REGISTERED SPEED POST

सत्यमेव जयते

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.196/33/WZ/18-RA /3458 Date of Issue: 02.07.2021

ORDER NO. 11 /2021-ST(WZ)/ASRA/Mumbai DATED 30.06.2021 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.

Subject : Revision Applications filed, under Section 86(1) of the Finance Act, 1994(32 of 1994) read with Section 35EE of the Central Excise ACT, 1944 and Section 174 of CGST Act, 2017 against the Order in Appeal No.IM/CGST A-III/Mum/314/18-19 dated 27.08.2018 passed by Commissioner of Central Tax Appeals-I, Mumbai.

Applicant : M/s Hazel Mercantile Limited , Ashoka Shopping Centre, 181, 2nd Floor, G.T. Hospital, L.T. Roa, Mumbai G.P.O. Mumbai, 400 001.

Respondent : Commissioner of Service Tax-I, Mumbai.

ORDER

This Revision Application has been filed by M/s Hazel Mercantile Limited , (hereinafter referred to as 'the applicant') against the Order in Appeal No. Order in AppealNo.IM/CGST A-III/Mum/314/18-19 dated 27.08.2018 passed by Commissioner of Central Tax Appeals-I, Mumbai.

2. The brief facts of the case are that the applicant is registered with Service Tax department, with registration No.AAACH2671KSD003 , under Section 69 of the Finance Act, 1994 had filed four refund claims under Notification No.41/2012-ST dated 29.06.2012 in respect of Service tax paid on input services viz., Clearing & Forwarding Services, Technical Testing & Analysis, Technical Inspection and Certification, Port Services, Storage and Warehousing Services & Bank Charges", which were reportedly received for export of chemicals for the period October 2012 to September 2013 totally amounting to Rs.1,86,74,690/-.

3. The Adjudicating Authority vide his Order in Original No. GS/02/2015 dated 23.02.2015 rejected the claim in entirety on the following grounds:

(i) The provisions of the Notification No.41/2012-ST dated 29.06.2012, as amended are applicable to the export of excisable goods by the manufacturer exporter beyond the place of removal and to the export of non-excisable goods by the merchant exporter procuring from open market. Hence taxable services utilized for the export of imported goods under Bond/Warehouse by the applicant cannot be considered as specified services qualifying for grant of rebate in the form of refund of service tax;

(ii) The applicant was getting the reimbursement of the FOB value, which is reflected in the sales invoices of re-export and hence if the refund is sanctioned it will lead to unjust enrichment;

(iii) The applicant could not establish the nexus between the goods exported and the input services like Storage & Warehouse, C & F, Technical Testing & Analysis, Technical Inspection and Certification, Port Services etc., in the form of appropriate documentary evidence;

(iv) The claim was not filed in specified form A-1 and was not supported by proper worksheet, as such the arithmetical accuracy of the claim could not be established.

4. On being aggrieved by the aforesaid Order in Original the applicant preferred an appeal before Commissioner(Appeals) who vide Order in Appeal IM/CGST A-III/Mum/314/18-19 dated 27.08.2018 rejected the appeal of the applicant and upheld the impugned Order in Original by observing as under :-

9. In the instant Case, there is no doubt that the Chemicals & Petrochemicals imported by the appellant are specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, but, they cannot be subjected to duty of excise, as they are not manufactured. Only customs duties can be levied on such goods, thereby sub-para (i) is not applicable in their case. In case of goods other than excisable, as in the impugned case, sub-para (ii) is applicable, hence taxable services used for export are eligible for refund, but this aspect is subject to proving the nexus between the input services and the goods exported, through sufficient documentation.

10. They were importing various chemicals and petro chemicals in bulk and storing those in terminal tanks in port areas and thereafter distributing the same to their domestic as well as overseas buyers on the basis of High Sea Sales and Transfer of Ownership under Bond. They are stating that during this process they were utilizing Clearing & Forwarding Services, Technical Testing & Analysis, Technical Inspection and Certification, Port Services, Storage and Warehousing Services & Bank Charges and this aspect needs to be corroborated with documentation. It is a fact that the imported material in bulk is stored in one tank located in Port Area and is removed for domestic consumption as well as for re-export. The input service invoices furnished show the total service tax amount in respect of the service used for export alongwith domestic clearances. Hence so as to get admissible for refund they have to provide documentary evidence like tank farm report, tank dips report, Stock issues & Receipts report, Stock inventory etc., along with the relevant input service invoices, supported by worksheets that shows the number of days & quantity of the exported /domestic stock (separately) that was kept in tank during the storage period. This will provide the actual amount of the service tax refund payable, which is attributable to exported goods. The appellant has failed to provide the said documentation along with the worksheets either at the adjudication stage or even at the appellate stage. Hence the nexus between the taxable input service and the goods exported could not be established by the appellant and thus the claims are liable for rejection on this ground.

