REGISTERED SPEED POST

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, Cuff Parade,
Mumbai- 400 005

F.No.196/03/ST/13-RA /2399 Date of Issue: 18/12/2018

ORDER NO. 07 /2018-ST(WZ) /ASRA/MUMBAI DATED 30.11.2018 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.

Applicant : M/s Citicorp Finance (India) Ltd.

Respondent : The Commissioner of Service Tax-I

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. 210 dated 22.12.2012 passed by Commissioner Central Excise & Service Tax (Appeal-IV), Mumbai.

ORDER

This Revision Application has been filed by M/s Citicorp Finance (India) limited (hereinafter referred to as "the applicant") against Order in Appeal No. 210 dated 22.12.2012 passed by Commissioner Central Excise & Service Tax (Appeal-IV), Mumbai.

2. Brief facts of the case are that the applicant is engaged in the business of provision of banking and other financial services. The appellant provides the service to local as well as foreign clients. The applicant is also providing service to its foreign group companies (associated enterprises) located outside India and has been treating such services as export of services and has been paying service tax on the export of services and has applied for rebate under Notification no. 11/2005-ST dated 19.04.2005.

3. The applicant had filed rebate claim of Rs. 2,20,94,650/- (Rupees Two Crore Twenty Lakh Ninty Four Thousand Six Hundred and Fifty only) on 29.04.2011 for the period October, 2009 to March, 2010. Subsequently the a Show Cause Notice No F. No. ST/MUM/DIV- III/REFUND/CFIL/10/5259 DT 8-06-2012 was issued to the applicant alleging that the rebate claim filed by them was time barred i.e. the rebate claimed has been filed after one year from the date of payment of Service Tax and therefore, the rebate claimed was sought to be denied.

4. The original adjudicating authority vide Order-in-original no REFUND/SS/113/2012 dt 9-07-2012 rejected the aforementioned rebate claim of the applicant as time barred. Being aggrieved by the said order in Original, the applicant filled an appeal to Commissioner of Central Excise & Service Tax (Appeal- IV).

5. Commissioner (Appeals) vide his impugned Order No. 210 dated 22.12.2012 observed that

10. *Export of Service Rule, 2005 Rule 3(2) deal with the situation where it has been described the provisions of export of service and it is held that in the case of export of service the relevant date is the date when the assessee has received payment of service exported and within one year from the date of receipt of the payment of service exported, the assessee is required to file the refund claim.*

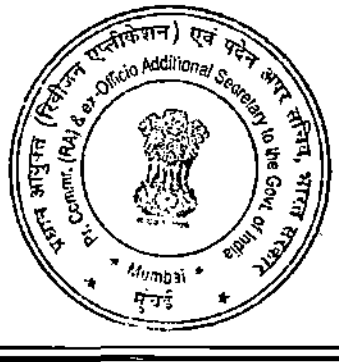
11. *As per CBEC in their Circular No.344/34/2010-TRU dt.31.03.2011 (Para 9) it has been clarified that until the payment is received, the provision of service, even if all other condition are met, would not constitute export. Therefore, the Appellants' rebate claim could not have been rejected on limitation. However, out of the total sum of Rs.2,20,94,650/- only an amount of Rs.57,60,195/- was beyond the period of one year from the date of receipt of the foreign currency. Therefore, the rebate of Rs.1,63,88,4721- is clearly within the period of limitation.*

12. *The balance amount of Rs. 57,60,195/- was beyond the period of one year from the date of receipt of the foreign currency, the Appellants have placed reliance upon Madras High Court judgment in the case of Dorcas Market Makers Pvt. Ltd. vs. Commissioner of Central Excise-2012(281) ELT 227 (MAD). However the aforesaid judgment in Dorcas Market Maker Pvt. Ltd. Case has been held to be inapplicable by the Hon'ble Bombay High Court in the judgment in the case of Everest Flavours Ltd Vs. Union of India-2012 (282) ELT 481 (BOM). Therefore, I rejected refund claim of Rs. 57,60,1951- being beyond the period of one year from the date of receipt of the foreign currency.*

6. Being aggrieved by the said Order in Appeal, the applicant have filed the present Revision Application mainly on the following grounds:-

6.1 no time limit prescribed under Notification No. 11/2005 and therefore, rebate claimed is not time barred.

