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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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. 196/04-06/SZ/2020-RA/1944 Date of Issue: 19/05/2022

ORDER NO. 61-63 /2022-ST(SZ)/ASRA/MUMBAI DATED 18.05.2022 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. Standard Chartered Global Business Services (P) Limited

Respondent: Commissioner of Central Excise, Chennai-I, Commissionerate.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. 10-12/2020 (CTA-I) dated 22.01.2020 passed by the Commissioner (Appeals-I), GST & Central Excise, Chennai.

ORDER

This Revision Application has been filed by M/s. Standard Chartered Global Business Services (P) Limited, No.1, Haddows Road, Nungambakkam, Chennai – 600 034 (hereinafter referred to as "the Applicant") against Orders-in-Appeal No. 10-12/2020 (CTA-I) dated 22.01.2020 passed by the Commissioner (Appeals-I), GST & Central Excise, Chennai.

2. Brief facts of the case are that the Applicant, a registered service provider, had filed three claims in Form ASTR-2 on 15.11.2017, seeking rebate of Swachh Bharat Cess paid on input services utilized by them, in terms of Notification No. 39/2012-ST dated 20.06.2012 as amended vide Notification No. 3/2016-ST dated 03.02.2016, for the period Apr-2016 to Dec-2016. On verification of the documents submitted by the applicant, it appeared that the declaration of non-availing of CENVAT credit on input services on which rebate had been claimed was not factually correct as per the conditions and limitations prescribed under Notification 39/2012-ST dated 20.06.2012. Hence, three Show Cause Notices, all dated 27.02.2018 were issued by the Department which were followed by a corrigendum dated 20.02.2019 rectifying the errors in the said three Show Cause Notices and adding limitation of time clause as per section 11B as one of the causes proposing rejection of claims. After due process of law, the adjudicating authority vide Order-in-Original No. 01-03/2019-20-(R) dated 25.06.2019 sanctioned the rebate amount of Rs.2,90,22,467/- and rejected an amount of Rs.6,33,350/-, being ineligible. Aggrieved, the Department filed an appeal, on the grounds that entire claim was hit by limitation clause as provided under Section 11B of the Central Excise Act, 1944. The Commissioner (Appeals), vide the impugned Order-in-Appeal, allowed the appeal and held that as the rebate claims were filed on 15.11.2017, hence the rebate for the period 16.11.2016 to 31.12.2016 was eligible, while for the period Apr-16 to 15.11.2016 was ineligible being hit by period of limitation.

3. Hence, the Applicant filed the impugned Revision Application mainly on the grounds that:

(a) The time limit specified under section 11B of the CEA is inapplicable to rebate claim of SBC made under Notification No. 39/2012-ST dated 20.06.2012 as amended by Notification No. 03/2016 dated 03.02.2016.

(b) The impugned Order draws sustenance from precedents that are inapplicable to the facts and circumstances of the present case, and hence, merits to be set aside.

(c) Without prejudice, even if Section 11B is said to be applicable to the Impugned Notification, time-limit is to be reckoned only from the date of receipt of Foreign Inward Remittance Certificate (FIRC).

i 'relevant date' defined under section 11B is incapable of application to 'export of services'. In such a case, enforcement of time-limit cannot be insisted. The insistence on fulfillment of such a criterion leads to *Lex non-cogit ad imposibilia,* which means that the law cannot ask a person to do the impossible.

ii The Larger Bench in the case of CCE v. Span Infotech (India) Pvt. Ltd. [2018 (12) GSTL 200 (Tri.- LB)] noted that the definition of relevant date in Section 11B does not specifically cover the case of export of services and thus observed that if at all the provision is to be made applicable, it is necessary to interpret the provisions constructively so as to reach its logical end. By reference to the Service Tax Rules, 1994 and the Export of Services Rules, 2005, it was observed that export of services is completed only upon receipt of the consideration in foreign exchange. Consequently, the date of Foreign Inward Remittance Certificate (FIRC) becomes relevant. The Hon'ble Andhra Pradesh High coun in the case of CCE v. Hyundai Motor India Engg (P) Ltd. [2015 (39) S.T.R. 984 (A.P.)I has held that the date of receipt

of consideration may be taken as relevant date. Hence, the one-year time limit is to commence from the date of FIRC.