11. Further, I find that since the impugned claims are liable for rejection, the decision on the question as to whether there is unjust enrichment or otherwise is not required to be taken, hence I refrain from it. Overall the adjudicating authority has rightly decided that the refund claims filed by the appellants are not admissible and hence he rejected the claims. I therefore do not intend to interfere with the said order passed by the Adjudicating Authority.

5. Being aggrieved by the impugned Order in Appeal the applicant has preferred the present Revision Application mainly on the following grounds:-

5.1 The Original Adjudicating Authority erred while holding that taxable services utilized for the re-export of imported goods under Bond / Warehouse by them cannot be considered as specified services qualifying for grant of rebate in the form of refund of service tax paid under Notification No.41/2012-ST dated 29-06-2012. However, the Appellate Authority has found that their claim falls within the specified Services under explanation A(ii) of the Notification.

5.2 The Notification No.41/2012-ST dated 29-06-2012 nowhere puts the condition that the Service Tax refund will not be applicable in respect of the re-export of imported goods under Bond / Warehouse. The condition in respect of the refund of Service Tax as contained in the said Notification dated 29-06-2012 (The applicant has reproduced the said condition as well as sub-clauses (A),(B), (BA) and (C) of clause (1) of rule (2) of the Cenvat Credit Rules, 2004).

The Hon'ble Appellate Authority has rightly held that the taxable services used for export are eligible for refund to them. Therefore, this ground has been addressed by the Hon'ble Appellate Authority in favour of the Applicant.

5.3 The only ground for rejection of the appeal cited by the Hon'ble Appellate Authority is that there was no sufficient documentation for establishing nexus between the input services and the export goods. It is submitted that this finding is not only erroneous but also far from truth. They have submitted all the relevant documents along with the refund application and also as and when called upon to do the same. A set of the said documents was submitted to the Hon'ble Appellate Authority along with the appeal papers.

5.4 It is re-iterated that they had submitted all the relevant documents along with its applications for refund. Not only that, as and when it was called upon to submit further documents, the same was duly addressed and required documents submitted to the authorities. To say that the same were not submitted alongwith the refund application or thereafter is not correct. Having submitted the required / relevant documents initially and also during the process of scrutiny, the refund claim cannot be rejected on this ground. The Applicant relies on the order of the Hon'ble CESTAT, Bangalore in the matter of Commissioner of S. T. , Bangalore Vs. Printex Exports India Pvt. Ltd. reported vide 2017 (52) S.T.R. 375 (Tri.- Bang.). In the cited order, having found that all the documents were submitted with the initial application for refund claim, the Hon'ble Tribunal held that the refund was admissible and rejected the appeal of the department. The Applicant also relies on the order of the Hon'ble CESTAT, Mumbai in the matter of A. K. Associates Vs. Commissioner of Central Excise, Nagpur reported vide 2017 (47) S.T.R. 49 (TrL — Mumbai). In the cited order, the Tribunal held that in case the documents were not submitted earlier, the same can be submitted later. Non-submission or non-availability of all the documents the refund is not liable to be rejected.

5.5 The refund claim cannot be denied on technical grounds. They rely on the order of the Hon'ble CESTAT, Hyderabad in the matter of Coromandel Stampings and Stones Ltd. Vs. C. C. E. & S. T., Hyderabad-11 reported vide 2016 (43) S. T.R. 221 (Tri. – Hyd). In the cited order, the Hon'ble Tribunal has held that substantive benefits are not deniable on technical ground and that refund under impugned notification not deniable on merely technical interpretation of procedures as it would result in unduly restricting scope of beneficial provisions under export oriented schemes.