6.2 The law of limitation is only procedural and not a substantive law.



6.3 ratio of Judgment of M/s Everest Flavours Ltd. on which Appellate authority relied upon is not applicable to present case and therefore cannot be relied upon

They rely upon the judgment of Hon'ble Madras high court in case of DORCAS MARKET MAKERS PVT. LTD. versus Commissioner of Central Excise 2012 (281) E.L.T. 227 wherein it was held that Rule 18 of Central Excise Rules, 2002 is not subject to Sections 11A and 11B of Central Excise Act, 1944 and in that view, rebate cannot be rejected on ground of limitation. The main contention of the Hon'ble Madras high court in holding that rebate claim cannot be rejected on the ground of limitation was that once Rule 18 of the Central Excise Rules gives the power to the authorities to issue notification prescribing conditions, limitation and procedures, the same have to be followed. It was further held that what was not prescribed in the notification cannot be imported into a notification. It was observed by the Hon'ble high Court that as no time limit was prescribed in the relevant Notification No. 19/ 2004 which is the statutory notification issued under Rule 18, time limit prescribed under Section 11 B is not applicable.

6.4 The appellate authority has relied upon the judgment of Hon'ble Bombay High court in case of EVEREST FLAVOURS LTD. In the said case, the judgment of DORCAS MARKET MAKERS PVT. LTD was held to be inapplicable on the ground that the in the case of Dorcas (supra) the Madras High Court had not given due regard to the specific provision of Explanation (A) to Section 11B of the Act under which the expression "refund" is defined to include rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of such goods.

6.5 the Hon'ble High Court in the case of Everest Flavours Ltd did not consider that the notification did not provide for the time limit or for applicability of section 11B. It is settled law that additional condition based on a circular or any other statutory provisions cannot be prescribed for the purpose of determining the applicability of the notification. Further the Hon'ble High Court did not consider the ratio of its judgement of Uttam Steel Ltd Vs Union of India 2003 (158) E.L.T. 274 (Bom.) while deciding the case of Everest Flavour Ltd. Therefore ratio of Judgment of M/s Everest Flavours Ltd. on which Appellate authority relied upon is not applicable to present case and therefore cannot be relied upon.

7. A personal hearing held in this case was attended by Shri Karan Awtani, Chartered Accountant on behalf of the applicant. Government noticed that there was a delay of 39 days in filing the present Revision Application. From the application for condonation of delay filed by the applicant, Government observed that impugned Order in Appeal was received by the applicant on 08.02.2013 and the appeal was filed before CESTAT on 06.05.2013. CESTAT vide its Order dated 14.03.2014 issued on 09.04.2014 ordered appeal is dismissed as withdrawn. The applicant filed Revision Application on 17.06.2013. The applicants sought the condonation of delay as they had wrongly filed appeal before CESTAT bonafidely. Since the revision application is filed within extended condonable period of three months, in the interest of justice, Government condoned the delay of 39 days in exercise of powers vested in it under Section 35EE of Central Excise Act, 1944 and heard the matter on merits. The applicant reiterated the submissions made in Revision Application and also filed further written submissions on the date of hearing. In view of the same it was pleaded that the instant Revision Application be allowed and the Order of the Commissioner (Appeals) be set aside.

8. In their submissions filed on the date of personal hearing, the applicant submitted as under :-

8.1 The issue is already decided by the Supreme Court judgment in favor of the applicant. The applicant had relied on the judgment in the case of M/s Dorcas Market Makers (P) Ltd 2012 (281) ELT 227 (Mad) wherein, in regards to claiming rebate under Rule 18, the Hon'ble High Court held that when the notification does not prescribe any time limit, time limit under section 11B will not apply. The Commissioner (Appeals), in para 9, of the order in appeal has denied the rebate claim on the grounds of limitation only by relying on the judgment in the case of M/s Everest Flavours Ltd 2012 (282) ELT 481 (Born) wherein the judgment of Madras High Court has been distinguished.

