REGISTERED SPEED POST AD

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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. 196/11/WZ/2019-RA / 7562 Date of Issue: 14.12.2022

ORDER No. 87 /2022-ST (WZ) /ASRA/Mumbai DATED 09.12.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944. (MADE APPLICABLE TO SERVICE TAX VIDE SECTION 83 OF THE FINANCE ACT, 1994).

Applicant : M/s. McKinsey & Co. Inc.,
21st Floor, Express Towers,
Nariman Point, Mumbai – 400 021.

Respondents : Pr. Commissioner of CGST, Mumbai South Commissionerate.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the following Order-in-Appeal No. IM/CGST A-I/MUM/474/18-19 Dated 18.02.2019 passed by the Commissioner of Central Excise Appeals-I, Mumbai

ORDER

The Revision Application has been filed by M/s. McKinsey & Co. Inc. (here-in-after referred to as 'the applicant') against the Orders-in-Appeal No. IM/CGST A-I/MUM/474/18-19 Dated 18.02.2019 passed by the Commissioner of Central Excise, Appeals-I, Mumbai.

2. The issue in brief is that the M/s. McKinsey & Co. Inc. ('here-in-after referred to as 'the applicant') are engaged in provision of 'Management and Business Consultants Services' amongst other services had provided management consultancy services to its clients situated in various countries across the world, which amounts to export, under Rule 6A(1) of the Service tax Rules, 1994 during the period under dispute.

3. For providing the exported services applicant had also received various services such as Management Consultancy services from the overseas entities and had paid service tax and cess on these imported invoices under Reverse Charge Mechanism(RCM) and had availed the credit of the service tax paid. They also paid Swachh Bharat Cess(SBC) on the input services amounting to Rs. 22,18,713/- and had manually filed the refund claim of Rs. 22,18,713/- on 09.01.2017 for refund of SBC paid on input service used for export services under Notification No. 39/2012-ST dated 20.06.2012 as amended by Notification No. 3/2016 dated 03.02.2016.

4. The Asstt. Commissioner, Refund-I, Service Tax-I, Mumbai, after issuing a Show Cause Notice rejected the said rebate claim vide his Order-in-Original No. ST-I/R-I/SSD/09/2017-18 Dated 15.05.2017 on the grounds that applicant had failed to fulfill the conditions of Para2(a), (c) & (e) of the Notification No. 39/2012-ST dated 20.06.2012 and that the claim was hit by time limitation for the period upto 08.01.2017 as per section 11B of

the Central Excise Act, 1944 as made applicable to service tax. Also as per Notification No. 3/2016-ST dated 03.02.2016, refund of Swachh Bharat Cess is applicable only from 03.02.2016 as amended by Notification No. 3/2016 dated 03.02.2016.

5. The said Order-in-Original dated 15.05.2017 of the Asst. Commissioner rejecting the claim was challenged by the applicant before the Commissioner (Appeals), who held that there is no legality denying the substantial benefit for technical reasons and the applicants are eligible for Swachh Bharat Cess with effect from 03.02.2016.

6. Aggrieved by the impugned Order in Appeal the applicant has filed the present Revision Application on following grounds :

6.1 **Refund of Swachh Bharat Cess (SBC) is eligible from the date such cess came into effect i.e. from 15th November, 2015**

The Commissioner (A) has allowed the refund of Swachh Bharat Cess(SBC) for the period 03.02.2016 onwards. The same has been allowed on the ground that Notification No. 39/2012-ST dated 20.06.2012 was amended by Notification No. 03/2016 dated 03.02.2016 by which SBC was included. Although Notification No. 39/2012 was amended on 03.02.2016 to include SBC the same was clarificatory in nature and refund of SBC must be allowed for the period from 15th November, 2015 onwards i.e. the date when the SBC was introduced.

Hence, all the provisions as well as rules relating to refunds shall apply to SBC from the date such cess becomes effective and has been specifically provided under the Finance Act. Further, it must be noted that Notification no. 03/2016-Service Tax dated 03.02.2016 as amended. Explanation-1 provided in Notification 39/2012-Service Tax Dated 20.12.2012 explains meaning of service tax and cess which is as follows-

Explanation 1. For the purposes of this notification service tax and cess" means

(A) ----

(D) Swachh Bharat Cess as levied under sub-section (2) of section 119 of the Finance Act, 2015 (20 of 2015).