5.6 As regards unjust enrichment in the present case, the Appellate Authority has refused to take a stand on the same. However, the Adjudicating Authority seems to be oblivious to the fact that taxes cannot be exported. As explained earlier, the international markets are so competitive that international buyer will never buy any goods with pricing based on built-in taxes. Otherwise also the principles of unjust enrichment are not applicable to exports. The Appellant relies on the order of the Hon'ble CESTAT, Mumbai in the matter of Vodafone Cellular Limited Vs. Commissioner of Central Excise, Pune-III reported vide 2014 (34) S. T.R. 890 (Tri.-Mumbai). As per the said order, the principles of unjust enrichment are not applicable to exports. They also rely on the order of the Hon'ble CESTAT, New Delhi in the matter of Convergys Services India Ltd. Vs. Commissioner of Service tax, New Delhi reported vide 2012 (25) S. T.R. 251 (Tri.-Del.) wherein it was held :-Rebate - Export of Services - Unjust enrichment principle is not applicable to such rebate claims - Section 118 of Central Excise Act, 1944 - Section 83 of Finance Act, 1994; and in any case, in terms of the provisions of Section 11B of the Central Excise Act, 1944, as made applicable to Service tax matters by Section 83 of the Finance Act, 1994, the principle of unjust enrichment is not applicable to export rebate[para 10].

In view of the above rulings, the contention of the Adjudicating Authority that refund will amount to unjust enrichment is against the legal principles and devoid of any merit.

5.7 It is further submitted that the issue of unjust enrichment does not arise since the exemption granted to them under the Notification No. 41/2012-ST dated 29-06-2012 is in the form of refund of Service Tax paid on specified input services which are received and used in relation to the exported goods. For exporting the said goods, they have availed services from various service providers. They have re-exported the goods, for which they have availed various input services, and have submitted required declaration and undertaking mentioning that they have not claimed CENVAT Credit on the goods exported, for which rebate / refund is claimed for the said taxable services availed and used for re-export of the said goods. They have followed the procedure prescribed under provisions of the Notification No. 41/2012-ST dated 29-06-2012, as amended. They are eligible for rebate of Service Tax paid on taxable services which have been received by them and used for re-export of the goods, by way of refund of the Service Tax paid on the specified services under Notification No. 41/2012-ST dated 29-06-2012, as amended, read with provisions of Section 11 B of the Central Excise Act, 1944 made applicable to Service Tax matters vide Section 83 of Chapter-V of the Finance Act, 1994.

5.8 Regarding many objections, including fulfilment of the conditions of submission of documents in support of the refund claim and other objections as re-produced and summarized above, all the documents were submitted to the Authorities under cover of its letters dated 03-12-2013, 22-07-2014, 24-07-2014, and 12-08-2014. Even a Personal Hearing was held on 24-07-2014, which was attended by their representatives and all

the doubts were cleared. Later, vide its letter dated 12-08-2014, they requested the Adjudicating Authority to process and sanction the refund and also claimed interest @ 6% p.a. under Section 11 BB of the Central Excise Act, 1944.

5.9 All the relevant documents to establish nexus of the input services to the export of goods, quantum of input services used in relation to the export of goods, etc. were submitted in great details. Not only that, during the personal hearing held on 16-02-2015, their representative had specifically asked the Adjudicating Authority whether any other documents were required by him and offered to submit the same for speedy processing of the refund claim. The Adjudicating Authority had asked for some specific clarifications and documents in respect of one Shipping Bill No. 4628534 dated 25-03-2013. The clarifications and documents in respect of same were submitted vide their letter dated 18-02-2015. At no time did the Adjudicating Authority or the Appellate Authority mentioned that any more documents or clarifications were required. The above only goes to show that the Adjudicating Authority and the Appellate Authority have rejected the refund claim and the appeal for reasons beyond their comprehension. In case any further clarifications are required, they are, as ever, always ready to provide the same at any time.

5.10 The Adjudicating Authority and the Appellate Authority have rejected the refund claim and its appeal based on the finding that the refund lacks worksheet or sufficient documents to show nexus of the service tax paid with the exported goods and that the documents have not been submitted in the format of A-1 as specified in the Notification No. 41/2012-ST dated 29-06-2012. It is submitted that the refund claims were in fact submitted in A-1 format and copies thereof submitted to the Adjudicating Authority. Copies of the same were submitted to the Appellate Authority as well. However, the same have been ignored to the detriment of the Applicant and against all the norms of legal principles. Therefore, the rejection of the their refund claim is illegal, unreasonable and against the settled legal principle.

In view of its aforementioned submissions applicant prayed for (i) quashing of the Order-in-Original dated 23-02-2015 and the impugned Order-in-Original dated 27-08-2018; (ii) to allow the refund claim of Service Tax in full and the appropriate authorities may be directed to sanction and disburse the same to them; (iii) the unjust enrichment may be held to be not applicable in respect of the refund claim; and (iv) interest as prescribed under Section 11 BB of the Central Excise Act, 1944 @ 6% p.a. may be directed to be paid on the refund amount (as applicable to Service Tax matter under Section 83 of the Finance Act, 1994, read with Section 174 of the CGST Act, 2017);

6. A personal hearing in this case held on 10.06.2021 was attended by Shri R.K. Tomar, Advocate on behalf of the applicant. None appeared on behalf of the respondent Department. Shri R.K. Tomar, Advocate reiterated the submissions

already made. He also filed additional written submissions on the matter on the date of the hearing. He requested to allow refund along with interest from the date of application.

