F NO. 199/08/ST/14-RA
F NO. 199/09/ST/14-RA
F NO. 199/10/ST/14-RA

SPEED POST
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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
DEPARTMENT OF REVENUE

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

F NO. 199/08/ST/14-RA
F NO. 199/09/ST/14-RA /1264 Date of Issue: 23.02.2021
F NO. 199/10/ST/14-RA

ORDER NO.63-65/2021-CX (WZ) /ASRA/MUMBAI DATED 22.01.2021 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.

Applicants : Dy.Commissioner of Service Tax, Divn.-VI, Mumbat.-II

Respondents : M/s Jubliant Enpro India Pvt.

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. RBT/53-54/2011 dated 23.02.2011, RBT/37/2011 dated 11.02.2011 and RBT/74-76/2011 dated 28.02.2011 passed by Commissioner (Appeals-IV), Central Excise, Mumbai Zone-I.

F NO. 199/08/ST/14-RA
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ORDER

These 03 Revision Applications are filed by Deputy Commissioner of Service Tax, Division-VI, Mumbai-II Commissionerate (herein after as "the Applicants") against the Orders-in-Appeal Nos. RBT/53-54/2011 dated 23.02.2011, RBT/37/2011 dated 11.02.2011 and RBT/74-76/2011 dated 28.02.2011 passed by the Commissioner (Appeals-IV), Central Excise, Mumbai Zone-I.

2. Briefly,

Sl. No.	Rebate claim(Rs) & date	SCN dt	OIO No & Dt	OIA No & Dt	CESTAT Order & dt.	Revision Application No.
1	36,465/- dt 2.4.08	01.5.09	1980(R)/(AK)/09-10 dt 18.8.2010	RBT/53-54/2011 dt 23.02.2011	A/1062-1067///14 /SMB/C-1V dt 23.5.14	199/08/ST/14-RA
	1,65,341/- dt 2.4.08	01.5.09	1982(R)/(AK)/09-10 dt 18.8.2010			
2	14,496 dt 27.6.08	09.3.09	1973(R)/(AK)/09-10 dt 26.02.2010	RBT/37/2011 dt 11.02.2011		199/09/ST/14-RA
	2,32,149/- dt 12.12.08	06.03.09				
3	91,052/- dt 26.4.10	21.9.10	2200 dt 15.10.2010	RBT/74-76/2011 dt 28.02.2011		199/10/ST/14-RA
	47,246/- dt 1.06.10	21.9.10	2201 dt 15.10.2010			
	1,68,095/- dt 25.6.09	26.5.10	2117 dt 22.06.2010			

M/s Jubliant Enpro India Pvt, Transocean House, Hiranandani Business Park, Powai, Mumbai 400 0076 (herein after as "the Respondents" had filed rebate claims under Notification No. 11/2005-ST dated 19.04.2005 in respect of 'Business Support Service (BSS) rendered to M/s Mustang Engineering, Australia on basis of agreement entered with the client. The services were in respect of consulting, designing and project management in the upstream

section of Oil and Gas. Based on the services received from the Respondent, M/s Mustang Engineering in turn provided certain services to M/s ONGC. On the basis of agreement between M/s Mustang Engineering and M/s ONGC, M/s ONGC made payment to the Respondent in Indian currency. On scrutiny of the claims, the Respondents were issued Show Cause Notice.

3. The jurisdictional Assistant Commissioner, Service Tax, Division-VI, Mumbai Service Tax Commissionerate vide Orders-in-Original dated 18.8.2010, 26.02.2010, & 15.10.2010 respectively rejected the rebate claims under the provisions of Rule 5 of the Export of Service Rules, 2005 read with Notification No. 11/2005 dated 19.04.2005 on the following grounds:

(i) In r/o of claims for Rs. 36,465/- and Rs 1,65,341/-, the claim was hit by the limitation of time.

(ii) Respondents had received service charges in Indian currency from M/s ONGC, the payment advices did not indicate the reference No. of the invoice against which the export proceeds have been received.