8.2 It is submitted that the Hon'ble Madras High Court in the case of M/s Dorcas Market Makers Pvt. Ltd. as reported in 2012 (28.) ELT-227 (Mad), has held that rebate of excise duty in terms of rule 18 of Central Excise Rules, 2002 sanctioned in terms of notification no. 19/2004-CE, dt. 06.09.2004 cannot be rejected on the grounds of time bar as the said notification did not contain any time limitation of claiming rebate. The appeal against the such order filed by the department was dismissed by the Supreme Court as reported in Dorcas Market Makers Pvt. Ltd. [2015 (325) ELT A104 (S.C)]. Therefore, the decision of the Bombay high court has been over-ruled by the Supreme Court and decided in favour of the assessee. Thus, the issue has now aattained finality and applying the ratio in the present case, limitation will not apply in the present case.

8.3 Further, the Principle Bench of CESTAT, in the case of M/s DSS Image Tech (P). Ltd, as reported in [2016 (2) TMI 657 (CESTAT-Del)], has held that rule 18 of the Central Excise Rules, 2002 is essentially pari-materia to rule 5 of the Export of Service Rules and notification no.19/2004-CE also did not contain any time limit as was in the case in respect of notification no. 11/2005-ST. Therefore, it is submitted that the rebate application filed after one year from the date of payment of service tax under notification no. 11/2005 cannot be rejected on the ground that time bar under section 11B of the Central Excise Act, 1944.

The applicant also relies upon various judgements wherein it is consistently held that the limitation provided under section 11B does not apply to service tax paid to export of services.

1. M/s JSL Lifestyle Ltd [2015 (326) ELT 265 P&H
2. M/s Hincon Technoconsult Ltd [2015 (37) STR 956 (Tri-Mum)}
3. M/s Vasudha Agencies [2015-TIOL-1470-CESTAT-MUM]
4. Jyot Urja International 2017 (3) TMI 872 - CESTAT MUMBAI

8.4 Subsequent amendment in notification no. 19/2004-CE introducing time limit indicates that there was no time limit prescribed earlier. The notification 19/2004-CE was amended vide notification no. 18/2016-CE (NT), dt. 01.03.2016 amending clause (b) of para 3. The said provision before the amendment and after amendment is reproduced below:-

(b) Presentation of claim for rebate to Central Excise:

'Claim of rebate of duty paid on all excisable goods shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory or manufacture or warehouse or, as the case may be, the Maritime Commissioner;

(b) Presentation of claim for rebate to Central Excise:

'Claim of the rebate of duty paid on all excisable goods shall be lodged before the Expiry of the period specified in section11B of the Central Excise Act, 1944 along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner'.

It will be evident form the above that the time limit for filing of rebate claim under section 11B of the Central Excise Act, 1944 was specifically provided from 01.03.2016. The said amendment substantiates the fact that prior to the amendment the time limit provided under section11B did not apply to the said notification.

The above amendment substantiates the contention of the respondent that in the absence of time limit provided under the notification under which the rebate is claimed, the time limit prescribed under section 11B cannot be applied to the said notification.

8.5 Export of Service Rules 2005 and notification 11/2005-ST issued thereunder are self-contained provisions. Therefore, the provisions of section 11B of Central Excise Act, 1944 are not applicable to present case. The rebate claim is filed by the them under notification no. 11/2005-ST, dtd. 19.04.2005 issued under rule 5 of the Export of Service Rules, 2005. The said notification & rules are self-contained provisions and does not prescribe any time limit of filing the rebate claim. Thus, the limitation provided under section 11B is not applicable to the present case. The respondent places reliance upon the judgment of Rahguvar India (India) Ltd. Reported in 2000(118) E.L.T. 311 (S.C.).

8.6 It is settled law that substantial benefit cannot be denied for infraction of procedures. In the present case, the export of service, payment of service tax and compliance of other conditions of notification 11/2005-ST are not in dispute. The only condition violation alleged in the present case is that the rebate claim has not been filed within period prescribed in section 11B.

