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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.196/15/ST/14 -RA/2036 Date of Issue: 17.03.2021

ORDER NO. 07 /2021-ST (WZ)/ASRA/MUMBAI DATED 10-03-2021 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.

Applicant : M/s Symantec Software India Private Limited,
EON Free Zone, 0-05 Floor, Wing -1, Cluster B,
Plot No.1, Survey No. 77, MIDC Knowledge Park,
Kharadi, Pune 411 014.

Respondent : Commissioner, Central Excise, Pune-III.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. PUN-EXCUS-003-APP-022-14-15 dated 30.05.2014 passed by the Commissioner (Appeals), Central Excise, Pune- III.

ORDER

This Revision Application has been filed by M/s Symantec Software India Private Limited, Pune (hereinafter referred to as "the applicant") against the Order-in-Appeal No. PUN-EXCUS-003-APP-022-14-15 dated 30.05.2014 passed by the Commissioner (Appeals), Central Excise, Pune- III.

2. Brief facts of the case are that the applicant are engaged in the business of providing 'Business Auxiliary Service" (BAS) and information Technology Software Services to foreign entities. The applicant, being provider of Taxable Services which are exported outside India, filed a rebate claim Application for Rs. 1,09,97,338/- (Rupees One Crore Nine Lakhs Ninety Seven Thousand Three Hundred Thirty Eight Only) for Service Tax paid for providing Professional and IT Support Services to M/s Symantec Corporation, USA. The said rebate application was filed in terms of Rule 5 of the Export of Service Rules, 2005 read with Notification No. 11/2005-ST dated 19.04.2005 for the month of June 2012. The Service Tax amount along with the cess on the exported services was made by debiting the said amount from the opening balance of the Cenvat Credit Account maintained by them. The Rebate Sanctioning Authority returned the said rebate claim to the applicant rejecting the same on the ground that the applicant was claiming dual benefit as a Refund had already been obtained under the Notification No. 27/2012 – CE (NT) for the period April 2012 to June 2012 which was sanctioned vide Order No. R/312/STC/PIII/2013 dated 01.07.2013

3. Being aggrieved by the aforesaid Order-In-Original, the applicant filed the appeal before Commissioner (Appeals), Central Excise, Pune – III. The Appellate Authority dismissed the appeal filed by the applicant vide Order in Appeal No. PUN-EXCUS-003-APP-022-14-15 dated 30.05.2014. The Appellate Authority while passing the impugned order observed that:-

i) The same invoices have been used by the applicant for both the refund and rebate claim ante the same is not permissible.

ii) Since the Applicant has already claimed refund under Rule 5 of the CENVAT Rules for the taxable services under the two invoices, they obviously not entitled to the rebate claim under Rule 5 of the Export Rules;

iii) There are contradictions in the CENVAT Registers of the Applicant and thus an attempt to manipulate the registers for claiming dual benefit.

4. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government on the grounds:-

4.1 The rebate claim was rejected without issuing Show Cause Notice to the applicant.

4.2 the rebate claim was returned by the Deputy Commissioner by way of letter dated 23.09.2013 without issuance of SCN or giving an opportunity of hearing to the applicant to address the alleged issues. The applicant have relied upon following case laws in support of their argument.

a) Metal Forgings Vs. UOI, 2002 (146) ELT 241 (SC)

b) UOI Vs. Madhumilan Syntex Pvt. Ltd., 1988 (35) ELT 349 (SC)

c) Nirlon Ltd. Vs. UOI, 2007 (209) ELT 12 (Bom.)

4.3 No reasons were attributed in the Order in Original for denial of Rebate claim.

4.4 The rebate and refund Notifications are mutually exclusive and seek to serve different purposes.

4.5 All the conditions in terms of the Notification 11/2005-St have been complied by the applicant.

4.6 The findings in the impugned Order with respect to alleged discrepancies in the ST-3 returns and the CENVAT Registers of the Appellant are incorrect and inconsequential.

5. A Personal hearing in this case was held on 22.01.2020 and was attended by Shri Gyanendra Tripathi, and Ms. Prithi Dabholkar, Consultants on behalf of the applicant. In view of change in the Revision Authority, fresh opportunity of personal hearing was given to the applicant on 02.12.2020, 07.12.2020, 10.12.2020 and 28.01.2021. However, no one appeared for the same. Therefore, the matter is taken up for decision based on the documents available on record and the submissions made by the applicant.

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

7. The Government finds that the applicant has alluded that the department had not issued any show cause notice in the instant case and the rebate claims were rejected / returned vide letter without giving them an opportunity of personal hearing. It is, however, observed that the appellate authority has alleviated this ground by granting the applicant an opportunity of being heard in person and addressed each of the grounds raised by them vide its reasoned order in appeal issued in the matter. Therefore, this ground no longer remains a cause of grievance for the applicant.

