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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. 196/05-06/WZ/18-RA/2656

Date of Issue: 24.06.2022

ORDER NO. 65-66/2022-CX (WZ)/ASRA/MUMBAI DATED 22-6-2022
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 Aircheck India Pvt. Ltd.

Respondent : Commissioner of GST and CX. (Appeals-III), Mumbai.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.NA/GSTA-
III/MUM/202-203/17-18 dated 27-1-2017 passed by the
Commissioner of Customs of GST and CX. (Appeals-III),
Mumbai.

ORDER

This Revision Application is filed by M/s Aircheck India P. Ltd. (herein after as "the Applicant") having office at Prism Towers, Unit 301/304-A Wing, Off Link Road, Goregaon, Mumbai-400062 against the Order-in-Appeal No. NA/GSTA-III/MUM/202-203/17-18 dated 27-1-2017 passed by the Commissioner of Customs of GST and CX. (Appeals-III), Mumbai..

2. The brief facts of the case are that the Applicant having Service Tax registration, have filed rebate claims amounting to Rs.18,15,375/- and Rs.8,78,668/- for the period Apr. 11 to Sept. 11 and October 11 to March 12 respectively, for the service tax paid on Services exported viz 'Development and supply of content service' under Export of Services Rule, 2005 read with Notification No.11/2005-ST dated 19.4.2005. The said rebate claims were filed on 15.02.2013. On scrutiny of the rebate claims discrepancies were noticed and SCN was issued to the applicant as to why the claim should not be rejected. The refund sanctioning authority vide Order in Original No.ST Div.IV/67-R/2013-14 dated 07.06.2013 rejected the rebate claim of Rs. 18,15,375/- and vide OIO No. ST-II/Div.IV/123-R/2013-14 dated 25.10.2013, sanctioned the rebate claim of Rs. 3,70,766/- and rejected the rebate claim of Rs.5,07,902/- on the grounds that the refund claim was time barred under the provisions of Section 11B of Central Excise Act, 1944. Aggrieved by the said Orders, to the extent of rejected amount, the applicant filed appeal with the Commissioner Appeals.

3 Commissioner Appeals vide OIA No. NA/GST-AIII/MUM/202-203/17-18 dated 27-11-2017 rejected the applicant's appeal and upheld the Order in Original. The applicant has filed the impugned Revision Application against the Commissioner Appeal's Order on the following grounds:

3.1. The applicant submitted that they have satisfied all the conditions of Notification No. 11/2005 ST dated 19th April 2005.

3.2. Notification No. 11/2005 ST dated 19th April 2005 has not given any specific limitation for filing rebate claim. They filed the rebate claim on 15th February 2013 in accordance with the Rule 5 of Export of Service Rules 2005 and Notification No. 11/2005 ST dated 19 April 2005.

Rule 5 of Export of Service Rules 2005 is reproduced below for ready reference

"5. Rebate of service tax. Where any taxable service is exported, the Central Government may, by notification, grant rebate of service tax paid on such taxable service or service tax or duty paid on input services or inputs, as the case may be, used in providing such taxable service and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification."

3.3. Accordingly the procedure, conditions or limitations have been notified by way of issuing Notification No. 11/2005 ST dated 19th April 2005. It is pertinent to note that the said notification does not have any specific provision for time limit for filing of Claim of Rebate. The sub clauses "a" to "d" of Notification No. 11/2005 ST dated 19th April 2005 are the only conditions and limitation to claim rebate under said notification and there is no provision of specific time limit. The Applicant also submitted that the similar process of rebate is given for claiming rebate on provision of specified services by exporters of goods under Notification No. 41/2007 ST dated 06/10/2007. In this notification the specific limit of "Sixty days" is mentioned hence the same is applicable for claims made under Notification No. 41/2007 ST.

3.4. The Applicant also submitted that in case of Kadambari Worldwide Vs Commissioner of Service Tax Delhi ([2015] 64 taxman.com 10 (New Delhi - CESTAT)), the Hon'ble Tribunal is of opinion that Section 11B is not applicable in that case since there is no specific mention therein that the time limit of one year prescribed in 11B will be applicable. It doesn't mean that the section 11B

has been over ruled by Notification No. 41/2012 ST. It simply indicates that the Section 11B has no application in case of Service Tax refund. They also referred to the case of Addi Industries Ltd Vs. Commissioner of Customs and Central Excise ([2014] 46 taxman.com 223(Allahabad)).

3.5. The Applicant submitted that they are claiming the rebate of amount of tax paid on Export of Services, so as to avoid the accumulation of taxes paid on input and input services.

3.6. In Section 11B of Central Excise Act 1994, there is no specific provision for application of refund or rebate of taxes paid during Export of Services. Even the provision is silent about the "relevant date". The applicant produced the provisions of Section 11B for easy reference.

3.7. The applicant referred to the following case laws to substantiate their say:

- a) Commissioner of Service Tax, Mumbai -I Vs M/s. Ambe International (2015-TIOL 1470-CESTAT-MUM)
- b) M/s JUBILANT ENTERPRISES PVT LTD Vs. COMMISSIONER OF CENTRAL EXCISE, MUMBAI-I (2014-TIOL-702-CESTAT-MUM)
- c) DSS IMAGE TECH P. LIMITED VS. COMMISSIONER OF SERVICE TAX, NEW DELHI (2016-TIOL-462-CESTAT-DELHI)
- d) INDIA WIRELESS SOLUTIONS PRIVATE LIMITED, BANGALORE (REPRESENTED BY ITS DIRECTOR Mr. K.R. RAJENDRAN) Vs. COMMISSIONER OF SERVICE TAX, BANGALORE. (2011-TIOL-928-HC KAR-ST)

3.8. The Applicant requested to consider the submissions made above and to set aside the Order-in-Appeal and hold that the rebate of taxable services exported applied under Rule 5 of Export of Service Rules 2005 is rightly admissible and not time barred by Section 11B Central Excise Act 1944.

4. Personal hearing in this case was fixed for 7.12.2021 or 14.12.2021 and 6.01.2022 or 20.01.2022. No one appeared for the hearing.

5. Government has carefully gone through the relevant case records, perused the impugned Orders-in-Original, Orders-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 claimed of the amount of tax paid on services 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. The relevant portion of the Notification is reproduced below:

"Notification No. 11/2005-Service Tax

*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, -*
....."

5.1. 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)."

5.2. 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 of the amount of tax paid on Export of Services as claimed by the applicant and this category does not fall in the aforesaid exception category and the applicant aggrieved by such order must file appeals before the Appellate Tribunal.

6. 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.

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

Shrawan
22/6/22
(SHRAWAN KUMAR)

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

65-66
ORDER No. /2022-ST (WZ)/ASRA/Mumbai DATED 22.06.2022

To,
M/s Aircheck India Pvt. Ltd.
Units 1-4, Prism Towers A-wing,
3rd Floor, Behind Hypercity Off Link Road,
Goregaon (West),
Mumbai-62

Copy to:

1. The Pr. Commissioner of CGST & C.Ex, Mumbai West Commissionerate, Mahavir Jain School, C. D. Barfiwala Road, Juhu, Andheri West, Mumbai-400058.
2. The Commissioner of CGST & Cx (Appeals-III), Mumbai, 9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbag, Parel, Mumbai-12
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.