(iii) Not submitted ST-3 returns and FIRC relevant to claim along with correlation between export invoices

(iv) The Respondents provided consulting, design and project management services in the upstream sector of M/s ONGC locate in India to M/s Mustang Engineering i.e. services are used in India only, it cannot be treated as export. and thereby the conditions prescribed under Rule 3(2) of Export of Service Rules, 2005 was not fulfilled as the services provided by the Respondent were used in Indian Territory and the service charges were received in Indian rupees from M/s ONGC.

4. Aggrieved, the Respondents filed appeal with the Commissioner (Appeals-IV), Central Excise, Mumbai Zone-I who vide Orders-in-Appeal dated 23.02.2011, 11.02.2011 and 28.02.2011 respectively allowed the Respondents appeals with consequential relief.

5. Aggrieved, the Applicants Department filed appeals before the CESTAT Mumbai. The Hon'ble CESTAT Mumbai vide Order No. A/1062-1067/14/SMB/C-IV dated 23.05.2014 found that the appeals are not maintainable and dismissed the same with liberty to the Revenue to approach the appropriate authority in accordance with law.

6. The Applicants Department filed the current three Revision Applications on the following grounds:

(i) In respect of Revision Application F.NO. 199/08/ST/14-RA, the appellate authority had erred in holding that the claims are not time barred inasmuch as in the show cause notice it was clearly alleged that the Respondent had filed the claims on 02.04.2008 by sending it by Speed Post on 28.03.2008. Therefore, the date of receipt of claims was on 02.04.2008 and not 28.03.2008 as had been held by the Commissioner(Appeals). Even the Respondent during the appeal proceedings, had admitted that claims were sent by speed post on 28.03.2008, the receipt of which was acknowledged on 02.04.2008. This contention appears was an afterthought as inasmuch as this plea was never raised during the adjudication proceeding before the Asstt. Commissioner and at the time it was contested that provision of Section 11B of Central Excise Act, 1944 were not applicable to rebate claims. Therefore, it appears that the claims had not been

filed within the time of one year as prescribed under Section 11B of the Central Excise Act, 1944.

(ii) In respect of Revision Application F.NO. 199/08/ST/14-RA , while examining aspect of co-relation of FIRC (payment advices) and export invoices, the appellate authority has entertained fresh evidence, in the form TDC certificate, which were not submitted by the Respondent with the original claim or when the Respondent was called upon to explain the difference observed in payment advices and invoices. Provision of Rule 5 of the Central Excise Appeals Rules, 2001 debar production of fresh evidence except in cases as specified in the said rules.

(ii) Rule 3(2) of Export of Service Rules, 2005 provided that *"the provision of any taxable service specified in sub-rule (1) shall be treated as export of service when the following conditions are satisfied, namely –*

(a) .....

(b) Payment of such service is received by the service provider in convertible foreign exchange."

(iii) In the subject case, the services provided by the Respondent are used in India as the same are used by M/s ONGC for its activities in upstream sector of Oil and Gas Industry.

(iv) Vide Circular No. 141/10/2011-TRU dated 13.05.2011, it has been clarified as follows –

"2. In the stated Circular it was inter-alia, clarified that the words, "used outside India" should be Interpreted to mean that "the benefit of the service should accrue outside India". It is well known that services, being largely intangibles, are capable of being paid from

one place and actually used at another place. Such arrangements commonly exist where the services are procured centrally e.g audit, advertisement, consultancy, Business Auxiliary Services. For example, it is possible to obtain a consultancy report from a service provider in India, which may be used either at the location of the customer or in any other place outside India or even in India. In a situation where the consultancy, though paid by a client located outside India, is actually used in respect of a project or an activity in India the service cannot be said to be used outside India."

(iv) Notification No. 11/2005-ST dated 19.04.2005 stipulates conditions that payment for taxable service exported should be received in convertible foreign exchange and the application for such rebate claim should accompany documentary evidence of receipt of payment. Admittedly, the Respondent received service charges in Indian rupees from M/s ONGC in respect of services rendered to M/s Mustang Engineering which clearly violated the aforesaid condition specified at Rule 3(2) of Export of Service Rules, 2005 and also under Notification No. 11/2005-ST dated 19.04.2005 and hence the Respondent was not eligible for rebate claim

(iv) Applicant prayed that the Orders-in-Appeal be set aside.