8. Further, the applicant had contested that no reasons were attributed in the Order in Original for denial of rebate claim. It is noted that the Rebate Sanctioning authority had returned the impugned rebate claims not being in order in terms of conditions of para 2(b) and declaration at para 3(iv) of Notification No. 27/2012-CE(NT) dated 18.06.2012. The appellate authority has dealt with this issue by calling for the relevant records crucial in the matter. On scrutiny of the documents the appellate authority has explicitly established that:-

i) the Invoice No. SSIPL/Professional Service/ 003/2012-13 dated 30.07.2012 and SSIPL / Tech Support/003/2012-2013 dated 30.07.2012 have been used twice – once for refund claim and then for the rebate claim.

ii) there are contradiction in the different versions of CENVAT credit registers for the period from April to July 2012 and for the month of June 2012, both of which were submitted by the applicant, though on different dates.

iii) the services provided during this period were exported without payment of service tax. However, the applicant had claimed rebate otherwise.

iv) the impugned two invoices were issued on 30.07.2012, the service tax was paid in June 2012 i.e. one month prior to the issuance of theses invoices. This points towards falsification of records by the applicant.

8.1 The Government notes that the conclusions drawn as above by the appellate authority are supported by the records submitted by the applicant. It is further noticed that the applicant while filing revision application has not been able to refute the serious discrepancies pointed out by the Appellate Authority in his order. The Government finds that the impugned Order in Appeal reveals the discrepancies in the rebate / refund claims filed by the applicant which establishes that the applicant intended to claim the rebate inadmissible to them. The Government holds that the discrepancies pointed out by the appellate authority are serious in nature and the applicant could not defend these allegations with satisfactory explanation through the submissions in the instant Revision Application. As such, the Government holds that the appellate authority in the right perspective addressed all the grievances of the applicant addressing as to why the impugned rebate claim cannot be granted to them and therefore upholds the decision of the Appellate Authority in the matter.

8.2 The Government also notes the scholastic approach of the appellate authority in the para 12 of his order wherein it was ornately explained how the schemes i.e. refund under Rule 5 of the Cenvat Credit Rules, 2002 and rebate under Ruled 5 of the Export of Service Rules, 2005 are mutually exclusive. The Government holds that having given the declaration, at the time of claiming refund under Rule 5 of the Cenvat Credit Rules, that no claim

of rebate under the Export of Service Rules had been filed, the applicant had automatically pushed themselves out of the scheme of rebate under Rule 5 of the Export of Service Rules for the same invoices.

8.3 The Government also notes the observations of the appellate authority at para 17 of the impugned order. The para reads as under:-

> *"With effect from 01.07.2012, after introduction of Place of Provision of Service Rules, 2012, Export of Service Rules, 2005 were abolished (Service Tax (Second Amendment) Rules,2012) and a new Rule 6A was inducted in Service Tax Rules, 1994 for export of services. The facility of rebate of service tax paid on taxable service exported hitherto available under rule 5 of the Export of Service Rules, 2005 read with Notification No. 11/2005-ST, was withdrawn. It therefore appears to emerge that after becoming aware of the withdrawal of the facility of rebate w.e.f. 01.07.2012 (as described above), the Appellant have attempted to encash their CENVAT credit by showing debit in June 2012 against Invoice Nos. SSIPL/ Professional Service/003/2012-2013 dted 30.07.2012 and No. SSIPL/Tech Support/003/2012-2013 dated 30.07.2012, which has caused the contradictions in the CENVAT credit Registers submitted by the Appellant on two different dates as discussed in para 15 above. It defies logic that for the said two invoices which were issued on 30.07.2012, the service tax soul be paid in June, 2012, i.e. one month prior to the issuance of theses invoices. This points towards falsification of records by the Appellant".*

8.4 The discrepancies noticed in the above para and the inferences drawn thereof certainly defy logical explanation as to why and how the duty in respect of the impugned two invoices was paid one month prior to issuance of these invoices. However, the applicant could not put forth any justification in this regard and therefore Government cannot persuade itself to take any other view in the instant Revision Application.

9. In view of above circumstances, Government finds no infirmity in the impugned Order-in-Appeal and therefore upholds the same.

10. Revision Application is thus rejected being devoid of merit.

Shrawan 10/03/2021

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

ORDER No. ०५ /2021-ST (WZ) /ASRA/Mumbai DATED १०.03.2021

To,
M/s Symantec Software India Private Limited,
EON Free Zone, 0-05 Floor, Wing -1, Cluster B,
Plot No.1, Survey No. 77, MIDC Knowledge Park,
Kharadi, Pune 411 014.

Copy to:

1. The Commissioner of Central Goods and Service Tax, Pune –I Commissionerate, GST Bhavan, ICE House, Opp. Wadia College, Pune – 411 001.
2. The Commissioner, Central Goods and Service Tax, Pune Appeals-I, GST Bhavan, F Wing, 3rd Floor, 41-A, Sassoon Road, P.B. no. 121, Pune 411 001.
3. The Deputy / Assistant Commissioner, Division V (Viman Nagar), 2nd Floor ICE House, 41/A, Sassoon road, Pune 411 001.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.