iii The Applicant submits that Bank Remittance Certificates (BRCs) pertaining to all the export of services made during the impugned period date only from 24.01.2017 onwards. The impugned rebate claims were made on 15.11.2017. Thus, it is evident that the Applicant has filed the rebate claims well within one-year time limit from the date of receipt of the inward remittance certificates and on this score also, the impugned order merits to be set aside

(d) Corrigendum enlarging the scope of SCN is incorrect.

i the Applicant submits that the corrigendum cannot enlarge or substantially alter the scope of the SCN

ii In this regard, reliance is placed on the decision of the Hon'ble Bangalore tribunal in Steel Authority of India Ltd vs. Commissioner of Customs, Visakhapatnam [2007 (210) ELT 150 — Tri. — Bang] and decision of the Hon'ble Bangalore tribunal in Flash Forge Private Limited, 2009 (233) ELT 126 (Tri-Bangalore)

iii the corrigendum to SCN was issued only after receipt of reply to the original SCN, and therefore, the Corrigendum cannot sustain. The Applicant places reliance on the decision of the Hon'ble Mumbai Tribunal in the case of Mahindra and Mahindra v. CCE, Mumbai, [2006 (196) ELT 62 (Tri -Mumbai)] and decision of Chawla Trading Co. v. CCE, [2015 (330 ELT 470 (Tri - Mumbai)]

(e) It is a settled internationally accepted principle that only goods are to be exported and not taxes/duties paid on the same.

i It is the submission of the Applicant that as per the settled position of law, notifications promulgated for the specific purpose of encouragement or promotion of certain beneficial activities are to be construed in a way beneficial to the Applicant.

ii The benefit of rebate under Notification 39/2012-ST is an incentive to promote exports.

iii In this regard, reliance is placed on the judgment of the Hon'ble Bombay High Court in the case of Commissioner v. Indorama Textiles Ltd., 2006 (200) ELT 3 (Bom.) and judgment of the Hon'ble Tribunal in the case of Flat Products Equipments India Limited v. CCE, Belapur, 2011 (272) E.L.T. 104 (Tri. - Mumbai)

4. Personal hearing in the case was fixed for 15.12.2021. S/Shri Raghavan Ramabadran, R. Parthasarthy, Sai Prashanth, Advocates and Ms. Sridevi B., attended the online hearing and reiterated their submissions. They submitted that corrigendum to SCN to disallow rebate was time barred. They further submitted that time limit is not applicable on Cess refund/rebate as Section 11B is not applicable for Service Tax Cess refund.

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

6. Government observes that the main issue in the instant case is whether the rebate claims filed after one year are time barred, being hit by limitation in terms of section 11B of Central Excise Act, 1944.

7.1 Government finds that the export of services is covered under Rule 6A of Service Tax Rules, 1994 and it reads as under:

6A. Export of services - (1) The provision of any service provided or agreed to be provided shall be treated as export of service when,-
(a) the provider of service is located in the taxable territory,
(b) the recipient of service is located outside India,
(c) the service is not a service specified in the section 66D of the Act,
(d) the place of provision of the service is outside India,
(e) the payment for such service has been received by the provider of service in convertible foreign exchange, and

(f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act.

Government observes that all the six requirements need to be fulfilled before a provision of service can be termed as an export of service.