Clause (d) has been inserted vide Notification 03/2016-Service Tax dated 03.02.2016 by virtue of which SBC levied under section 119(2) of the Finance Act, is also considered as Cess. It is submitted that SBC is levied under section 119(2) from date 15.11.2015. Thus, on harmonious construction, it must be treated that SBC levied under Section 119 (2) will be eligible for refund from 15.11.2015 from itself i.e. the date when such Cess has been levied.

In para 10 of O-1-A, the Commissioner (Appeals) has observed that if the refund is to be allowed from insertion of section 119(5) in the Finance Act, 1994 there was no necessity to issue Notification 03/2016-ST dated 03.02.2016. It is submitted that Notification 03/2016-ST dated 03.02.2016 is clarificatory in nature. The clause (d) inserted through amendment notification shall be applicable from date of levy of SBC ie. 15.11 2015 itself.

The amendment on 03.02.2016 has been made in Explanation of the notification wherein SBC has been included. It is submitted that when explanation has been amended, it shall have retrospective effect. We rely on the judgment of Hon'ble Madras High Court in the case of M/s. Loyal Textile Mills Ltd. 2012 (280) ELT 8 (Mad.) wherein the Hon'ble High) Court has held that explanatory notification is operative from the date of original notification itself. In the said case, the assessee had claimed refund of Education Cess against export of goods, Notification no. 41/2001 grating refund did not include Education cess as one of the duty. However, subsequently in the Explanation, Education cess was included by notification no. 21/2004 dated 06.09.2004. The assessee claimed refund of Education Cess for the period prior to 06.09.2004 which was granted by the Hon'ble High Court.

Thus in view of the above, it is submitted that the amendment made in notification no. 39/2012 dated 20.06.2012 apply retrospectively refund be allowed.

6.2 **In identical matter, Hon'ble Karnataka High Court allowed refund Automobile Cess.**

It is submitted that similar wordings used in section 119(5) Finance Act, 1994, have been used Rule 3 of the Automobile Cess Rules, 1984 while introducing automobile cess.

Rule 3 of the Automobile Cess Rules, 1984 reads follows:

(3) Application of Central Excise Act and the rules made thereunder:- save as otherwise provided in these rules, the provisions of Central Excise Act, 1944 (1 of 1944) and the rules made thereunder including those relating to refund of duty, shall so far as may be, apply in relation to the levy and collection of the cess as they apply in relation to the levy and collection of the duty of excise on manufacture of automobiles under the Act and their Ride"

The said rule has been interpreted by the Hon. Karnataka High Court in the case of M/s. TVS Motor Company Ltd. 2015-(323)-ELT-57 (Kar) and it has been held that the provisions relating to refund with respect to any duty of excise will equally apply to automobile cess. The Hon. High Court allowed the refund of automobile cess to the assesse against the exports, even though the refund Notification No. 19/2004 dated 06/09/2004 did not include automobile cess.

Further, in case of M/s TVS Motor Co. Ltd. V/s Commissioner of Central Excise, Mysore III 2013 (295) E.L.T. 42 (Kar.) the Hon. High court has taken similar view and held that the Cess word also includes Automobile Cess.

Further, in case of M/s Banswara Syntex Ltd. 2007 (216) E.L.T. 16 (Raj.) the Hon. High court has held that Notification providing exemption to the duty of excise will also apply to education cess even if it was not specifically included in the notification. The High Court observed that cess is part of excise duty from the date of levy itself even though notification No. 41/2011 dated 26.06.2001 was subsequently amended to specifically include cess.
The view taken by Rajasthan High Court has been confirmed by Supreme Court in case of M/s SRD Nutrients Pvt. Ltd. 2017 (355) ELT. 481 (S.C.) and assessee was allowed refund of Education cess and Higher Education Cess.

In view of the above judgments, in the present case also refund shall be allowed from the date of levy of SBC ie. 15.11.2015 even though clause of SBC has been specifically inserted from 03.02.2016.

