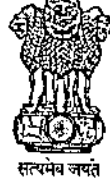


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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. 196/11/ST/13/146²

Date of Issue: 03-04-2018

ORDER NO. 06 /2018-ST /ASRA/MUMBAI DATED 16-03- 2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944 (MADE APPLICABLE TO SERVICE TAX VIDE SECTION 83 OF THE FINANCE ACT, 1994).

Applicant : M/s Vodafone Cellular Limited (formerly known as Vodafone Essar Cellular Limited) Shivajinagar, Pune

Respondent : The Commissioner of Service Tax, Pune-III.

Subject : Revision Application filed, under section 35EE of the Central Excise ACT, 1944 (made applicable to Service Tax vide Section 83 of the Finance Act, 1994) against the Order in Appeal No. P III/RS/132/2012 dated 17. 04.2012 passed by Commissioner (Appeals-III), Central Excise, Pune.



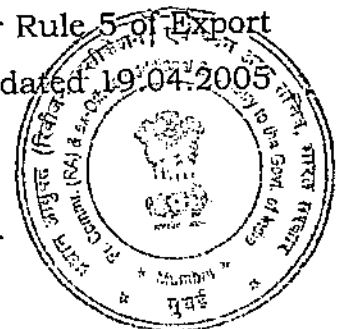
ORDER

This Revision Application have been filed by M/s Vodafone Cellular Limited (formerly known as Vodafone Essar Cellular Limited) Shivajinagar, Pune (hereinafter referred to as "the applicant") against Orders-in-Appeal No. PIII/RS/132/2012 dated 17.4.2012 whereby Commissioner (Appeals) upheld the Order in Original No. R/638/STC/P-III/2011 dated 28.12.2011 passed by original jurisdictional authority and dismissed the appeals filed by the applicant.

2. The applicant is providing telecom services, under license from the Department of Telecommunication, Government of India, to its customers in India and the applicant also provide services to the Foreign Telecom Operators (FTO) i.e. the telecom services providers located and operating from outside India. The applicant provides services to the FTO by providing telecom services to the subscribers of the FTO visiting or roaming in India, commonly called as International inbound roaming (IIR) services. For providing International inbound roaming (IIR) services the applicant had entered into agreements with various FTOs (its Customers) having their permanent establishment and entire business operations located outside India.

3. It is the contention of the applicant that International inbound roaming (IIR) services provided by them to the subscribers of the FTO during their visit to India qualify as export of services under Rule 3(1)(iii) of Export of Services Rules, 2005. The applicant therefore claimed rebate under Rule 5 of Export of Services Rule, 2005 read with Notification No.11/2005-ST dated 19.04.2005. The applicant filed periodical rebate claims of service tax paid on the IIR services provided by them to the subscribers of the FTO during their visit to India claiming the same to be export.

4. The rebate claim of Rs. 52,53,320/- for the period October 2010 to March 2011 was filed by the applicant on 29.09.2011 under Rule 5 of Export of Services Rule, 2005 read with Notification No.11/2005-ST dated 19.04.2005



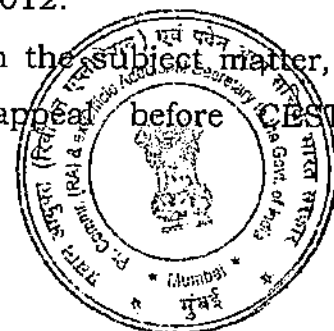
before the Assistant Commissioner Service Tax Cell, Central Excise, Pune-III who vide Order in Original No. R/638/STC/PIII/2011 dated 28.12.2011 rejected the same.

5. Being aggrieved by the aforesaid Order in Original the applicant preferred an appeal before Commissioner (Appeals-III), Central Excise, Pune, who vide Order in Appeal No. PIII/RS/132/2012 dated 17.04.2012 rejected the appeal of the applicant and upheld the Order in Original No. R/638/STC/PIII/2011 dated 28.12.2011:

6. Being aggrieved by the Order in Appeal No. PIII/RS/132/2012 dated 17.04.2012 the applicant has preferred the present Revision Application (RA No. 196/01/ST/13-RA) under Section 35 EE of Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of the Finance Act, 1994 (as amended by the Finance Act, 2012) before Central Government on the various grounds as enumerated in the application.