The Supreme Court in the case of MANGALORE CHEMICALS & FERTILIZERS LTD 1991 (8) TMI 83 - SUPREME COURT OF INDIA has held that there are always two types of conditions, ones which are substantive in nature and others which are procedural in nature. Equal importance cannot be attached to both the types of conditions and any lapse of procedural condition should be condoned and not lead to denial of benefit.

In the present case, the substantial conditions are that the service is exported in terms of export of service rules and payment of service tax has been made. If these conditions are satisfied, then mere no filing the rebate claim within time limit i.e. a procedural aspect should not lead to denial of benefit of rebate.

9. Government has carefully gone through the relevant case records available in case files, perused the impugned Orders-in-Original and Orders-in-Appeal and considered oral & written submissions made by the applicant in their Revision Applications as well as during the personal hearing.

10. Government observes that the issue to be decided in this case is whether or not the refund claim for amount of Rs.57,60,195/- (Rupees Fifty Seven Lakh Sixty Thousand One Hundred Ninety Five only) which was filed after the period of one year from the date of receipt of the foreign currency, is rightly rejected by the Commissioner (Appeals) in terms of Provisions of Section 11 B of the Central Excise Act,1944 as made applicable to Service Tax matters vide Section 83 of the Chapter V of the Finance Act,1994, or not.

11. Government observes that issue of limitation period / time bar has been discussed by the Tribunal in its Order 18-12-2013 [2014 (34) S.T.R.

890 (Tri. - Mumbai)] in the case of M/s Vodafone Cellular Limited in following words:

> *" We notice that the provisions of Section 11B of the Central Excise Act, 1944, which deals with refund of excise duties has been made applicable to Service Tax vide Section 83 of the Finance Act, 1994. This would imply that the time-limit of one year from the date of payment of tax for filing of the refund claim would apply in respect of Service Tax refunds also. Even if it is argued that there is no specific time-limit set out in Notification 11/2005-S.T., it is a settled position in law that though the law is silent on the time-limit applicable, a reasonable time-limit has to be read into the law. The decision of the Hon'ble Apex Court in the case of Citadel Fine Pharmaceuticals and the Hon'ble Bombay High Court in the case of Everest Flavours Ltd. and other decisions of the Hon'ble Apex Court relied upon by the Revenue would support this contention.*

12. Government further observes that the applicant in the present case has relied mainly on the case of M/s DSS Image Tech (P) Ltd. as reported in [2016(2) TMI 657 (CESTAT –Del)] and Hon'ble Madras High Court judgement in the case of M/s Dorcas Market Makers Pvt. Ltd. as reported in 2012 (28.) ELT-227 (Mad), wherein it is held that rebate of excise duty in terms of rule 18 of Central Excise Rules, 2002 sanctioned in terms of notification no. 19/2004-CE, dt. 06.09.2004 cannot be rejected on the grounds of time bar as the said notification did not contain any time limitation of claiming rebate. It is further contended by the applicant that the appeal against Madras High Court judgement in the case of M/s Dorcas Market Makers Pvt. Ltd. filed by the department was dismissed by the Supreme Court as reported in [2015 (325) ELT A104 (S.C)].

13. In the case of M/s DSS Image Tech (P) Ltd., the appellant had filed rebate claims in terms of Notification No.11/2005-ST dtd.19.05.2005 issued under Rule 5 of Export of Service Rules, 2005. The original adjudicating authority held that the rebate application was filed after one year from the date of payment of service tax, the rebate claim was time barred. The