7. The Respondent filed cross-objections on the following grounds:

(i) The Revision Applications cannot be entertained as they are time barred. That even on assuming and not admitting that the period in relation to the filing of application before CESTAT, Mumbai is to be excluded for computing the time limit than also the applications are not filled within three months as provided under Section 35EE(2) of the Central Excise Act, 1944. The proviso to the said section provided that the time limit of 3

months may be extended by further 3 months but the said provisio is not applicable as no applications are made for extensions to the best of information of the Respondent.

(ii) In respect of Revision Application No. F.NO. 199/08/ST/14-RA on the grounds that the refund claims are hit by period of limitation under Section 11B of the Central Excise Act, the Respondent submitted that Explanation B to Section 11B of the Act defines relevant date. The said definition provides that the relevant date in relation to refund of Service tax is the date of payment of Service tax. This provision in law was not questioned or challenged in the SCN or OIO and on the contrary the fact of time of payment have been acknowledged in the SCNs and OIOs in para 25 and 27 respectively. Since it was accepted that the period of limitation is to be computed from the date of payment of Service tax and also accepted the claim was filed within one year of such payment in the SCN, it was unlawful to go beyond the SCN and the OIA and therefore such ground is unsustainable in law and therefore cannot be taken cognizance of.

(iii) In respect of Revision Application No. F.NO. 199/10/ST/14-RA, on the grounds that the Commissioner(Appeals) does not have power to entertain additional/ fresh evidence under Rule 5 of the Central Excise Rules, 2001, the Respondent submitted the ground is erroneous and made without application of mind as the order was issued exparte and the Respondent was not granted opportunity to present any evidence/ submission and therefore there is no question of providing additional/ fresh evidence in absence of following principles of natural justice. Thus there being no contravention of Rule 5, the pleas is unsustainable and the applications are required to be set aside.

(iv) In the contracts between M/s ONGC and M/s Mustang Engineering recognized the Respondent as their Indian agent / representative / retainer /associate. Further, the contracts stipulated direct payment of commission by M/s ONGC to the Respondent out of the amount payable to M/s Mustang Engineering. Thus the payment for services rendered to foreign contractors for their contracts with M/s ONGC, were made by M/s ONGC even when there was no direct contract between M/s ONGC and the Respondent. Payment by M/s ONGC to M/s Mustang Engineering were made in freely convertible foreign exchange whereas payments to the Respondent were made in Indian rupees after applying the specified exchange rate. The system was followed by M/s ONGC to reduce the expenses on conversion of Indian currency in convertible foreign exchange, its outward remittance and vice versa.

(v) The object and purpose behind Notification No. 11/2005-ST was obviously to export services without payment of tax in line with the EXIM Policy of the Government. Since M/s ONGC paid less amount to M/s Mustang Engineering at the instruction of M/s Mustang Engineering on their behalf, the remuneration of the Respondent stan received in convertible foreign exchange and because the same was not repatriated from India, the eligibility condition of the Notification was fulfilled. The Respondent's relied upon the Supreme Court in the case of J.B. Boda and Co. Pvt. Ltd. Vs CBIT [(1997) 223 (ITR 271 (SC)] and few other case laws where it has been held that denial of benefit of Rule 4 of the Export of Services Rules, 2005 would not be justified.

(vi) The reliance made on Circular No. 141 dated 13.05.2011 is misplaced primarily on the ground that the Circular is not in accordance with the law or has no legal standing and further, the law as enunciated the

judicial ruling on this issue is in accordance with the contention of the Respondent. Further, the ground that the money was received in Indian rupees from M/s ONGC which does not hold goods since the said fact was already considered by the Commissioner(Appeals) in its Order.

(vii) The Respondent prayed that the Revision Application be set aside and uphold the Order-in-Appeal.

7. The Applicants delayed filing these Revision Applications, details of which are as given below:

Sl. No.	Revision Application	OIA dt	Date filed in CESTAT	CESTAT order dt	Date RA filed	COD recd	No. of days delay
1	199/08/ST/14-RA	23.02.11	01.6.11	23.5.14	28.7.14	Nil	90+74 =164
2	199/09/ST/14-RA	11.02.11	01.6.11	23.5.14	28.7.14	Nil	90+86 =176
3	199/10/ST/14-RA	28.02.11	01.6.11	23.5.14	28.7.14	Nil	90+69 =159

Appellants filed the Revision Applications without the Miscellaneous Application for Condonation of Delay (herein after as 'COD').