6.3 **Law applicable on the date of filing refund application will apply**

Commissioner (A) has observed that since SBC was inserted in Notification 39/2012-ST dated 20.06.2012 through amendment Notification 03/2016-ST dated 03.02.2016, refund for the period prior to 03.02.2016 will not be allowed.

It is submitted that applicant has filed refund application on dated 09.01.2017 as amended provision of refunds prevailing at the time of filing of refund shall be applicable. On the date of filing refund application, SBC was already included in the notification no 39/2012 dated 20.06.2012 and hence refund of the same must be allowed.

6.4 **Provisions relating to export must always be interpreted liberally**

It has been consistently held that provisions relating to export should always be liberally interpreted and other aspects should not come in the way of granting benefit to the exporter of goods or service. The appellant relies on the judgment in the case of M/s. M. Ambalal & Co. 2010 (260) ELT 487 (SC) wherein it has been held that beneficial exemptions have purpose of encouragement or promotion of certain activities & such notifications should be liberally interpreted.

In M/s. Bajaj Tempo Ltd. reported at 1992 (3) SCC 78, the Hon'ble Supreme Court observed that while interpreting the statute, provision granting incentives for promoting economic growth and development should be liberally construed. Restriction placed on it by way of exception should be construed in a reasonable and purposive manner so as to advance the objective of the provision.

In the present case, the substantive condition provided in the Notification No. 39/2012-ST is that the taxable service should be exported in terms of Rule 6A of Service Tax Rules 1994. This condition has duly been complied by the appellant.

The purpose of amendment made on 03.02.2016 was to ensure that exports remain tax free & benefit of refund must be given to exporters. Hence, the amendment must be applied retrospectively & order rejecting the rebate claim must be set aside.

6.5 **Section 11B of Central Excise Act, 1944 does not apply to refund under Notification No. 39/2012 dated 20.06.2012.**

The applicant is claiming refund of SBC paid under Notification no. 39/2012 dated 20.06.2012. There is no time limit restriction in filing refund claim under the said notification. Hence, where there is no specific time limit in the notification for filing of refund claim, section 11B of Central Excise Act, 1944 cannot be made applicable.

The applicant relies on the judgment of M/s. Quality BPO Service Pvt. Ltd. 2015 (39) STR 230 (Tri. - Ahmd.). Relevant para of the judgment reads as follows:

> *"6. The second point required to be decided is whether non-filing of monthly refunds will make such refund claims time-barred under Section 11B of the Central Excise Act, 1944. Comm. (A) has not discussed this aspect at all and has only held that refund filed by the appellant is time- barred. It is observed from the main body of Notification No. 5/2006-CE (NT), dated 14-3- 2006 that the same is issued under Rule 5 of the Cenvat Credit Rules, 2004 and does not link this refund procedure in any way to the provisions of relevant date under Section 11B of the Central Excise Act, 1944. No time-limit has been prescribed in this Notification also as to within which time the refund claims (monthly basis or quarterly basis) are required to be filed. In view of the above and the case laws relied upon by the appellant, it has to be held that time-limit prescribed under Section 11B of the Central Excise Act, 1944 will not be applicable to the refund claims filed under Notification No. 5/2006-C.E. (N.T.), dated 14-3-2006 which is issued under Rule 5 of the Cenvat Credit Rules, 2004."*

Thus, there is no specific time limit for filing of refund claim under the notification and the time limit prescribed u/s 11B of Central Excise Act, 1994 will not be applicable to the refund claim filed under Notification No. 39/2012-ST.

6.6 **Without prejudice above, even is held that refund shall be allowed only for period after 03.02.2016, refund amount should be rectified.**

a) The Commissioner (Appeals) has allowed refund for period after 03.02.2016 but failed to quantify the amount of refund. Assistant Commissioner in O-i-O (in Para 17) quantified refund amount as Rs. 7,47,410/- for the period after 03.02.2016. It is submitted that the correct amount for the period after 03.02.2016 is Rs. 8,23,642/-.
Thus, even if it is held that refund for the period after 03.02.2016 is only allowed, the differential amount of Rs. 76,232 (ie. Rs. 8,23,642 - Rs. 7,47.410) shall be allowed.

b) Further, Commissioner (A) has allowed refund for period 03.02.2016 to 31.03.2016 and considered total turnover and export turnover for period 15.11.2015 to 31.03.2016 and challans dated March 2016. It is submitted that since Commissioner (A) has allowed refund for period 03.02.2016 to 31.03.2016 the export turnover & total turnover shall also be considered for that period. Further, challans dated February 2016 amounting to Rs. 13,48,161/- shall also be considered while allowing refund for period 03.02.2016 to 31.03.2016.