7.2 Government observes that Notification No. 39/2012 - Service Tax dated 20.06.2012 as amended has been issued under Rule 6A of the Service Tax Rules, 1994 and specifies conditions, limitations and procedures for claiming duty paid on excisable inputs or service tax and cess paid on all input services used in providing service exported in terms of rule 6A ibid. The extracts of this notification are reproduced hereunder:

2. Conditions and limitations:-

a) that the service has been exported in terms of rule 6A of the said rules;
b) that the duty on the inputs, rebate of which has been claimed, has been paid to the supplier;
c) that the service tax and cess, rebate of which has been claimed, have been paid on the input services to the provider of service; Provided if the person is himself is liable to pay for any input services; he should have paid the service tax and cess to the Central Government.
d) the total amount of rebate of duty, service tax and cess admissible is not less than one thousand rupees;
e) no CENVAT credit has been availed of on inputs and input services on which rebate has been claimed; and
f) that in case:-
  i. the duty or, as the case may be, service tax and cess, rebate of which has been claimed, has not been paid; or
  ii. the service, rebate for which has been claimed, has not been exported; or
  iii. CENVAT credit has been availed on inputs and input services on which rebate has been claimed,

the rebate paid, if any, shall be recoverable with interest in accordance with the provisions of section 73 and section 75 of the Finance Act, 1994 (32 of 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.*

7.3 Government finds that vide Section 83 of the Finance Act, 1994 certain provisions of the Central Excise Act, 1944, including Section 11B which deals with claims for refund, including rebate, of duty paid, have been made applicable to service tax, as they apply to duty of excise. Section 11B of the Central Excise Act, 1944 provides that any person claiming refund/rebate of duty may make an application for refund to the Assistant/Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in the form and manner prescribed. The appropriate portion of Explanation 'B' to Section 11B(5) ibid which provides the meaning of 'relevant date' is reproduced below:-

(B) "Relevant date" means, -

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable material used in the manufacture of such goods, -

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of dispatch of goods by the Post Office concerned to a place outside India; .....

(b)

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(f) in any other case, the date of payment of duty.

A reading of the above extract clearly indicates that 'relevant date' as provided for by Section 11B of the Central Excise Act, 1944, irrespective of the mode of transport, is the date on which the actual movement of goods to leave India takes place. Like-wise, in the case of export of services, the date of provisions of service would be the 'relevant date' on which export of service is provided. In case, this date is not easily ascertainable, the date of payment of duty/tax would be the relevant date as provided under Section 11B of the Act. Government observes that, the date of receipt of consideration in foreign currency, as pleaded by the Applicant, cannot, by any stretch of imagination, be held to be the relevant date for computing the time limit of one year for filing the rebate claim, as then in those cases where the payment is received in advance and time gap between receipt of advance and export of services is more than one year, an exporter would be required to file claim for rebate even before export of services is completed, and, such interpretation of the law which leads to an absurdity has to be discarded.

7.4 In view of the above, the Government finds that the decision of the original/appellate authority to hold the date of the invoice as the 'relevant date' for computation of the one-year time limit to be proper, as in the case of export of service, issuance of the invoice in respect of the service provided, would be the correct indicator that the service stands exported, which is the primary requisite for claiming rebate. An exporter of service needs to file the rebate claim under Rule 6A of the Service Tax Rules, 1994 within one year from the relevant date thus calculated.

8. In view of the findings recorded above, Government finds no reason to annul or modify the impugned Orders-in-Appeal No. 10-12/2020 (CTA-I) dated 22.01.2020 passed by the Commissioner (Appeals-I), GST & Central Excise, Chennai.

9. The Revision Application is dismissed

Shrawan 18/05/22

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

ORDER No. 61 – 63 /2022-ST(SZ)/ASRA/Mumbai dated 18.5.2022

To,
M/s. Standard Chartered Global Business Services (P) Limited,
No.1, Haddows Road, Nungambakkam, Chennai – 600 034.

Copy to:

1. Pr. Commissioner of CGST,
   Chennai North Commissionerate,
   26/1, Mahatma Gandhi Road,
   Nungambakkam, Chennai – 600 034.

2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.