8. Personal hearing in this case was fixed on 06.06.2018, 25.02.2020 and 04.03.2020. On 04.03.2020, the hearing was attended by Ms Puloma Dalal, Chartered Accountant on behalf of the Respondent and on behalf of the Department none appeared. The Respondent reiterated the cross objection submitted and cited few case laws. However, there was a change in the Revisionary Authority, hence a final hearing was granted on 09.12.2020/16.12.2020/23.12.2020. On 17.12.2020 Shri Rohitkumar Bhaisare, Dy. Commissioner, Division-III, CGST & CX, Navi Mumbai Commissionerate attended the online hearing on behalf of the Applicants.

However none appeared on behalf of the Respondents. The Applicants submitted that in the instant case services by M/s Jubliant have been proved and used in India and payment had been made by ONGC in Indian Rupees (not in foreign currency), therefore services did not constitute export. Consequently no rebate was admissible.

9. Government has carefully gone through the relevant case records available in case files, oral & written submissions/counter objections and perused the impugned Order-in-Original and Order-in-Appeal.

10. Government first proceeds to discuss the issue of delay in filing these three revision applications. It is clear that Applicants have filed the revision applications after 3 months + 74 days, 3 months + 86 days and 3 months + 69 days respectively when the time period spent in proceedings before CESTAT is excluded. As per provisions of Section 35EE of Central Excise Act, 1944 the revision application can be filed within 3 months of communication of Order-in-Appeal and delay up to another 3 months can be condoned provided there are justified reasons for such delay. In view of judicial precedence that period consumed for pursuing appeal bonafidely before wrong forum is to be excluded in terms of Section 14 of Limitation Act, 1963 for the purpose of reckoning time limit of filing revision application under Section 35EE of Central Excise Act, 1944. Government, in exercise of power under Section 35EE of Central Excise Act, 1944 condones the said delay and takes up revision application for decision on merit.

11. The issue

(i) in respect of all the three revision applications is whether the payments received from M/s ONGC in Indian rupees for services provided by Respondent to their overseas client M/s Mustang

Engineering who do not have any office in India and who provided the services to M/s ONGC can be considered as receipt of foreign exchange or not.

(ii) in respect of Revision Application F NO. 199/08/ST/14-RA is whether the claim is time barred or not when the said claim was send through Speed Post on 28.3.2008 and received by the department on 02.04.2008.

(ii) in respect of Revision Application F NO. 199/10/ST/14-RA is whether the examining aspect of co-relation of FIRC (payment advices) and export invoices, can be entertained as fresh evidence, in the form TDC certificate, which were not submitted by the Respondent with the original claim or when the Respondent was called upon to explain the difference observed in payment advices and invoices.

12. On perusal of the records, it is observed that the overseas company M/s Mustang Engineering was providing service to M/s ONGC and the Respondents was an agent/representative/retainer/associate of M/s Mustang Engineering. M/s Mustang Engineering was raising bills to M/s ONGC for services provided by them and the Respondent was raising bills to M/s Mustang Engineering for providing services. The Respondent had received payment from M/s ONGC in Indian rupees instead of receiving it from M/s Mustang Engineering. In this process, instead of M/s ONGC making full payment to M/s Mustang Engineering in dollars and M/s Mustang Engineering making payment to the Respondent, M/s ONGC made payment in dollars to M/s Mustang Engineering after deducting commission payable to the Respondents by M/s Mustang Engineering in non-convertible Indian Rupees at the market rate of exchange.

13. Government notes in the current case it is not disputed that the Respondents was providing 'Business Support Service' which is covered under category III (Rule 3(1)(iii)) service. From the agreement, it is clear that the service was provided in relation to business and was provided to the recipient M/s Mustang Engineering located outside India i.e. Australia. The Respondents submitted that payment by M/s ONGC to M/s Mustang Engineering were made in freely convertible foreign exchange whereas payments to the Respondent were made in Indian rupees after applying the specified exchange rate. The system was followed by M/s ONGC to reduce the expenses on conversion of Indian currency in convertible foreign exchange, its outward remittance and vice versa.