7. In their additional submissions the applicant made following contentions:-

- They had furnished all the relevant documents along with its refund applications. Not only that, as and when it was called upon to submit further documents. the said instructions were duly complied with and required documents submitted to the authorities. Having submitted the required / relevant documents initially and also during the process of scrutiny the refund claim cannot be rejected on this ground They rely on the order of the Hon'ble CESTAT, Bangalore in the matter of Commissioner of S.T., Bangalore Vs. Printex Exports India Pvt. Ltd. reported vide 2017 (52) S.T.R. 375 (Tri.-Bang.)and Hon'ble CESTAT, Mumbai Order in the matter of A. K. Associates Vs. Commissioner of Central Excise, Nagpur reported vide 2017 (47) S.T.R. 49 (Tri. - Mumbai). The applicant reproduced relevant portion of both the orders.

- The refund claim cannot be denied on technical grounds. They rely on the order of the Hon'ble CESTAT, Hyderabad in the matter of Coromandel Stampings and Stones Ltd. Vs. C. C. E. & S. T., Hyderabad-II reported vide 2016 (43) S.T.R. 221 (Tri. - Hyd.). The applicant reproduced relevant portion of the order.

- The applicant reiterated the grounds already mentioned at para 5.6 , 5.7 5.8 & 5.9 supra.

- It is evident from the records and the two orders i.e., the said Order-in-Original and the impugned order, that they had produced the documentary evidence of there being clear nexus between the exports and the payment of Service Tax for the services consumed in relation of the said exports. This being the case, their refund claim cannot be denied. They rely on the order of the Hon'ble Bombay High Court in the matter of Commissioner of Service Tax-V Vs. Vijay Cotton and Fibre Co. reported vide 2017(48) S.T.R. 450(Bom.). The relevant part of the cited order is re-produced by the applicant.

- They further rely on the order of the Hon'ble CESTAT, Kolkata in the matter of Commissioner of C. Ex., Cus. & S.T., BBSR-II Vs. East India Minerals Ltd. reported vide 2017 (3) G.S. T.L. 121 (Tri.-Kolkata) . In the cited Order, it has been held that there need not be one to one co-relation between inputs and an output, a close relation is sufficient for grant of refund. The relevant part of the same is also reproduced by the applicant.

- They further rely on order of the Hon'ble CESTAT, New Delhi in the matter of Bharat Heavy Electricals Ltd. Vs. Commissioner of C. Ex., Bhopal reported vide 2017 (49) S.T.R. 81 (Tri.-Del.) In the cited order it has been held that wordings of exemption notification are to be interpreted so as to

achieve purpose and object for which the notification has been issued. The relevant part of the same is also reproduced by the applicant

- Refund claims post the present case and dealing with exactly the same issues have been dealt with in their favour. A list of 10 (Ten) orders, is provided hereunder where they have been granted refunds in respect of the exports made (copies of the 10 Orders in original enclosed by the applicant).

- The applicant reiterated the grounds at already mentioned at para 5.10 supra and also reiterated the prayers at para 5.10 supra.

8. In response to Notice issued under Section 35EE of the Central Excise Act, 1944 read with Section 86 of the Finance Act 1994, the respondent Department vide letter F.No. CGST/MS/Dn.II/Misc/2020-21 dated 29.06.2021 has informed that no fresh evidence/submissions are being made in the subject matter and the case may be decided on merit.

9. Government has carefully gone through the relevant case records available in case file, perused Order-in-Original and the impugned Order-in-Appeal and considered the oral & written submissions made by the applicant.

10. On going through the records, Government observes that the applicant is engaged in re-export of imported goods under Bond / Warehouse under Section 69 of the Customs Act, 1962. They were importing various chemicals and petro chemicals in bulk and storing them in terminal tanks in port areas and therafter distributing the same to their domestic as well as overseas buyers of High Sea Sales and Transfer of ownership under Bond. It is apparent from the description of services that Clearing and Forwarding services, Technical testing and Analysis service, Technical Inspection and Certification, Port services, Storage and Warehousing services and Bank Charges are all services which are necessary for facilitating the export of the chemicals. Government finds that the applicant has utilized these services to facilitate the export of goods. Since the exported goods are chemicals, certain services like technical testing and analysis service, technical inspection and certification service would be exclusive to the commodity being exported. Government therefore concurs with the finding of the Commissioner (Appeals) at para 9 of the impugned Order (reproduced at para 4 supra) that the applicant would be eligible for refund of the service tax paid on taxable services utilized for the re-export of imported goods under Bond/Warehouse.

