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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, Cuffe Parade,
Mumbai- 400 005

F.No. 196/09/WZ/ST/18-RA/1564

Date of Issue: 05.05.2022

ORDER NO. 49 /2022-ST(WZ)/ASRA/MUMBAI DATED 28.04.2022
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 Barclays Wealth Trustees (India) Pvt. Ltd.

Respondent: Commissioner CGST & Central Excise (Appeals-II), Mumbai.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944, against the Order-in-Appeal No.
PK/373/MC/2017 dated 02.01.2018 passed by the
Commissioner CGST & Central Excise (Appeals-II), Mumbai.

ORDER

This Revision Application has been filed by M/s Barclays Wealth Trustees (India) Pvt. Ltd. situated at 208, Ceejay House, Shiv Sagar Estate, Dr Annie Besant Road, Worli, Mumbai-18 (hereinafter referred to as "the applicant"), against the Order-in-Appeal No. PK/373/MC/2017 dated 02.01.2018 passed by the Commissioner CGST & Central Excise (Appeals-II), Mumbai.

2. The applicant were registered with Service tax for providing taxable service namely 'Business Support Service' & 'Banking and Other Financial Service' as defined under Section 65(105) of the Finance Act, 1994. The applicant had filed rebate claim of Rs.23,86,940/- in terms of Notification 11/2005 dated 19-04-2005 as amended read with Rule 5 of Export of Service Rules, 2005, on the grounds that they have exported taxable service under claim for rebate for the services exported during the period April 2012 to June 2012 as per the said Rules. The Assistant Commissioner, Service Tax-I, Dn-I, Mumbai vide OIO No.RS/R-121/2013 dated 31.07.2013, rejected the rebate claim on the grounds that: (i) the applicant has not fulfilled the conditions given in the Notification 11/2005 in as much as the supporting documents as required were not furnished; (ii) Service must be exported in terms of Rule 3 of Export of Services Rules and relevant declaration was not filed; (iii) Documentary evidence proving the payment of taxes claimed as rebate was not submitted; (iv) there is no nexus between the services described in the invoices with those in the work order and (v) the claim was filed after one year from the relevant date.

3. Aggrieved by the said Order, the applicant filed appeal with the Commissioner Appeal. Commissioner Appeal vide his Order-in-Appeal No. PK/373/MC/2017 dated 22.12.2017 upheld the A.C's Order and rejected the applicant's appeal.

4. Aggrieved by the Commissioner Appeal's Order, the applicant filed the present Revision Application on the grounds that they have duly complied with all the conditions of the Notification No. 11/2005 dated 19.04.2005 in as much as they have exported the services and Service Tax has been paid on the said services which is duly disclosed in the Service Tax Returns. The applicant was granted personal hearing on 07.12.2021 or 14.12.2021. Shri Mihir Mehta, Advocate appeared online on 14.12.2021 and also submitted written submissions. He submitted that there is correlation and their claim is eligible. He informed that a brief submission will be made within a week.

5. Government has carefully gone through the relevant case records, perused the impugned Order-in-Original, Order-in-Appeal and the Revision Applications filed by the applicant. Government notes that the issue to be decided in this case is regarding admissibility of the rebate of service exported as claimed by the applicant in terms of Notification No. 11/2005-ST dated 19.04.2005 read with Export of Service Rules, 2005.

6.1. Government finds that the Revision Applications in Service Tax matters are filed before the Government of India as per the provisions of Section 35EE of the Central Excise Act, 1944 (made applicable to service matters by Section 83 of the Finance Act, 1994) in view of Section 86 of the Finance Act, 1994 and the same is reproduced below:

"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)."

6.2. Sub-section (1) of Section 86 of the Finance Act, 1994 stipulates that all appeal against Orders of Commissioner Appeal are to be filed before the Appellate Tribunal except those cases where the orders are relating to grant of rebate of service tax on input services, or rebate of duty paid on inputs where services have been exported. These case have been directed to be dealt with in accordance with the provisions of Section 35EE of the Central Excise Act, 1944. Government finds in the instant case, the dispute is in respect of the admissibility of the rebate claimed on the services exported as claimed by the applicant and this category does not fall in the aforesaid exception category and the applicant aggrieved by these order must file appeals before the Appellate Tribunal.

7. Government concludes that the present case involves admissibility of rebate of service tax paid on services exported and therefore remains outside the jurisdiction of this office. Hence the Revision application filed by the applicant is not maintainable under Section 35EE of the Central Excise Act, 1944.

8. In view of the above discussions, the revision application filed by the applicant is dismissed as non-maintainable due to lack of jurisdiction.


(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 44 /2022-ST (WZ)/ASRA/Mumbai DATED 28.04.2022

To,
M/s Barclays Wealth Trustees (India) Pvt. Ltd.,
208, Ceejay House,
Shiv Sagar Estate,
Dr Annie Besant Road,
Worli, Mumbai-18

Copy to:

1. The Principal Commissioner of CGST, Mumbai Central, GST Building, 115, M.K.Road, Opp Churchgate Station, Mumbai-20.
2. The Commissioner (Appeals-II) CGST & CEx, Mumbai, 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, Bandra Kurla Complex, Bandra (East), Mumbai-51
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file.
5. Notice Board.