7. A personal hearing in the case was held on 14.12.2021 Shri Archit Agarwal, and Shri Nishant Mittal, Consultants appeared for hearing on behalf of the applicant. They stated that Swachh Bharat Cess (SBC) should be rebated to them as explanation issued in 2016 should be read from the date of original Notification when it was issued. They informed that some judgement on the matter have been mailed.

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

9. The issue to be decided in the present case is as to whether the applicant is entitled for rebate of SBC paid on services used for export of services under Notification No. 39/2012-ST dated 20.06.2012 as amended by Notification No. 3/2016 dated 03.02.2016 for the period prior to 03.02.2016 or not.

10.1 The Adjudicating Authority in his order dated 15.05.2017 has observed that –

> *" 18. The claimant has filed the refund application for Swachh Bharat Cess on 09.01.2017 for the period November, 2015 to March, 2016. As such, the claim is hit by limitation for the period upto 08.01.2017 as per Section 11B of the CEA, 1944 as made applicable to service tax. ....."*

The applicant has contended that the time limit prescribed under Section 11B of Central Excise Act, 1994 will not be applicable to the refund claim filed under Notification No. 39/2012-ST.

10.2 Government observes that the view that notifications for grant of rebate are not covered by the limitation prescribed by Section 11B of the CEA, 1944 has been agitated before the courts on several occasions. Judgments have been rendered even in central excise matters as both Notification No. 19/2004-CE(NT) dated 06.09.2004 for rebate of duty paid on excisable goods exported and Notification No. 21/2004-CE(NT) dated 06.09.2004 for rebate of duty paid on excisable goods used in the manufacture of export goods did not contain any reference to Section 11B of the CEA, 1944 till they were substituted vide Notification no. 18/2016-CE (N.T.) dated 01.03.2016. The applicants contention that when the relevant notification does not prescribe any time limit, limitation cannot be read into it by an executive implementing the said notification or even by a court interpreting the same is precarious as there are recent judgments where the Honorable Courts have categorically held that limitation under Section 11B of the CEA, 1944 would be applicable to notifications granting rebate. In the judgment of the Hon'ble Madras High Court in Dorcas Market Makers Pvt. Ltd. vs. CCE[2012(281)ELT 227(Mad.)] it was held that time limitation

under section 11B is not applicable to rebate of duties claimed under specific notifications although the same High Court has reaffirmed the applicability of Section 11B to rebate claims in its later judgment in Hyundai Motors India Ltd. vs. Dept. of Revenue, Ministry of Finance[2017(355)ELT 342(Mad.)] by relying upon the judgment of the Hon'ble Supreme Court in UOI vs. Uttam Steel Ltd.[2015(319)ELT 598(SC)]. Incidentally, the special leave to appeal against the judgment of the Hon'ble High Court of Madras in Dorcas Market Makers Pvt. Ltd. has been dismissed *in limine* by the Apex Court whereas the judgment in the case of Uttam Steel Ltd. is exhaustive and contains a detailed discussion explaining the reasons for arriving at the conclusions therein.

10.3 Be that as it may, the observations of the Hon'ble High Court of Karnataka in Sansera Engineering Pvt. Ltd. vs. Dy. Commissioner, Bengaluru[2020(371)ELT 29(Kar)] at para 13 of the judgment dated 22.11.2019 made after distinguishing the judgments in the case of Dorcas Market Makers Pvt. Ltd. and by following the judgment in the case of Hyundai Motors India Ltd. reiterate this position.

