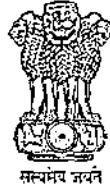


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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/WZ/2019-RA / 2630

Date of issue: 24.06.2022

ORDER NO. 67/2022-ST(WZ)/ASRA/MUMBAI DATED 21.6.2022
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. WDPS Engineered System Support

Respondent : Commissioner of CGST, Navi Mumbai

Subject : Revision Applications filed, under Section 35EE of Central
Excise Act, 1944 against the Order-in-Appeal No.
MKK/498/RGD APP/2018-19 dated 26.02.2019 passed by
the Commissioner of Central Tax, Raigad Appeals.

ORDER

This Revision Application has been filed by M/s. WDPS Engineered System Support, situated at P-2, Block-B, 4th Floor, North side, Godrej IT Park, Pirojshah Nagar, Vikhroli (West), Mumbai - 400 079 (hereinafter referred to as "the Applicant") against Order-in-Appeal No. MKK/498/RGD APP/2018-19 dated 26.02.2019 passed by the Commissioner of Central Tax, Raigad Appeals.

2.1 Brief facts of the case are that the Applicant, a registered service provider, had filed a refund claim of Rs.69,62,882/- under Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No. 27/2012-CE (NT) dated 18.06.2012 with regard to accumulated cenvat credit. The Adjudicating Authority after examining the export of the services and the eligibility of cenvat credit, passed Order-in-Original No. 41/Cen.Ref./AKS/2018-19 dated 03.07.2018 rejecting the entire refund claim on the grounds that part of the claim was hit by limitation of time and some ineligible Cenvat credit had been taken.

2.2 Aggrieved the Applicant filed an appeal. The Appellate Authority, vide impugned Order-in-Appeal, allowed partial refund of Rs.23,35,819/- on the basis of relevant ISD invoices and other documents submitted by the Applicant and rejected the appeal as regards the time barring matter.

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

(a) Time limit for filing of refund application is a procedural law. It is settled law that the substantive benefit should not be denied only on ground of procedural lapse and therefore, refund claim should not be rejected on sole ground of time barred which is a procedural lapse.

(b) The Appellate Authority, in its impugned Order, has not discussed about the ground of procedural lapse. Also, the impugned Order has failed to appreciate the cited judgments of the Hon'ble Apex

Appellate Forum and thereby failed to obey the Judiciary Discipline. The Applicant had placed the reliance on the case of M/s. Ceat Limited Vs. Commissioner of Central Excise Mumbai Zone — II, Navi Mumbai reported in 2019-TIOL-906-HC-MUM-CX wherein, the Hon'ble High Court held that the non-consideration of submission made by the assessee is breach of principal of natural justice.

(c) The Applicant exported "Information Technology Software Services" to its clients located outside India. The Applicant paid Service tax and Cesses on input services which was used for export of services and accordingly, filed the refund claim under notification no.27/2012-CE NT dated 18th June 2012 issued under Rule 5 of CCR, 2004. The Appellate Authority rejected part claim on the ground that refund claimed is time barred. It is submitted that in a situation where the refund claim is disallowed, the amount of Service tax and Cesses paid on input services will be cost to the Applicant and will be added to the price of the services. Therefore, the ultimate price of the services would increase and will be higher than that charged by the Applicant.

(d) As stated above, if refund is disallowed, the amount of Service tax and Cesses paid would be cost to the Applicant and will be added to the price of the services to be exported. Therefore, the ultimate price of the service would increase and would be higher than that usually charged by the Applicant. Due to increase in price of service and due to competition in International Market, the Applicant would not receive/get order, for the supply/provision of service, from its client located outside India and simultaneously, export of service would be decrease/reduce and it would be adversely affect the Economy of India.

(e) The Commissioner (Appeals) has not disputed on the eligibility of CENVAT Credit and Export of Services for which refund has been

claimed. The Commissioner (Appeal) has only disputed on the time limit for the filing of refund claim which is procedural law. Therefore, the impugned Order need to be set-aside to the extent of rejection of claim.

(f) The Applicant was under bona fide belief that filing of refund claim within one year is a procedural law and the claim would not get rejected on ground of procedural lapse.

