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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. 196/19-20/SZ/2018-RA | 1318 Date of Issue: 07.03.2022

ORDER NO.31-320/2022-ST (SZ) /ASRA/MUMBAI DATED 31 .03.2022 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 Ford Motor Pvt. Limited,
Campus 1B, RMZ Millenia, No.143,
Dr. MGR Road, North Veeranam Salai,
Perungudi, Chennai – 600 096.

Respondent : Commissioner of CGST,
Chennai South Commissionerate.

Subject : Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 76, 77/2018 (CTA – II) dated 28.02.2018 passed by Commissioner (Appeals - II), GST & Central Excise, Chennai.

ORDER

The subject Revision Application has been filed by M/s Ford Motor Pvt. Limited, Chennai (here-in-after referred to as 'the applicant') against the impugned Order-in-Appeal dated 28.02.2018 passed by the Commissioner (Appeals - II), CGST & Central Excise, Chennai. The said Order-in-Appeal disposed of appeals against two Orders-in-Original passed by the Assistant Commissioner, Refund/Rebate Legacy Cell – II, Chennai South Commissionerate, which in turn disposed of two rebate claims filed by the applicant.

2. - Brief facts of the case are that the applicant filed two rebate claims under notification no.39/2012-ST dated 20.06.2012 as amended by notification no.03/2016-ST dated 03.02.2016, for the period July 2016 to December 2016, seeking rebate of Swatch Bharat Cess (SBC) paid on the input services used by them towards services exported by them. The same were rejected by the original Adjudicating Authority on two grounds. The first one being that as per para 2(a) of notification no.27/2012-CE (NT) dated 18.06.2012 an output service provider could not submit more than one claim of rebate under Rule 5 of the Cenvat Credit Rules, 2004 for a particular period, and, since the applicant had already availed of the refund of accumulated Cenvat Credit, they were not eligible to file the instant claims seeking rebate of the SBC for the same period. The second reason was that the applicant had failed to file a declaration as required by notification no.39/2012-ST dated 20.06.2012 and had hence failed to fulfill the conditions stipulated at paras 3.1, 3.2 and 3.3 of the said notification.

3. Aggrieved, the applicant filed appeals before the Commissioner (Appeals) against the said Orders-in-Original resulting in the impugned Order-in-Appeal dated 28.02.2018. The Commissioner (Appeals) found that since SBC was not cenvatable, refund of the same could not be claimed under Rule 5 of the Cenvat Credit Rules, 2004 and hence rejection of the same by invoking provisions of notification no.27/2012-CE (NT) dated 18.06.2012 was incorrect. The Commissioner (Appeals) set aside the order

of the original Adjudicating Authority to that extent. Further, as regards the applicant not having submitted the mandated declaration, the Commissioner (Appeals) took cognizance of the submission of the applicant that they had submitted the same on 27.04.2017 and remanded the case back to the original Adjudicating Authority for verification of the said declaration and deciding the case afresh.

4. Aggrieved, the applicant has filed the subject Revision Applications against the Order-in-Appeal on the following grounds:-

(a) The Commissioner (Appeals) had held that they were eligible for rebate of SBC under Notification No. 39/2012-ST but had erred in remanding the matter for the sole purpose of verification of the rebate declaration prescribed under para 3 of the Notification No.39/2012-ST, as filing of the said declaration was merely procedural in nature;

(b) The substantive conditions to be satisfied for the purpose of claiming rebate under Notification No.39/2012-ST prescribed under para 2 of the said Notification had been satisfied in the present case and hence the impugned Order-in-Appeal was incorrect to the extent of remanding the matter for verification of the said declaration;

(c) There was no dispute that they had satisfied the conditions prescribed at Para 3.4 of the said notification and that there was no nexus between the conditions stipulated at para 3.1 and 3.4 and hence they were eligible to claim the rebate they applied for;

(d) That they could not be denied substantive benefit of rebate claim on the ground of non-fulfilment of procedural requirements under para 3.1, 3.2 and 3.3 of the said notification;

(e) That when there is no specific mention of the mandatory nature of filing of Declaration under para 3 of the Notification, the same could not be imported into the wordings of the Notification to remand the proceedings for further verification; and that the sanction of the rebate claim should not be withheld from them because of mere procedural aspects of the Notification

No. 39/2012-ST were not followed inasmuch as the declaration was not filed prior to export of service;

(f) It was a settled and an internationally accepted principle that only goods are to be exported and not taxes/duties paid on the same; that the benefit of rebate under Notification no.39/2012-ST is an incentive to promote exports and that the object of the entire scheme was that the goods were to be exported and not taxes;

(g) They relied on the case of Ford India Ltd vs. Asst. CCE [2011 (272) ELT 353 (Mad)] wherein it was held that as long as there was substantial compliance and the factum export was not in doubt, rebate being a beneficial scheme situation, the compliance of procedural requirement should be interpreted liberally.