> *"13. The reference made by the Learned Counsel for the petitioners to the circular instructions issued by the Central Board of Excise and Customs, New Delhi, is of little assistance to the petitioners since there is no estoppel against a statute. It is well settled principle that the claim for rebate can be made only under section 11B and it is not open to the subordinate legislation to dispense with the requirements of Section 11B. Hence, the notification dated 1-3-2016 bringing amendment to the Notification No. 19/2004 inasmuch as the applicability of Section 11B is only clarificatory."*

10.4 Similarly, in their judgment dated 27.11.2019 in the case of Orient Micro Abrasives Ltd. vs. UOI[2020(371)ELT 380(Del.)], their Lordships have made categorical observations regarding the applicability of the provisions of Section 11B to rebate claims. Para 14 and 15 of the judgment is reproduced below.

> *"14. Section 11B of the Act is clear and categorical. The Explanation thereto states, in unambiguous terms, that Section 11B would also apply to rebate claims. Necessarily, therefore, rebate claim of the petitioner was required to be filed within one year of the export of the goods.*
>
> *15. In Everest Flavours Ltd. v. Union of India [2012(282)ELT 481(Bom.)], the High Court of Bombay, speaking through Dr. D. Y. Chandrachud, J (as he then was) clearly held that the period of one year, stipulated in Section 11B of the Act, for preferring a claim of rebate, has necessarily to be complied with, as a mandatory requirement. We respectfully agree."*

10.5 In such manner, the Hon'ble High Courts of Karnataka and Delhi have reiterated the fact that limitation specified in Section 11B would be applicable to rebate claims even though the notifications granting rebate do not specifically invoke it. Applying the same analogy, it would follow that the benefit of rebate available to a claimant under Notification No. 39/2012-ST dated 20.06.2012 would only be available by and through the machinery of Section 11B of the CEA, 1944 made applicable to service tax matters through Section 83 of the Finance Act, 1994. Needless to say, the time limit for filing rebate claims specified under Section 11B would automatically be applicable. The applicant has sought to colour the applicability of Section 11B as "generic in nature" as it covers the scenario relating to export of goods. However, such an interpretation overlooks the leeway allowed by the words "so far as may be, in relation to service tax as they apply in relation to a duty of excise :-". It is apparent from the text of Section 83 that it allows the sections of CEA, 1944 made applicable to be adapted in relation to service tax. The implication is that the provisions of Section 11B can be interpreted suitably to make them applicable to comparable situations that arise in relation to claimants of refund of service tax.

The applicant was duty bound to file rebate claim within the stipulated time limit of one year. In simple words, the time limit of one year stipulated by Section 11B of the CEA, 1944 for filing rebate claims is a statutory requirement and not a procedural requirement.

As a result, the rebate claim filed by the applicant for the *period* upto 08.01.2017, which is beyond the time limit of one year specified under Section 11B of the CEA, 1944 is time barred.

11. The government of India vide Chapter VI (Section 119) of the Finance Act, 2015 introduced a new levy called Swachh Bharath Cess. In this context, the relevant Chapter of the Finance Act, 2015 is reproduced below:-

"CHAPTER VI

SWACHH BHARAT CESS

119. (1) This Chapter shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(2) There shall be levied and collected in accordance with the provisions of this Chapter, a cess to be called the Swachh Bharat Cess, as service tax on all or any of the taxable services at the rate of two per cent. on the value of such services for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto.

(3) The Swachh Bharat Cess leviable under sub-section (2) shall be in addition to any cess or service tax leviable on such taxable services under Chapter V of the Finance Act, 1994, or under any other law for the time being in force.

(4) The proceeds of the Swachh Bharat Cess levied under sub-section (2) shall first be credited to the Consolidated Fund of India and the Central Government may, after due appropriation made by Parliament by law in this behalf, utilise such sums of money of the Swachh Bharat Cess *for such purposes specified in sub-section (2), as it may consider necessary.*

(5) The provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder, including those relating to refunds and exemptions from tax, interest and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Swachh Bharat Cess on taxable services, as they apply in relation to the levy and collection of tax on such taxable services under Chapter V of the Finance Act, 1994 or the rules made thereunder, as the case may be."

Government observes that Notification No. 03/2016-ST dated 03.02.2016 has amended Notification No. 39/2012-ST dated 20.06.2012 which grants rebate of service tax paid on input services used for export of services. The said Notification was amended and the following clause (d) has been added to the definition of "Service Tax and Cess":

"(d) Swachh Bharat Cess as levied under sub-section (2) of Section 119 of the Finance Act, 2015 (20 of 2015)"

and hence it is very clear that "SBC" is available as refund to the eligible claimants from 03.02.2016, the date the Notification was amended.