3.2 The Department vide letter dated 22.12.2021, submitted that:-

- a) The Applicant raised their invoices to their clients and received the consideration in foreign currency in their bank account on 06.01.2017, 08.02.2017, 16.02.2017, 07.03.2017 and 30.03.2017. However, refund application for the period January 2017 to March 2017 under Rule 5 of Cenvat Credit Rules was filed on 14.02.2018 as a result of which refund pertaining to foreign remittance received by the applicant in their bank account on 06.01.2017 and 08.02.2017 is hit by limitation of time for claiming refund;
- b) As per Notification No. 27/2012 CE (NT) dated 18.06.2012 as amended by Notification No. 14/2016 CE (NT) dated 01.03.2016, the refund claim has to be filed before expiry of one year from the date of payment in convertible foreign exchange. Thus, it is mandatory to file the refund claim within one year from the relevant date which also has been held by Hon'ble High Court in the case of Hyundai Motor India Engg. P. Ltd. reported in 2015(39) STR 984 (AP);
- c) The applicant's contention in the subject Revision Application that they were under bona fide belief that the filing of refund claim within one year is procedural law and the claim would not get rejected on ground of procedural lapse does not hold any ground and the subject

Revision Application filed by the Applicant needs to be rejected in totality.

4. Personal hearing in the case was fixed for 02.02.2022. Shri Santosh, Chartered Accountant and Shri Rohit Yadav, Advocate, attended the hearing and reiterated their submissions. They submitted that time limit was a procedural requirement and they should not be denied substantive benefit on procedural lapse/delay of some days.

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 limitation of time stipulated in Section 11B of Central Excise Act, 1944 is a procedural requirement?

7.1 Government observes that the relevant portion of Section 11B of the Central Excise Act, 1944 reads as under:

Section 11B. Claim for refund of duty and interest, if any, paid on such duty -

(1) Any person claiming refund of any ¹[duty of excise and interest, if any, paid on such duty] may make an application for refund of such ²[duty and interest, if any, paid on such duty] to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of ¹[duty of excise and interest, if any, paid on such duty] in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such ²[duty and interest, if any, paid on such duty] had not been passed on by him to any other person :

.....
.....

Explanation. - For the purposes of this section, -

(A) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(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 materials 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

.....
.....

Thus, there is no ambiguity regarding time limit of one year for filing of a rebate claim.

7.2 Government further observes that there is no provision in Section 11B *ibid* for condonation of any delay in filing rebate claim. In this regard, Hon'ble Supreme Court of India in the case of UOI Versus Kirloskar Pneumatics Company [1996 (84) E.L.T. 401 (S.C.)] has held that High Court under writ jurisdiction cannot direct the Custom authorities to ignore time limit prescribed under Section 27 of the Customs Act, 1962, even though, High Court itself may not be bound by the time limit of the said section. *In particular, the Custom authorities, who are the creatures of the Customs Act, cannot be directed to ignore or act contrary to Section 27 of the Customs Act.* The ratio of this Apex Court judgement is squarely applicable to the instant case, as although Section 11 B of the Central Excise Act 1944 provides for the time limit of one year but it has no provision to extend this time limit or to condone any delay.

7.3 Government therefore finds that limitation of one year is a statutory obligation and not a procedural requirement as contended by the Applicant and therefore both the Applicant as well as the Department are bound to ensure its compliance.

8. In view of the findings recorded above, the rebate claim filed after the time limit of one year is rightly rejected by the authorities. Therefore, Government finds no reason to annul or modify the impugned Order-in-Appeal No. MKK/498/RGD APP/2018-19 dated 26.02.2019 passed by the Commissioner of Central Tax, Raigad Appeals.

9. The Revision Application is rejected on the above terms.

Shrawan
21/06/22
(SHRAWAN KUMAR)

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

ORDER No. 67/2022-ST(WZ)/ASRA/Mumbai dated 21.6.2022

To,
M/s. WDPS Engineered Systems Support,
P-2, Block-B, 4th Floor, North side, Godrej IT Park,
Pirojshah Nagar, Vikhroli (West), Mumbai - 400 079.

Copy to:

1. Commissioner of CGST,
Navi Mumbai Commissionerate,
16th Floor, Sector 19-D Satra Plaza,
Palm Beach Road, Navi Mumbai - 400 705

2. Sr. P.S. to AS (RA), Mumbai

3. Guard file

4. Notice Board.