14. Government notes that the very object of the Export of Services Rules, 2005 is that such services are performed outside India and payment for such service provide is received by the service provider in convertible foreign exchange. Here Government places reliance in the judgment of the Hon'ble CESTAT, South Zonal Bench, Bangalore, in the case of Support.Com India Pvt Ltd. Vs Commr. of S.T., Bangalore-II [2018 (9) G.S.T.L. 260 (Tri. - Bang.)]. The relevant paras are reproduced below:

> *"7. From the above regulation and serial No. (2) of the Table, it is very clear that the payment in rupees from the account of a bank situated in any country (other than a member country of Asian Clearing Union or Nepal or Bhutan) is a manner of receipt of foreign exchange. In the present case, as evident that the Indian rupees was received thru the account of Deutsche Bank which is situated in foreign country. Therefore, in terms of Regulation 3 made under Section 47 of the Foreign Exchange Management Act, 1999, in the present case the foreign remittance in Indian rupees through Deutsche Bank is the receipt of payment in convertible foreign exchange.*

8. I have gone through the Hon'ble Supreme Court's judgment in the case of J.B. Boda and Company (supra) wherein it was held that :

> *"12. The facts brought out in this case, are clear as to how the remittance to the foreign reinsurance company is made through the Reserve Bank of India in conformity with the agreement between the appellant and the foreign re-insurer, and that the remittance that the amount due to the foreign re-insurers as also the brokerage due to the appellant and the balance due to the foreign re-insurer is remitted (and expressed so) in dollars. It is common ground that the entire transaction effected through the media of the Reserve Bank of India is expressed in foreign exchange and in effect the retention of the fee due to the appellant Is dollars for the services rendered. This, according to us, is receipt of income in convertible foreign exchange. It seems to us that a "two way traffic", is unnecessary. To insist on a formal remittance to the foreign reinsures first and thereafter to receive the commission from the foreign reinsurer, will be an empty formality and a meaningless ritual, on the facts of this case. On a perusal of the nature of the transaction and in particular the statement of remittance filed in the Reserve Bank of India regarding the transaction filed in the Reserve Bank of India regarding the transaction, we are unable to uphold the view of the respondent that the income under the agreement is generated in India or that the amount is one not received in convertible foreign exchange. We are of the view that the income is received in India in convertible foreign exchange, in a lawful and permissible manner through the premier institution concerned with the subject-matter - the Reserve Bank of India.*
>
> *In this view, we hold that the proceedings of the Central Board of Direct Taxes dated 11-3-1986, declining to approve the agreements of the appellant with M/s. Sedgwick offshore Resources Ltd. London for the purposes of Section 80-O of the Income-tax Act, are improper and illegal. We declare so we direct the respondent to process the agreements in the light of the principles laid down by us herein above. The appeal is allowed. There shall be no order as to costs."*

9. From the above judgment it is observed that out of the total payment to be made by the insurance broker in India to the foreign insurer was reduced to the extent of his brokerage and remaining amount was remitted to foreign insurer in

the foreign exchange. The issue was whether the brokerage in Indian rupees retained by the Indian Insurance broker shall be treated as foreign exchange or otherwise. The Hon'ble Supreme Court has held that the said amount of brokerage retained by the Indian insurance broker from the total amount due to the foreign insurer shall be treated as foreign exchange. In view of the above judgment, I am of the view that when a foreign bank is maintaining Indian rupees in their account obviously, such Indian rupees was obtained in lieu of foreign exchange. For example, if any payment is made from India to any foreign country, it is to be made in foreign exchange and thus there is a outflow of foreign exchange but if the payment is made in Indian rupees, there is a saving of foreign exchange and if the said Indian rupees is received in India, the same is in lieu of foreign exchange which was saved at the time of repatriation of Indian rupees to foreign country. On this logic under the Foreign Exchange Management Act also it provided that if the payment in India rupees is received in India through banking channel it is deemed to be convertible foreign exchange."

15. Further, Government finds that the Commissioner of Customs, Tuticorn had filed M.P. No. 1 of 2013 in C.M.A. SR No. 85936 of 2012 against the judgement of case of PSA Sical Terminals Ltd [2004 (165) ELT 109 (Tri-Chennai)] which was relied by the Commissioner(Appeals. The Hon'ble Madras High Court Bench vide Order dated 30.01.2013 [2015 (316) E.L.T. A77 (Mad.)] while dismissing the departmental appeal passed the following judgment.