appellant contended that the rebate was claimed under Rule 5 of Export of Service Rules read with Notification No. 11/2005 ST and in that notification there was no limitation period prescribed for filing rebate claim and therefore its claim cannot be rejected as time-barred. The appellant had cited the Judgement of Madras High Court in the case of Dy. Commissioner of C. Excise, Chennai Vs. Dorcas Market Makers Pv. Ltd. - 2015 (321) ELT 45 (Madras) and Punjab & Haryana High Court in the case of JSL Lifestyles limited Vs. Union of India. The CESTAT in its judgement observed that in terms of Rule 5 of Export of Service Rules, 2005, the rebate claim is only subject to such conditions or limitations and fulfilment of such procedure as may be specified in the notification; that in the concerned Notification No. 11/2005-ST there was no time-limit prescribed during the relevant period. A combined reading of Rule 5 of Export of Service Rules, 2005 and Notification 11/2005 ST makes it clear that the rebate scheme under the said rule is a self contained scheme and it nowhere invites the condition of one year for filing the application for rebate; that Madras High Court in the case of M/s Dorcas Market Makers Pvt.Ltd. (Supra) held that the rebate of excise duty in terms of Rule 18 of Central Excise Rules, 2002 sanctioned in terms of Notification No. 19/2004-CE dated 06.09.2004 cannot be rejected on the ground of time-bar as the said Notification did not contain any time limit for claiming rebate; that Rule 18 of Central Excise Rules, 2002 is essentially pari materia Rule 5 of Export of Service Rules and Notification No. 19/2004-CE dated 06.09.2004 also did not contain any time limit as was the case in respect of Notification No.11/2005-ST and thus the ratio of the Madras High Court Judgement in the case of M/s Dorcas Market Makers Pvt. Ltd. is squarely applicable to the present case and similar view has been held by Punjab Haryana High Court in the case of JSL Lifestyle Ltd. and also by Delhi High Court in the case of Sony India Pvt. Ltd Vs. CC, New Delhi [2014(304)ELT 660 (Delhi)].

14. Government in this regard observes that the same Hon'ble High Court Madras which delivered judgement in the case of M/s Dorcas Market Makers

Pvt. Ltd. [2015 (321) E.L.T. 45] (Mad.), while dismissing writ appeal filed by Hyundai Motors India Ltd. and upholding the rejection of rebate claim filed beyond one year of export in its order dated 18.04.2017 [reported in 2017 (355) E.L.T. 342 (Mad.)] by citing the judgment of same Hon'ble High Court Madras In Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai, reported in 2015 (324) E.L.T. 270 (Mad.), which noted as under :-

> *5. The claim for refund made by the appellant was in terms of Section 11B. Under sub-section (1) of Section 11B, any person claiming refund of any duty of excise, should make an application before the expiry of six months from the relevant date in such form and manner as may be prescribed. The expression "relevant date" is explained in Explanation (B). Explanation (B) reads as follows :-*
>
> *"(B) "relevant date" means, -*
>
> *(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -*
>
> *(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or*
>
> *(ii) if the goods are exported by land, the date on which such goods pass the frontier, or*
>
> *(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;*
>
> *(b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;*
>
> *(c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;*

भारत सरकार (रिविजन एप्लीकेशन) एवं पदेन अपर सचिव, भारत सरकार
Pr. Commr. (RA) & ex-Officio Additional Secretary to the Govt of India
Mumbai
मुंबई

(d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;

(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;

(ea) in the case of goods, which are exempt from payment of duty by a special order issued under sub-section (2) of Section 5A, the date of issue of such order;

(eb) in case where duty of excise is paid provisionally under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

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

* * *

"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."

15. Government also observes that GOI vide its order No. 366-367/2017-CX, dated 7-12-2017 in Re: DSM Sinochem Pharmaceuticals India Pvt. Ltd.

[2018(15)G.S.T.L. 476 (G.O.I.)] while rejecting the contention of the applicant that the time limitation of one year is not applicable to the rebate claims filed under Rule 18 and Notification No. 19/2004-CE dated 6-9-2004 observed as under :

