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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. 196/12/ST/14-RA / 1191 Date of Issue: 23.03.2022

ORDER NO. 27 /2022-ST(SZ)/ASRA/MUMBAI DATED 22.3.2022 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 Applabs Technologies Private Limited(Now known as M/s. DXC Technologies India Pvt. Ltd.).

Respondent : The Commissioner of CGST & Central Tax, Hyderabad.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. 22/2014 (H-IV)S.Tax dated 24.01.2014 passed by the Commissioner(Appeals-II) Customs Central Excise & Service Tax Hyderabad.

ORDER

The revision application has been filed by M/s Applabs Technologies Private Limited(Now known as 'M/s. DXC Technologies India Pvt. Ltd.),Bldg. No. 4, Raheja Mindspace, Hitech City, Madhapur,Hyderabad, Telangana, India-500081' (hereinafter referred to as "the applicant") against Order-in-Appeal No. 22/2014 (H-IV)S.Tax dated 24.01.2014 passed by the Commissioner(Appeals-II) Customs Central Excise & Service Tax Hyderabad.

2. Brief facts of the case are that the applicant have filed an application on 29.04.2013 for Rebate of Service Tax (of Rs. 2,23,46,970/-) said to have been paid on the taxable services exported during May 2012, in terms of rule 5 of Export of Services Rules, 2005 read with Notification No. 11/2005-ST dated 19.04.2005. Along with the application for Rebate, the applicant have submitted the Application

(i) Form ASTR-1 for Rebate of Rs.2,23,46,970/-

(ii) Copy of SOFTEX Form

(iii) Copy of export invoices and

(iv) Copy of the FIRCS.

During the course of verification of the exported invoices, it is noticed that the nature and details of services exported is not clearly mention in the exported invoice. Further, it is noticed in the rebate application that the applicants claimed to have exported the services under "Information Technology Software Services" but in all the export Invoices, it is noticed that they exported the services under "Profession Service Fee"; in the SOFTEX Form, the payments were received for "Software Testing Service"; and from the FIRCS, the payments are received for "Advance Receipts, Software Development Invoice", etc. Hence, without knowing the exact nature and details of service exported by the applicant, it cannot be considered that service exported by them are as taxable services under Section 65 of the Finance Act, 1994 as amended, and therefore, the Cenvat Credit availed on the input services by them cannot be eligible rebate as it is not in compliance of Rule 3(1) & Rule 3(2) of the Export of Services Rules, 2005 and in terms of Para 2(a) of Notification No.11/2005-ST dated 19 04 2005. Further it is also not clear from the FIRCS that the payments received by them were pertaining to the claimed exports. It was further found that the applicant had not paid the service tax on the services exported vide the export invoices and as such the question of rebate of service tax does not arise. Being aggrieved by the aforesaid order-in-original the applicant filed appeal before the Commissioner(Appeals-II) Customs Central Excise

& Service Tax Hyderabad., who vide Order in Appeal No. 22/2014 (H-IV)S.Tax dated 24.01.2014 rejected their appeal and upheld the Order in Original.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application under Section 35EE of the Central Excise Act, 1944 before the Government.

4. Personal hearing in this case was fixed for 24.09.2021, Shri Rahul Shekhar, consultant and Shri Arihant Sipani,Consultant appeared online on behalf of the applicant and reiterated the submissions earlier made. They submitted that not mentioning of tax amount on invoices is a procedural requirement. Tax was paid through Cenvat credit. They relied on judgment of I&PG Technologies decided in 2018 by Banglore Tribunal.

5. Government has carefully gone through the relevant case records, perused the impugned Order-in-Appeal, the Order-in-Original, the revision application and the submissions filed by the applicant. It is observed that the dispute is regarding admissibility of rebate of service tax paid on output taxable service rendered by the applicant for which they have filed claim under Rule 5 of the Export of Services Rules, 2005 read with Notification No. 11/2005-ST dated 19.04.2005.

6. Government observes that the Notification No. 11/2005-ST dated 19.04.2005 has been issued in exercise of the powers conferred by Rule 5 of the Export of Services Rules, 2005. The preamble of the notification is reproduced below for a better appreciation of its ambit.

> *"In exercise of the powers conferred by rule 5 of the Export of Service Rules, 2005 (hereinafter referred to as the said rules), insofar as it relates to export of taxable services to the countries other than Nepal and Bhutan, the Central Government hereby directs that there shall be granted rebate of the whole of the service tax and cess paid on all taxable services exported in terms of rule 3 of the said rules, to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter, -"*

It is clear from the text that the service tax and cess paid on the output services exported is rebated in terms of this notification.