12. Applicant has relied upon the case law of TVS Motor Co.Ltd. [2015-TIOL-1478-HC-KAR, the case is not in context of SBC. Besides, it has been contested in Supreme Court, reported as 2016 (342) ELT A56 (SC), and is not strictly applicable because Rule 3 of the Automobile Cess Rules, 1984,

itself has refund of duty, of Automobile Cess is embedded in the rule itself. However, in the impugned case Swachh Bharat Cess has been levied under sub-section (2) of section 119 of the Finance Act, 2015 (20 of 2015), wherein, Clause (d) has been inserted vide Notification 03/2016-Service Tax dated 03.02.2016 by virtue of which SBC levied under section 119(2) of the Finance Act, is also considered as Cess and therefore it will be applicable from the date of insertion.

13. Hon'ble CESTAT, Mumbai in the case of M/s. Hindustan Petroleum Corporation Ltd. Vs. UOI[2016 (41) S.T.R. 223 (Tri. - Mumbai)] HELD : Loading of ATF in aircrafts on foreign trips eligible for refund as per Notification No. 17/2009-S.T. - Service Tax paid by MIAPL under Airport Service, Section 65(105)(zzm) of Finance Act, 1994 inserted in Notification by Notification No. 37/2010-S.T., dated 28-6-2010 - Impugned category not classified under said Notification as existed during relevant period - Lower authorities correct in rejecting refund claim filed - No infirmity in impugned order - Appeal devoid of any merit - Section 11B of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994 - Section 65(105)(zzm) of Finance Act, 1994.", made following observations:

> **6.** *On consideration of the submissions made by both the sides, we find that the appellant is claiming of the service tax paid on the services rendered by MIAPL to the appellant during the period December, 2009 to May, 2010 for fueling aircrafts by ATF. It is undisputed that the appellant has loaded the ATF in aircrafts which were on foreign trips. We find that the service tax paid on any service rendered by export of goods were eligible for the refund from the authorities. The said refund was extended by Notification 17/2009-S.T. On perusal of the said Notification we find that the services which were considered by the Notification for refund of the service tax paid were as per the provisions of Section 65(105) and the said classifications were sub-clause (zn) and the payment of service tax on the services only known as terminal handling charges. The services rendered by MIAPL will not fall under any of the two categories as the service tax discharged by MIAPL is under Section 65(105)(zzm). The service tax paid under the category of services provided by Airport authority under Section 65(105)(zzm) were inserted in Notification 17/2009-S.T. by Notification 37/2010-S.T., dated 28-6-2010. The arguments of the learned Counsel is that this notification should be read as being effective in the Notification 17/2009-S.T. from the date it was issued is not acceptable. Notification 17/2009-S.T. specifically grants refund of tax paid on services provided*

under the category as per classification as mentioned therein. The service tax paid by MIAPL is under the category which was not classified under Notification 17/2009-S.T. as it existed during the period when the services were received by the appellant for fueling the aircrafts which are on foreign. In view of the above, we hold that both the lower authorities were correct in rejecting the refund claim filed by the appellant. We do not find any infirmity in the impugned order passed by the lower authorities.

14. Hon'ble High Court of Delhi in the case of Agri Trade India Services Pvt. Ltd. Vs. UOI [2006 (204) E.L.T. 161 (Del.)] while holding that "Interpretation of Statute - Power to make a retrospective delegated legislation has to be either conferred in express words or inferred by necessary implication.", made following observations:

37. *Mr. Malhotra sought to place heavy reliance upon the judgment of the Hon'ble Supreme Court in R.C. Tobacco v. Union of India (supra) to contend that as long as the measure was in public interest, it was open to the Central Government to impose a restriction from a retrospective date. The general power of imposing a ban through legislation from a retrospective date is undeniable. That general proposition hardly needs reiteration. However, what we are dealing here is a delegated legislation and the rules concerning retrospective delegated legislation are not identical with those governing legislations themselves. The power to make a retrospective delegated legislation has to be either conferred in express words or inferred by necessary implication. The law in this regard requires the express words of the statute to be examined for this purpose. In Shri Vijayalakshmi Rice Mills v. State of A.P. - AIR 1976 S.C. 1471 the question was whether the price to be paid for certain supplies of rice made by the appellants in January-February, 1964, would be governed by the Price Control Order dated 23-3-1964 or by the one which was in force in 1963 when the sales in fact took place. The Hon'ble Supreme Court held (at p. 1473) :*