"This Civil Miscellaneous Appeal is filed at the instance of the Revenue with a delay of 3053 days. It is stated that the papers were originally allotted to Sri. K. Veeraraghavan, former senior standing counsel on 28-1-2004. On his elevation as a Judge of this Court, the matter was handed over to yet another counsel appearing for the Revenue on 26-3-2009. It is stated that the appeal given to the first counsel was stated to have been filed on 14-6-2004. When the second counsel approached the Registry for filing a memo of appearance, no such papers were available at the Registry and the said counsel informed the Department on 18-6-2010.

2. It is seen from the documents placed before this Court that the letter dated 16-4-2009 addressed by the Assistant Commissioner to the Superintendent of Customs, Legal Cell informed about engaging the services of P. Bhuvaneswari, Advocate. Thereafterwards, on 15-9-2009, there was yet another letter stating that there was no appeal papers filed before the Registry. Thereafterwards, again on 1-10-2009, there was yet another communication from the Superintendent of Customs to the Commissioner of Customs informing about the handing over of the papers. After 1-10-2009, letters came from the Department were on 11-6-2010, 18-7-2011, 19-7-2011 and 17-8-2012. The appeal before this Court was filed only on 4-10-2012. Except for the correspondences, there being no explanation for the delay in between 2009 and 2012 and on which date they came to know about the non-filing of the appeal, we do not find any justifiable ground to condone the delay. Accordingly. M.P. No. 1 of 2013 and C.M.A. SR. No. 85936 of 2012 are dismissed. No costs."

The Appellate Tribunal in its impugned order had held that Customs notification with term 'free foreign excharge' by RBI which was statutorily responsible for its control and regulation. Such a clarification was binding on Customs Authorities. Enlarged understanding of term, not defined in notification, but given by other authorities has to be given effect as again strict interpretation of notification. Clarifications regarding same issued by competent authority during period of previous policy were binding on Customs Authorities. Payment receivable in dollar but paid in rupees after conversion as per exchange rate, from amount remittable to overseas principal thereby reducing outgo of foreign exchange are deemed to be foreign exchange. Fixation of tariff by competent authority using banking and commercial terms upon taking customs into confidence can be seen. In issue involving interpretation of those terms, it cannot be said that there was suppression of facts. Terms of policy actually, already complied by noticee and their licence has not been cancelled. Show cause notice was premature. "

Thus the issue/case is Res-Judicata.

16. Hence, Government is in agreement with the findings of the Commissioner(Appeals) that the amount received by the Respondent in Indian Rupees from M/s ONGC, for the services rendered to M/s Mustang Engineering Pvt Ltd can be considered as amount received in convertible foreign exchange and that the Respondent has fulfilled the condition 'b' of Rule 3(2) of the Export of Services Rules, 2005.

17. In respect of Revision Application F NO. 199/08/ST/14-RA, the Respondent was issued two SCNs both dated 01.05.2008 for claims of Rs. 36,465/- and Rs 1,65,341/ respectively stating " *During the preliminary scrutiny of the claim, it is seen that the claimant has filed the claim on 2.4.2008 by sending it by speed post on 28.03.2008".* The findings of the Original Adjudicating Authority in the respective two Order-in-Original both dated 18.8.2010 in paras

> *"25. On perusal of the relevant TR-6 challan evidencing payment of Service Tax of Rs. 36465/-, I find that the date mentioned on TR-6 Challan is 28.03.07, but the same was presented to the bank viz. UTI bank, on 30.03.2007. The date of deposit is indicate by the bank on the face of the TR-6 challan is 30.3.2007 and the date of realization is indicated as 30.3.2007.."*
>
> And
>
> *"27. On perusal of the relevant TR-6 challan evidencing payment of Service Tax of Rs. 165341/-, I find that the date mentioned on TR-6 Challan is 28.03.07, but the same was presented to the bank viz. UTI bank, on 30.03.2007. The date of deposit is indicate by the bank on the face of the TR-6 challan is 30.3.2007 and the date of realization is indicated as 30.03.2007."*