7. Meanwhile, vide letter dated 28.04.2014, the applicant informed Joint Secretary to the Government of India, New Delhi that

- With effect from 28.05.2012, Section 35EE of Central Excise Act, 1944 which provided that revision application be filed in case of rebate / refund claims rejected by Commissioner (Appeals) was made applicable to Service Tax vide Section 83 of the Finance Act, 1994
- In the light of the aforesaid change in the law there was ambiguity as to whether an appeal can be filed before the Customs, Excise and Service Tax Appellate Tribunal, Mumbai against the order of rejection of refund or rebate claims by Commissioner (Appeals).
- Also, there was lack of clarity whether revision application can be filed before the Central Government against order of rejection by Commissioner (Appeals) passed prior to 28.05.2012.
- Due to lack of clarity about the jurisdiction in the subject matter, the applicant was advised to also file an appeal before CBESTAT.



Consequently, the applicant filed an appeal before the CESTAT in the aforesaid matter on 19.07.2012.

- The appeal was accepted by the CESTAT and the matter has been decided in favour of VCL vide Order No. A/503-508/13/CSTB/C-1 dated 12 March 2013.

In the light of the above, since the matter had already been decided by CESTAT, the applicant wished to withdraw the subject Revision Application filed before this office and requested to accept their application for withdrawal of Revision Application.

8. The then Commissioner, Central Excise and Service Tax, Pune-III Commissionerate vide letter F.No. P-III/TC-73 /2013 dated June 2013 informed the Section Officer, (Revision Application), New Delhi that the applicant M/s Vodafone Cellular Limited had simultaneously also filed an appeal against Order in Appeal No. P-III/RS/132/2012 dated 17.04.2012 passed by Commissioner of Central Excise, Appeals -III, Pune before the Hon'ble CESTAT Mumbai, and Hon'ble CESTAT decided the matter, vide final Order No. A/503-508/13/CSTB/C-1 and S/386-389/13/CSTB/C-1 dated 12.03.2013.

9. However, on perusal of the CESTAT final Order No. A/503-508/13/CSTB/C-1 and S/386-389/13/CSTB/C-1 dated 12 March 2013 enclosed to the aforementioned letters, it was revealed that the said order did not refer to Order in Appeal No. P-III/RS/132/2012 dated 17.04.2012 passed by Commissioner of Central Excise, Appeals -III, Pune.

10. A personal hearing in the matter was fixed on 20.02.2018; however, the authorized representative of the applicant submitted that the said revision application had been withdrawn by the applicant vide its letter dated 28.05.2014. The authorized representative of the applicant was informed that the copy of the CESTAT Order No. A/503-508/13/CSTB/C-1 dated 12 March




2013 enclosed to its letter dated 28.05.2014 did not refer to Order in Appeal No. P-III/RS/132/2012 dated 17.04.2012 passed by Commissioner of Central Excise, Appeals -III, Pune.


11. Thereafter, vide its letter dated 12.03.2018, the applicant has enclosed a copy of CESTAT order No. A/31-39/14/CSTB/C-1 dated 18.12.2013 indicating that CESTAT has decided an appeal filed against Order in Appeal No. P-III/RS/132/2012 dated 17.04.2012 passed by Commissioner of Central Excise, Appeals -III, Pune and has requested to pass an appropriate order in the said matter.

12. Government observes that the applicant have themselves requested for withdrawal of the Revision Application vide letter dated 28.05.2014 as well as 12.03.2018 as their appeal against Order in Appeal No. P-III/RS/132/2012 dated 17.11.2012 passed by Commissioner of Central Excise, Appeals -III, Pune stands decided vide CESTAT order No. A/31-39/14/CSTB/C-1 dated 18.12.2013. Under such circumstances, Government allows the applicant to withdraw the Revision Application bearing F.No.196/11/ST/13-RA. This Revision Application is dismissed as withdrawn.

13. So, ordered.

True Copy Attested


28-3-18
एस. आर. हिरुलकर
S. R. HIRULKAR
(A.C.)


16.3.2018
(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 06/2018-ST (WZ) /ASRA/Mumbai Dated 16.03.2018.

To,

M/s Vodafone Cellular Limited,
The Metropolitan, F.P. No. 27,
Survey No.21, Wakdewadi,
Old Pune-Mumbai-Highway,
Shivaji Nagar, Pune-411 003



Copy to:

1. The Commissioner of CGST, Pune-II Commissionerate.
2. The Commissioner CGST (Appeals-II) Pune
3. The Deputy / Assistant Commissioner Division-I, CGST, Pune-II,
4. Sr. P.S. to AS (RA), Mumbai.
- ✓ 5. Guard file.
6. Spare Copy.

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