(h) They placed reliance on the following case laws in support of the above arguments:-

(i) Aircheck India P. Ltd vs Commissioner of CGST, Mumbai West [2019 (24) G.STL (Tri- Mumbai)]
(ii) Union India v. A.V. Narsimahalu [1983 ELT. 1534 (SC)]
(iii) Jocund India before the Government of India, Ministry of Finance [2015 (330) ELT. 805 (G.O.I)]
(iv) Forging Machinery Manufacturing Co. vs CCE & ST, Jalandhar [2018 (364) ELT 208 (Tri-Chen)]
(v) Themis Medicare Ltd [2014 (313) E.L.T. 924 (G.O.I.)]
(vi) Innodata India Pvt. Ltd. [2018 (364) E.L.T. 1168 (G.O.I)]
(vii) Raj Petro Specialities vs UOI [2017 (345) ELT 496 (Guj)]
(viii) Crest Premedia Solutions Pvt. Ltd. v. CCE, Pune-III, [2015 (38) S.T.R. 46 (Tri-Mumbai)]
(ix) CST vs Convergys India Pvt. Ltd. [2010 (20) S.T.R. 166 (P&H)]
(x) Harsh Constructions Pvt. Ltd v. CCE, Nashik [2019 (3) TMI 1679-CESTAT Mumbai.

In light of the above, the applicant prayed that the impugned Order-in-Appeal may be set aside to the extent of the remand ordered and that their rebate claims be sanctioned.

5. Personal hearing in the matter was granted to the applicant on 23.12.2021. Shri Sai Prashanth and Shri S. Dev, both Advocates, appeared online on behalf of the applicant. They submitted that the Commissioner (Appeals) had already agreed to the eligibility of rebate, however, he had remanded the matter for verification of a declaration to be filed under notification no.39/2012-ST. They submitted that procedural requirement of filing declaration should not deprive them of their right of rebate once there is no dispute on payment of tax on export of services. They mentioned several judgments of the Hon'ble High Court in this regard.

6. Government has carefully gone through the relevant records, the written and oral submissions and also perused the impugned Orders-in-Original and the impugned Order-in-Appeal.

7. Government observes that the issue involved in the present case relates to the admissibility of the rebate claims filed by the applicant claiming the SBC paid on the input services used towards outward services exported by them. Government notes that of the two counts on which the claims were rejected by the original authority; the Commissioner (Appeals) has set aside the first objection - that of non-compliance of the conditions of notification no.27/2012-CE (NT) dated 18.06.2012. As regards the second reason viz., non-filing of declaration in terms of para 3.1 of notification no.39/2012-ST dated 20.06.2012; the Commissioner (Appeals) remanded the case back to the original authority with directions to decide the case afresh after verifying the claim of the applicant that they had filed the said declaration. Government notes that the applicant vide the present application has contested the decision of the Commissioner (Appeals) to remand the case back, on the grounds that non-filing of the said declaration was a mere procedural lapse and non-fulfillment of the same should not deprive them of the substantive benefit of rebate of SBC and hence the rebate claimed should have been allowed to them.

8. Government notes that in the present case, as it stands now, the rebate claims have not been sanctioned to the applicant for the sole reason that they had failed to file the declaration under para 3.1 of the notification

no.39/2012-ST dated 20.06.2012. As the crux of the issue involves the non-filing of the said declaration, which apparently lead to non-fulfillment of the conditions required under para no.3.1, 3.2 and 3.3 of notification no.39/2012-ST dated 20.06.2012, Government finds it is pertinent to examine the relevant portion of the said notification before proceeding any further. Paras 3.1, 3.2, 3.3 and 3.4 of the notification is reproduced below:-

> *"**3.1 Filing of Declaration.**- The provider of service to be exported shall, prior to date of export of service, file a declaration with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, specifying the service intended to be exported with,-*
>
> *(a) description, quantity, value, rate of duty and the amount of duty payable on inputs actually required to be used in providing service to be exported;*
> *(b) description, value and the amount of service tax and cess payable on input services actually required to be used in providing service to be exported.*
>
> ***3.2 Verification of declaration.**- The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall verify the correctness of the declaration filed prior to such export of service, if necessary, by calling for any relevant information or samples of inputs and if after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is satisfied that there is no likelihood of evasion of duty, or as the case may be, service tax and cess, he may accept the declaration.*
>
> ***3.3 Procurement of input materials and receipt of input services.**- The provider of service to be exported shall,-*
>
> *(i) obtain the inputs required for use in providing service to be exported, directly from a registered factory or from a dealer registered for the purposes of the CENVAT Credit Rules, 2004 accompanied by invoices issued under the Central Excise Rules, 2002;*
>
> *(ii) receive the input services required for use in providing service to be exported and an invoice, a bill or, as the case may be, a challan issued under the provisions of Service Tax Rules, 1994.*
>
> ***3.4 Presentation of claim for rebate.-***
>
> *(a) (i) claim of rebate of the duty paid on the inputs or the service tax and cess paid on input services shall be filed with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, after the service has been exported;*

(ii) such application shall be accompanied by, -

(a) invoices for inputs issued under the Central Excise Rules, 2002 and invoice, a bill, or as the case may be, a challan for input services issued under the Service Tax Rules, 1994, in respect of which rebate is claimed;
(b) documentary evidence of receipt of payment against service exported, payment of duty on inputs and service tax and cess on input services used for providing service exported, rebate of which is claimed;
(c) a declaration that such service, has been exported in terms of rule 6A of the said rules, along with documents evidencing such export.