Further, as per the Sub-Rule 6(2)(A) of Service Tax Rules, 1994

> *"(2A) For the purpose of this rule, if the assessee deposits the service tax by cheque, the date of presentation of cheque to the bank designated by the Central*

Board of Excise and Customs for this purpose shall be deemed to be the date on which service tax has been paid subject to realization of that cheque."

and the relevant portion of Section 11B of Central Excise Act, 1944 as made applicable to matter relating to Service tax by Section 83 of Finance Act, 1994 '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"

Government notes that date of payment of duty is 20.03.2007 and date of filing of rebate claims is 02.04.2008, hence the rebate claims for Rs. 36,465/- and Rs 1,65,341/-, are time barred.

18. In respect of Revision Application F NO. 199/10/ST/14-RA, Government observes that Respondent was issued three SCNs all dated 21.09.2010 stating

"On scrutiny of the claim it is seen that the payment in respect of the above invoices are received from ONGC. On going through the payment advice it is seen that it does not indicate the reference no. of the invoice against which the export proceeds has been received.

3. Further, on scrutiny of the claim filed by the claimant, it was noticed that the claimant had not submitted certain documents relevant to the claim such as copies of ST-3 returns and relevant copies of FIRC alongwith co-relation between Export Invoice & FIRC."

and the respective Order-in-Original was issued exparte. The Applicants submitted that while examining aspect of co-relation of FIRC (payment advices) and export invoices, the appellate authority has entertained fresh evidence, in the form TDC certificate, which were not submitted by the Respondent with the original claim or when the Respondent was called upon to explain the difference observed in payment advices and invoices. Government finds that since the three Order-in-Original were exparte, hence the Respondent before the Commissioner(Appeals), presented the necessary evidence/ submissions, which was called for in the show cause notices. The Commissioner(Appeals) in the finds at Para 9 has in detail verified the documents and payment advices issued by M/s ONGC and TDS certificates as regards to export invoices which matched each other except in case of two invoices i.e. Nos. JEPL/MUST/2007-08/08 dated 25.02.2009 and JEPL/MUST/2007-08/16 dated 18.02.2009. The Government finds that there is no contravention of Rule 5 of Central Excise (Appeals) Rules, 2001 as the three Order-in-Original were issued exparte.

19. In view of the above,

(i) In respect of F NO. 199/08/ST/14-RA, Government sets aside the Order-in-Appeal No. RBT/53-54/2011 dated 23.02.2011 passed by the Commissioner (Appeals-IV), Central Excise, Mumbai Zone-I to the extend as discussed in Para 17 above.

(ii) In respect of F.No. 199/09/ST/14-RA, Government finds no infirmity in the Order-in-Appeal No. RBT/37/2011 dated 11.02.2011 passed by the Commissioner (Appeals-IV), Central Excise, Mumbai Zone-I and therefore upholds the same.

(iii) In respect of F NO. 199/10/ST/14-RA, Government finds no infirmity in the Order-in-Appeal No. RBT/74-76/2011 dated 28.02.2011 passed by the Commissioner (Appeals-IV), Central Excise, Mumbai Zone-I and therefore upholds the same.

20. As such

(i) In respect of F.No. 199/08/ST/14-RA, the Revision Application is allowed as rebate claim is time barred.

(ii) In respect of F.No. 199/09/ST/14-RA, the Revision Application is dismissed as devoid of merit.

(iii) In respect of F.No. 199/10/ST/14-RA, the Revision Application is dismissed as devoid of merit.

Shrawan 22/01/21

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

ORDER No. 03-05 /2021-CX (WZ) /ASRA/Mumbai Dated 22.01.2021

To,
M/s Jubliant Enpro Pvt. Ltd.,
1st floor, Transocean House,
Behind BG House, Off Lake Boulevard Road,
Hiranandani Business Park,
Powai,
Mumbai 400 076.

Copy to:

1. The Commissioner of Goods & Service Tax, 16th Floor, Satra Plaza, Beach Road, Sector 19D, Vashi, Navi Mumbai 400 705.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file
4. Spare Copy.

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अधीक्षक
Superintendent
रिवीजन एप्लीकेशन
Revision Application
मुंबई इकाई, मुंबई
Mumbai Unit, Mumbai