7. The powers for revision under the statute are limited to certain matters. The powers of revision in the Central Excise Act, 1944 in Section 35EE of the Act are exercisable in cases where the order is of the nature referred to in the first proviso

to sub-section (1) of Section 35B of the CEA, 1944. Amongst other matters which are covered by the powers of revision vested in the Central Government, the part relating to rebate mentioned in the first proviso to sub-section (1) of Section 35B of the CEA, 1944 specified orders relating to *"a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India"*. Therefore, the two types of rebate cases which were specified for exercise of revisionary powers vested in the Central Government under Section 35EE were rebate of duty paid on exported goods and rebate of duty paid on excisable materials(inputs) used in the manufacture of exported goods. *This proviso clearly does not mention rebate of service tax paid on taxable services which are exported.*

7.1 Revision Applications in service tax matters are filed before the Central Government as per the provisions of Section 35EE of the CEA, 1944(made applicable to service tax matters by Section 83 of FA, 1994) in terms of the first proviso of sub-section (1) of Section 86 of the FA, 1994. The Section 86 specifies the orders which are to be appealed against before the Appellate Tribunal with a proviso for exceptions where revision application is to be preferred. The Section 86 of the FA, 1994 is reproduced below for the sake of lucidity.

"Section 86. Appeals to Appellate Tribunal. –

(1) Save as otherwise provided herein an assessee aggrieved by an order passed by a Principal Commissioner of Central Excise or Commissioner of Central Excise under section 73 or section 83A by a Commissioner of Central Excise(Appeals) under section 85, may appeal to the Appellate Tribunal against such order within three months of the date of receipt of the order.

*Provided that **where an order, relating to a service which is exported**, has been passed under section 85 and the matter relates to grant of rebate of service tax on input services, or rebate of duty paid on inputs, **used in providing such service**, **such order** shall be dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944(1 of 1944).*

Provided further that all appeals filed before the Appellate Tribunal in respect of matters covered under the first proviso, after the coming into force of the Finance Act, 2012(23 of 2012), and pending before it up to the date on which the Finance Bill, 2015 receives the assent of the President, shall be transferred and dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944(1 of 1944)."

7.2 Sub-section (1) of Section 86 of the FA, 1994 stipulates that appeals against orders of Commissioner(Appeals) are to be filed before the Appellate Tribunal. However, a specific category has been carved out of these orders in the first proviso to sub-section (1) of Section 86; viz. orders relating to grant of rebate of service tax

on input services and rebate of duty paid on inputs where services have been exported are directed to be dealt with in accordance with the provisions of Section 35EE of the CEA, 1944. Unmistakeably, the category of rebate of service tax paid on taxable service exported does not fall in the exception category and therefore the assessees aggrieved by these orders cannot obtain relief by filing revision applications under Section 35EE.

7.3 The Notification No. 11/2005-ST dated 19.04.2005 has been issued specifically for grant of rebate of service tax paid on taxable services which have been exported. Therefore, the remedy for an applicant who is aggrieved by an order passed by Commissioner(Appeals) involving Notification No. 11/2005-ST dated 19.04.2005 would lie before the Appellate Tribunal; i.e. the Hon'ble CESTAT. It is observed that this issue has been discussed by the Hon'ble CESTAT in Vodafone Mobile Services Ltd. vs. Commissioner of Service Tax, Pune[2016(45)STR 301(Tri-Mum)].

"5. I find that though as per the provision .....

From the above Section 86 there is explicit provision by which the order relating to grant of rebate of service tax on input, service tax or rebate of duty paid on input have been carved out for appeal before this Tribunal and in such cases the assessee is required to file revisionary application under Section 35EE. However, in the said provision, the rebate of service tax paid on output service has not been carved out therefore present appeal on the issue of rebate of service tax paid on output service exported out of India is maintainable before this Tribunal. As regard the contention of the ld. AR that Section 35EE is applicable in the service tax matters by virtue of Section 83, I am of the view that though Section 35EE is applicable but only for the cases related to rebate of service tax paid on input service or duty paid on inputs which were used in the export of services. Since there is independent provision under Section 86 in such cases Section 35B need not to be resorted. Therefore, the present appeals are maintainable....."

8. Government concludes that since the present case involves rebate of service tax paid on taxable services which have been exported, the matter is beyond the scope of the revisionary powers vested in the Central Government under Section 35EE of the CEA, 1944 read with the proviso to sub-section (1) of Section 86 of the

FA, 1994. In the result, the revision application filed by the applicant is not maintainable under Section 35EE of the CEA, 1944.

9. The revision application filed by the applicant is dismissed as non-maintainable for lack of jurisdiction.

Shrawan 22/3/22

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

ORDER No. 27 /2022-ST (SZ) /ASRA/Mumbai DATED 22.3.2022

To,
M/s. Applabs Technologies Private Limited,
6th Floor, DLF Building, Plot No. 129-132,
APHB Colony,Gachibowli,Hyderabad-500019.

Copy to:

1) The Commissioner of CGST & CX, Rangareddy Commissionerate,Ponsett Bhavan,Ramkoti,Hyderabad.
2) The Commissioner of Customs Central Excise & Service Tax(Appeals-II), 7th floor, Kendriya Shulk Bhavan,LB Stadium Road, Basheer Bagh,Hyderabad-500004.
3) The Deputy Commissioner Service Tax,Division-I,Hyderabad-IV Commissionerate,POSNET Bhavan,Tilak road ,Hyderabad-500001.
4) Sr. P.S. to AS (RA), Mumbai
5) Guard file