> *5. Coming to the applicant's contention that the time limitation of one year is not applicable to the rebate claims filed under Rule 18 and Notification No. 19/2004, the Government finds no legal force in this argument as for refunds and rebate of duty [under] Section 11B of the Central Excise Act is directly dealing statutory provision and it is clearly mandated therein that the application for refund of duty is to be filed with the Assistant/Deputy Commissioner of Central Excise before expiry of one year from the relevant date. Further in explanation in this Section, it is clarified that refund includes rebate of duty of Excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India. In addition to time limitation, other substantive and permanent provisions like the authority who has to deal with the refund or rebate claim, the application of principles of undue enrichment and the method of payment of the rebate of duty, etc., are prescribed in Section 11B only. Whereas Rule 18 is a piece of subordinate legislation made by Central Government in exercise of the power given under Central Excise Act whereby the Central Government has been empowered to further prescribe conditions, limitations and procedure for granting the rebate of duty by issuing a notification. Being a subordinate legislation, the basic features and conditions already stipulated in Section 11B in relation of rebate duty need not be repeated in Rule 18 and the areas over and above already covered in Section 11B have been left to the Central Government for regulation from time to time. But by combined reading of both Section 11B [of Central Excise Act, 1944] and Rule 18 of Central Excise Rules, 2002 it cannot be contemplated that Rule 18 is independent from Section 11B of the Act. Since the time limitation of 1 year is expressly specified in Section 11B and as per this section refund includes rebate of duty, the condition of filing rebate claim within 1 year is squarely applicable to the rebate of duty when dealt [with] by Assistant/Deputy Commissioner of a Division under Rule 18. Thus Section 11B and Rule 18 are interlinked and Rule 18 is not independent from Section 11B. This issue regarding application of time limitation of one year is dealt [with] by Hon'ble High Court of Bombay in detail in the case of M/s. Everest Flavour Pvt. Ltd. Union of India 2012 (282) E.L.T. 481*

wherein it is held that since the statutory provision for refund in Section 11B specifically covers within its purview a rebate of Excise duty on goods exported, Rule 18 cannot be independent of requirement of limitation prescribed in Section 11B. In the said decision the Hon'ble High Court has differed from the Madras High Court's decision in the case of M/s. Dorcas Market Makers Pvt. Ltd. [2015 (321) E.L.T. 45 (Mad.)] and even distinguished Supreme Court's decision in the case of M/s. Raghuvar (India) Ltd. [2000 (118) E.L.T. 311 (S.C.)]. Hence, the applicant's reliance on the decision in the case of M/s. Dorcas Market Makers Pvt. Ltd. is not of much value. The above averment of the applicant based on the above decisions clearly amounts to saying that a rebate claim can be filed at any time without any time-limit which is not only against Section 11B of the Central Excise Act but is also not in the public interest as per which litigations cannot be allowed for infinite period.

16. Government applying the ratio of the aforesaid judgments, holds that the Section 11B of the Central Excise Act, 1944, stipulates the relevant date for filing rebate claims. Any application for refund of tax must be filed before the expiry of one year from relevant date. 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. Government further observes that the provisions of Section 11B of the Central Excise Act, 1944 dealing with refund/rebate have been made applicable to service tax by virtue of Section 83 of the Finance Act, 1994. The limitation as prescribed by the law cannot be extended by any authority as no such relaxation or discretion is provided in the law. Moreover, it is pertinent to note here that in both the case laws referred above, several case laws including Dorcas Market Makers Pvt. Ltd. - 2015 (321) E.L.T. 45 (Mad.) which are relied by the applicant in their application/submissions are referred / discussed and hence reliance placed on these case laws would not render any support to applicant's case.

17. In the aforesaid circumstances, Government observes that the limitation of time bar under Section 11B of the Central Excise Act, 1944 would precisely apply in the case of export of service, where the relevant date

is held to be the date when the assessee has received payment of service exported and hence the impugned order of the Commissioner, Central Excise & Service Tax (Appeals-IV), Mumbai rejecting the refund of an amount of Rs.57,60,195/- (Rupees Fifty Seven Lakh Sixty Thousand One Hundred Ninety Five only) which was beyond the period of one year from the date of receipt of the foreign currency is legal and proper and is therefore, upheld.

21. Revision application thus stands dismissed being devoid of merit.

22. So, ordered.

30.11.18

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

ORDER No. 07 /2018-ST(WZ)/ASRA/Mumbai DATED 30.11.2018

To,
M/s Citicorp Finance (India) Limited Citicorp Centre,
5th Floor, Bandra Kurla Complex,
Bandra (East), Mumbai 400 051

Copy to:

1. The Commissioner of GST & CX, Mumbai East, 9th Floor, Lotus Infocentre, Parel, Mumbai 400 012.
2. The Commissioner of GST & CX, (Appeals-II) 3rd Floor, GST Bhavan, Plot No.C-24, Sector-E, Bandra Kurla Complex, Bandra(E) Mumbai 400 051.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.
5. Spare Copy.