> *"It is a well recognised rule of interpretation that in the absence of express words or appropriate language from which retrospectivity may be inferred, a notification takes effect from the date of its issue and not from any prior date. The principle is also well settled that statutes should not be construed so as to create new disabilities or obligations or impose new duties in respect of transactions which we are complete at the time the Amending Act came into force."*

15. It is also held in the case of UOI v/s Ind-Swift Laboratories Ltd reported in 2011 (265) ELT. 3 (S.C) that a taxing statute must be interpreted

in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency. In support of the same the Hon'ble Supreme Court has referred to another decision of the Supreme Court Court in Commissioner of Sales Tax, UP v. Modi Sugar Mills Ltd. reported in (1961) 2 SCR 189 wherein this Court at Para 10 has observed as follows:-

> *"10. .... In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency."*

16. Hon'ble Supreme Court in case of UOI VS. Dharmendra Textiles 2008 (231) ELT 3 (SC) has observed that –

> *"it is a well settled principle in law that the Court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent".*

17. Further, the Hon'ble Supreme Court in case of Excon Building Material Mfg. Co. Pvt Ltd. Vs. CCE, Bombay - 2005 (186) E.LT. 263 (SC) held that -

> *"It is well settled that where the wording of notification are clear, then the plain language of the notification must be given effect to".*

18. Government finds support from the observations of Hon'ble Supreme Court in the cases of M/s. ITC Ltd. v. CCE reported as 2004 (171) E.L.T. 433 (S.C.), and M/s. Paper Products v. CCE reported as 1999 (112) E.L.T. 765 (S.C.) that the simple and plain meaning of the wordings of statute are to be strictly adhered to.

19. Government observes that the applicant has argued very forcefully about the order rejecting the refund being against Government policy. The policy of the Government and its purposes cannot overwhelm the statute

and the delegated legislations which are the essential machinery put in place to give effect to the objectives of granting export incentives. Government concurs with the view that technical lapses must be dealt with pragmatically. It would be pertinent to mention here that there are vast powers vested in the courts of law in terms of the Constitution of India. The courts may in their wisdom exercise such powers and grant relief where their Lordships may deem fit. However, the powers exercised by the Government in revisionary proceedings, in the instant case are in terms of Section 35EE of the Central Excise Act, 1944. The Government cannot exceed the scope of the CEA, 1944 and the rules, notifications in the revisionary proceedings.

20. In the light of the above observations and respectfully following the judgments of the Hon'ble Supreme Court and the Hon'ble High Courts cited above, Government holds that the refund claims for Swachh Bharat Cess filed by the applicant are not admissible for the period prior to 03.02.2016.

21. The applicant has also contended that there are some issues with the quantification of the refund claims. It would therefore, be in the interest of justice to remand back the matter to the original authority for the limited purpose of verification on the applicant's claim of short sanction. To this extent, Government modifies the Order-in-Appeal No. IM/CGST A-I/MUM/474/18-19 dated 18.02.2019 passed by the Commissioner(Appeals).

22. Government directs the original authority to carry out necessary verification on the basis of documents already submitted to the department as claimed by the applicant with the various export documents and also verifying the documents relating to relevant export proceeds, challans and decide the issue accordingly within eight weeks from the receipt of this Order. The applicant is also directed to submit the documents, if any,

required by the original authority. Sufficient opportunity to be accorded to the applicant to present their case.

23. The revision application is disposed of on the above terms.

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

ORDER No. 87/2022-ST(WZ)/ASRA/MUMBAI DATED 09.12.2022.

To,
M/s. McKinsey & Co. Inc.,
21st Floor, Express Towers,
Nariman Point, Mumbai – 400 021.

Copy to:

1. Pr. Commissioner of CGST, Mumbai South.
2. Commissioner (Appeals-I), GST & Central Excise, Mumbai.
3. Assistant Commissioner, CGST &CX, Mumbai.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.