(b) The jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, having regard to the declaration, if satisfied that the claim is in order, shall sanction the rebate either in whole or in part."

A reading of the above portion of the notification, indicates that –

- As per para 3.1, the applicant was required to file a declaration which specified the service to be exported along with the description, value and the amount of service tax and cess payable on the input services that were required to be used in providing services which were exported;
- Para 3.2 specifies the nature of verification to be conducted by the jurisdictional Assistant Commissioner with respect to the declaration filed by the applicant; and
- As per para 3.3, such input services were required to be received by the applicant under the cover of an invoice, bill or challan under the provisions of the Service Tax Rules, 1994.
- As per para 3.4, the applicant was required to submit invoices/bill/challans under which the input service was procured indicating the quantum of service tax and cess paid thereon; proof of receipt of payment from their customer abroad and a declaration that the services were exported with documents evidencing the same.

9. Government finds that the declaration required to be given by the applicant as per para 3.1 was limited to providing details of the nature of service to be exported and the input services and the amount of service tax payable on the same. On examining para 3.4 of the same notification

Government finds that while filing the claim for rebate, the applicant was required to submit all such details along with documentary evidence pertaining to the input services and outward service that was mandated by para 3.1. It is the case of the applicant that they had submitted the same, a claim which has not been disputed by the original adjudicating authority. Given this fact, Government finds that non-filing of declaration under para 3.1 is a mere procedural lapse as it has not resulted in the rebate sanctioning authority being denied access to any data required to be submitted by the applicant for processing the rebate claims in question.

10. Further, Government notes that in this case the applicant has already been granted refund of the Cenvat credit of the service tax paid on the input services under Rule 5 of the Cenvat Credit Rules, 2004, for the same period for which the rebate claims for SBC have now been filed, a fact recorded by the Order-in-Original dated 23.10.2017. It is a fact that during the said period, SBC was payable wherever service tax was paid. Given the fact that the applicant was already granted refund of the component of service tax paid on the input services by way of refund under Rule 5 of the Cenvat Credit Rules, 2004, Government finds that there should be no reason to deny them the rebate of SBC on the very same input services, as SBC was an integral part of the tax structure at the material time. Government finds that no case has been made out in the Show Cause Notice that the applicant had sought to avail refund/rebate on input services not used by them in the outward service exported by them or that they had claimed SBC where it was not paid.

11. In light of the above findings, Government holds that the non-filing of the declaration in terms of para 3.1 of the notification no. 39/2012-ST dated 20.06.2012 by the applicant to be a procedural lapse and that the substantive benefit of rebate of the SBC paid on input services utilized for export of service cannot be denied to them for such procedural lapse. Government finds support in the judgment of the Hon'ble High Court in the case of UOI vs Farheen Texturisers [2015 (323) ELT 104 (BOM)] wherein it was held that substantive benefit should not be denied on ground of procedural lapses, a decision which was upheld by the Apex Court [Union of India vs. Farheen Texturisers – [2015 (323) E.L.T. A23 (S.C.)]. Having held

so, Government finds the decision of the Commissioner (Appeals) to remand the case back to the original adjudicating authority to determine the case afresh to be incorrect, as both the grounds on which the rebate claims were rejected by the original authority in the first place have been found to be unsustainable and hence there is no cause for the rebate claims in question to be subjected to scrutiny all over again.

12. The impugned Order-in-Appeal stands modified to the above extent.

13. The Revision Applications are allowed.

Shrawan 31/3/22

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

ORDER No.31-32/2022-ST(SZ) /ASRA/Mumbai dated31.03.2022

To,

M/s Ford Motor Pvt. Limited,
Campus 1B, RMZ Millenia, No.143,
Dr. MGR Road, North Veeranam Salai,
Perungudi, Chennai – 600 096.

Copy to:

1. The Commissioner of CGST, Chennai South Commissionerate, 692, M.H.U. Complex, Nandanam, Chennai – 600 096.
2. The Commissioner (Appeals - II), GST & Central Excise, Chennai, Newry Towers, 3rd floor, Plot No.2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040.
3. Sr. P.S. to AS (RA), Mumbai
4. Notice Board.