input services and non filing of declaration in terms of Para 3.1 of the said Notification, prior to the date of export services.

8.1 As regards the availment of cenvat credit, it is noted that in order to enable the applicant to claim the rebate benefit under Notification No. 39/2012-ST dated 20.06.2012 in respect of the Service Tax paid on the input

services on which rebate was claimed, they should have refrained themselves from taking the Cenvat Credit on input and input services in respect of which the rebate is sought to be claimed under the said notification. The rejection by the original authority was on the basis of the Para 2(e) of the Notification No. 39/2012-ST dated 20.06.2012 which reads as follows :

"(d) no CENVAT credit has been availed of on inputs and input services on which rebate has been claimed;"

8.2 The Government finds that the Notification No. 39/2012-S.T. dated 20.06.2012 has been issued in terms of Rule 6A of the Service Tax Rules, 1994. The notification provides for grant of rebate by way of refund of the duty paid on excisable inputs or the service tax and cess paid on input services used in providing service exported in terms of Rule 6A of the Service Tax Rules, 1994 subject to fulfilment of conditions stipulated thereunder. There is no doubt that the appellant falls within the gamut of the notification whose stated purpose is to grant rebate by way of refund of the duty paid on excisable inputs or the service tax and cess paid on input services used in providing service exported in terms of Rule 6A of the Service Tax Rules, 1994 subject to condition that no Cenvat credit of on inputs and input services has been availed on which rebate has been claimed.

8.3 The issue in the instant revision applications is as to whether in the circumstances of the case, the applicant would be eligible for benefit under Notification No. 39/2012-ST dated 20.06.2012. There is no dispute that the benefit of the said notification is subject to one of the condition that no tax credit is taken. The applicant during relevant period had taken Cenvat credit in respect of inputs services. However, the applicant has submitted that the cenvat credit claimed by them was mere 'paper credit' and that they had availed the credit in the ST-3 return without any intention of utilising the same for payment of any tax. The applicant has contended that they were always willing to reverse the same and they had reversed the credit from the books of accounts and passed a journal entry for the reversal. The Government observes that the applicant have claimed to have reversed the cenvat credit and have submitted a certificate from their chartered accountant

certifying the same. Thus the error of taking credit has been corrected and set right. The aforesaid views find sustenance in number of High Courts and Supreme Court judgments.

8.4 Government notes that the Hon'ble Karnataka High Court in the case Commissioner of C.EX & ST, LTU, Bangalore Vs. Bill Forge Pvt. Ltd reported in [2012(179) ELT 109(Kar.)] has held that –

> ***"20.*** *From the aforesaid discussion what emerges is that the credit of excise duty in the register maintained for the said purpose is only a book entry. It might be utilised later for payment of excise duty on the excisable product. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. It matures when the excisable product is received from the factory and the stage for payment of excise duty is reached. Actually, the credit is taken, at the time of the removal of the excisable product. It is in the nature of a set off or an adjustment. The assessee uses the credit to make payment of excise duty on excisable product. Instead of paying excise duty, the cenvat credit is utilized, thereby it is adjusted or set off against the duty payable and a debit entry is made in the register. Therefore, this is a procedure whereby the manufacturers can utilise the credit to make payment of duty to discharge his liability. Before utilization of such credit, the entry has been reversed, it amounts to not taking credit. Reversal of cenvat credit amounts to non-taking of credit on the inputs."*

8.5 Government notes that the Appellate Authority had concurred with the impugned order in original that the applicant had not filed a declaration in terms of para 3.1 of Notification No 39/2012-ST dated 20.06.2012 prior to the date of export of services and no correlation of the payments received in convertible foreign exchange with the invoices issued was provided and there were no documentary evidences regarding payments made to the provider of the input services. The applicant on the other hand has harboured an opinion that these are procedural errors and stated that they had filed the declaration post facto and that they had paid all the vendors the amounts and tax amounts as mentioned in the bills.

8.6 Government notes that these are areas where the statements made by the department and the applicant are at variance over verifiable facts which need to be examined for correctness before arriving at a conclusion.

8.7 Government also notes that another area of variance is the amount of the rebate claim filed. While the applicant claims that the rebate claim was for Rs. 29,55,382/-, the impugned order-in-original has rejected the claim amounting to Rs. 29,13,046/-, without any mention of the status of the balance amount of the claim filed.

9. The applicant has made some submissions to contend that even if their rebate claims are not sanctioned, then cenvat credit debited should be restored back and in the post GST scene, the provisions of Section 142(6) of the CGST Act, 2017 would entitle them to case refund of the cenvat eligible for recredit. Although the Government policy is to zero rate exports, the exporter is required to follow the procedures prescribed under the relevant sections and notifications issued to be eligible for rebate. The rebate admissible in terms of the notifications issued are subject to the specified conditions and limitations. Upon following the conditions and limitations for grant of rebate, the applicant is entitled to rebate of the duty paid on excisable inputs or the service tax and cess paid on input services used in providing service exported in terms of Rule 6A of the Service Tax Rules, 1994.

9.1 The duty suffered on the goods can be refunded only when the procedures for grant of rebate and the conditions and limitations in the relevant notification are followed. In the instant case the Government notes that one of the conditions of the Notification No 39/2012-ST dated 20.06.2012 is that no CENVAT credit has been availed of on inputs and input services on which rebate has been claimed. Besides, Government also notes that if the original authority finds that the rebate claims have not been filed within the time limit for filing rebate claims as per Explanation (B) to Section 11B(5) of the CEA, 1944 and not as per the conditions and limitations of the relevant notification, the rebate claims will not be admissible. Needless to say, where the rebate claims are time barred the duties cannot be allowed as recredit as the levy thereof is not in doubt. Allowing recredit of duties paid on the export goods inspite of the rebate claims being time barred would render redundant the provisions of Section 11B of the CEA, 1944 and the notifications issued

under Rule 6A of the Service Tax Rules, 1994 for grant of rebate. Therefore, the contentions of the applicant for allowing the duties paid by them as re-credit cannot be sustained.

10. In view of the above, Government holds that ends of justice will be met if the impugned Order in Appeal is set aside and the case remanded back to the original adjudicating authority for causing verification as stated in foregoing paras. The applicant shall submit evidences and documents to the adjudicating authority for consideration and acceptance in accordance with the law. The original authority will complete the requisite verification expeditiously within eight weeks from the date of receipt of this order and pass a speaking order. A reasonable opportunity for hearing will be accorded to the applicant. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

11. The Revision Application is disposed off on the above terms.

Shrawan 27/01/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER NO. 02/2022-ST (WZ) /ASRA/MUMBAI DATED 27 .01.2022

To,

M/s Ceylon Infotech Pvt Ltd,
1079, 1st Floor, Sadashiv Peth
Bosco Furnishings,
Near Shanipar Chowk,
Pune 411 030

Copy to :

1) The Commissioner of CGST, Pune -II, GST Bhavan (ICE House), 41/A, Sassoon Road, Opp, Ness Wadia College, Pune 411 001
2) The Commissioner of CGST, Appeals Pune II, GST Bhavan, F Wing, 2nd Floor, 41-A, Sassoon Road, P.B. No 121, Pune-411 001
3) Guard File.
4) Spare copy