11. As is apparent from the nature of the services on which the applicant has claimed rebate; viz. Clearing and Forwarding services, Technical Testing and Analysis service, Technical Inspection and Certification service, Port services, Storage and Warehousing services and bank charges, they are essential for enabling the export of chemicals. However, both the lower authorities have observed that the applicant has failed to provide the necessary documentation along with the worksheets to establish the nexus between the taxable input service and exported goods.

12. It is observed from the records produced along with the revision application viz. copies of the letters dated 18.02.2014, 22.07.2014, 12.08.2014 24.11.2014 (Reply to SCN dated 15.09.2014) & 16.02.2015, that the applicant has submitted documents/ explanation to establish nexus between the goods exported and the services utilized for their export. The ground for rejection that the applicant has not furnished documentary evidence to establish nexus between the goods exported and the input services is therefore fallacious. Government further observes from the annexures filed along with the revision application that the applicant has filed all the four (4) refund claims in Form A-1 and appended detailed Annexure-2 thereto. Hence, the assertion that the applicant has not filed the said claims in Form A-1 is also factually incorrect.

13. In so far as the issue of reimbursement of FOB value leading to unjust enrichment which is alleged to have been reimbursed by the buyer is concerned, Government finds that this observation would have no bearing on grant of rebate. The intention and purpose of the scheme for grant of rebate is to maximize collection of foreign exchange and to incentivize the exporter for his efforts. The facts of the present case involve a claim for rebate of taxes paid on input services utilized for export of goods and not rebate of Central Excise duties paid on excisable goods. The contention that the value of services has already been included in the value of the exported goods recovered from their foreign buyer would not negate their eligibility for grant of rebate. There are a plethora of judgments which hold that the principle of unjust enrichment is not applicable to exports. Government therefore holds that the rejection of the rebate claims on this ground is unsustainable.

14. In view of the findings recorded above, Government concludes that the applicant has exported the goods by using taxable input services for export of the goods and submitted all the requisite documents/explanation to the original authority required for sanctioning of the said refund claims which are

admissible. The rebate sanctioning authority is directed to sanction the said rebate claims filed by the applicant within a period of eight weeks of receipt of this order. The applicant should also co-operate in the proceedings by submitting documents, if any, required by the original authority.

15. Government observes that the applicant has also prayed that interest as prescribed under Section 11 BB of the Central Excise Act, 1944 @ 6% p.a. may be directed to be paid on the refund amount (as applicable to Service Tax matter under Section 83 of the Finance Act, 1994, read with Section 174 of the CGST Act, 2017). In this connection Government observes that once the rebate claim is held admissible under Section 11B of the Central Excise Act, 1944, interest liability starts after the expiry of three months of the date of receipt of application for rebate in the Divisional Office in terms of Section 11BB ibid. Government observes that Hon'ble Supreme Court in the case of M/s. Ranbaxy Laboratories Ltd. v. UOI [2011 (273) E.L.T. 3 (S.C.)] has categorically held in unambiguous terms that liability of the Revenue to pay interest under Section 11BB of Central Excise Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(I) ibid. In view of the principle laid down in above said judgment of Apex Court, Government holds that the applicant is eligible for the interest under the provisions of Section 11BB of the Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994, from the dates immediately after the expiry of three months from the date of receipt of their refund application till the date of refund of duty in the present case.

16. The revision application filed by the applicant is allowed with consequential relief.

Shrawan 30/06/21

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

ORDER No. 11 /2021-ST(WZ) /ASRA/Mumbai DATED 30.6.2021

To,
M/s Hazel Mercantile Limited,
Ashoka Shopping Centre,
181, 2nd Floor, G.T. Hospital, L.T. Road,
Mumbai G.P.O., Mumbai 400 001.

Copy to:

1. Principal Commissioner of CGST & CX, Mumbai South, 13th & 15th Floor, Air India Building, Mumbai 400 021.
2. Commissioner of Central Tax Appeals-I, Mumbai, 9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai 400 012
3. The Deputy Commissioner, Division-II, CGST & CX, Mumbai South, 13th & 15th Floor, Air India Building, Mumbai 400 0214.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file.
6. Spare copy.