REGISTERED SPEED POST AD

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. 196/17/WZ/2018-RA 7971 Date of Issue: 07.12.2022

ORDER No. 89 /2022- (WZ) /ASRA/Mumbai DATED 29.12.2022 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. Whirlpool of India Ltd.,
28, NIT, Industrial Area,
Faridabad, Haryana-121 001.

M/s. Whirlpool of India Ltd.
M/s. Global Technology & Engineering,
Centre 501-502, D-Block,
Weikfield IT, CIT Infopark,
Weikfield factory premises,
Pune – 411 014.

Respondents : Pr. Commissioner of CGST, Pune-I
Commissionerate.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 (made applicable to Service Tax vide Section 83 of the Finance Act, 1994) against the following Order-in-Appeal No. PUN-EXCUS-001-APP- 1080/17-18 Dated 15.02.2018 passed by the Commissioner (Appeals-I), Central Tax, Pune.

ORDER

The Revision Application has been filed by M/s Whirlpool of India Ltd., 28, NIT, Industrial Area, Faridabad, Haryana-121 001 (here-in-after referred to as 'the applicant') against the Order-in-Appeal No. PUN-EXCUS-001-APP-1080/17-18 Dated 15.02.2018 passed by the Commissioner (Appeals-I), Central Tax, Pune.

2. The Applicant is registered with the service tax department vide registration number AAACW1336LST001 and Central Excise Registration No. AAACW1336LXM001 engaged in the manufacture of Refrigerators and parts thereof falling under Chapter Heading No. 8414 of the first schedule to the Central Excise Tariff Act, 1985. The Applicant is also engaged in export of Consulting Engineering Services under Rule 6A of the Service Tax Rules, 1994 to M/s. Whirlpool USA, Sweden, Australia, Hongkong, Europe, South Africa etc. through their subsidiary M/s. Global Technology & Engineering Centre, 501-502, D-Block, Weikfield factory premises, Pune Nagar Road, Pune (hereinafter referred to as "the GTEC").

3. The issue in brief is that the Applicant had filed four rebate claim applications claiming rebate of service tax paid on specified services used for export of Consulting Engineering Services under Notification No. 39/2012-ST dated 20.06.2012. The said rebate claims were rejected by the jurisdictional adjudicating authority. The Applicant had filed an appeal before the Commissioner, Central Excise (Appeals-I), New Delhi against the OIOs and challenged the rejection of their rebate claims. The Appellate Commissioner vide Order-in-Appeal No. 20-23/ST/L TU/DLH/ 2016 dated 06.12.2016 allowed the appeals subject to examination of documents. The Commissioner

(Appeals) remanded the matter to the adjudicating authority on the issues where production and scrutiny of documents were required.

4. The adjudicating authority vide Order-in-Original No. 056/Rebate/WIL/ST/2017 dated 07.06.2017 passed by the Deputy Commissioner, Division-2, Large Taxpayer Unit, NBCC Plaza, Pushp Vihar, Saket, New Delhi allowed a part of the rebate claim for an amount of Rs. 4,15,32,260/- and rejected the rebate claim for Rs. 50,92,284/-.

5. The applicant being aggrieved by the order-in-original filed appeal before the Commissioner(Appeals). The Commissioner(Appeals), Pune upheld the order of the original and rejected the appeal filed by the applicant vide Order-in-Appeal dated 15.02.2018.

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

6.1 **Interest on the rebate claim due to the applicant not considered by the Appellate Authority**

6.1.1 The Applicant submitted that it had filed the application for the rebate for the period April 2012 to September 2014 on 30.04.2013, 16.05.2013(revised), 25.04.2013, 09.12.2014 and 22.12.2014 respectively. That the refund has been allowed by the authority vide the order dated 07.06.2017 but the same was granted without any interest on delay in grant of such refund.

6.1.2 The Applicant submitted that interest is legally due to the Applicant

under Section 83 of the Finance Act read with Section 11 BB of the CEA, 1944. The relevant extracts of Section 11 BB of the CEA, 1944 have been reproduced below, for the ease of reference:

> *"If any duty ordered to be refunded under sub-section (2) of section 11 B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:"*

6.1.3 On the basis of above, it is submitted that the applicable rate of interest as notified under Notification No. 67/2003- C. E. (N.T) dated 12" September 2003 is 6 percent per annum. In the present case as provided in the Section 11BB of the CEA, 1944, the interest is payable if the refund is not paid within three months from the date of filing the application. Accordingly, the Applicant is eligible for the interest at the rate of 6% per annum from the date of expiry of three months till the date of refund of rebate. In the light of above provision, it is clear that Applicant is eligible for the interest and impugned Order was passed without considering all the relevant provisions.

6.1.4 The Applicant submits that the interest liability automatically arises on expiry of 3 months from the date of filing the application for rebate claim. The Applicant submits that it is a well settled proposition of law

that a fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provisions. There is nothing to be read in and nothing to be implied and there is no room for any intendment. The Applicant is relied on the Hon'ble Supreme Court judgment of Ranbaxy Laboratories Ltd. Versus Union of India2012 (27) S.T.R. 193 which is applicable in the present case.

6.1.5 The Applicant also relied on the following circulars / judgments:-

i. Siddhant Chemicals V/s. Union of India 2014 (307) E.L.T. 44 (All.).

ii. Kamakshi Tradexim (India) Pvt. Ltd. V/s. Union Of India, 2017 (351) E.L.T. 102 (Guj.).

iii. Commr. Of C. Ex. & S.T., Indore V/s. Hindustan Equipment Pvt. Ltd., 2017 (347) E.L.T. 300 (Tri. - Del.).

iv. Union of India V/s. Hamdard (Waqf) Laboratories 2017 (51) S.T.R. 214 (S.C.).

v. Union of India V/s. Jindal Drugs Limited 2014 (305) EL.T. 396 (Born.).

vi. Commissioner of C. Ex., Pune-I V/s. Sulaki Chemicals Pvt. ltd. 2014 (310) EL T. 511 (Bom.).

vii. Circular no. 670/61/2002- CX dated 01.10.2002.

6.2 **Invoices issued on different premises cannot be the basis to deny the rebate claim**

6.2.1 The Applicant submits that the denial of rebate in respect of invoices issued on the addresses other than the address from where exported services were rendered is not tenable in law. There are settled case laws which states that even if the addresses are different then rebate or refund cannot be denied. It is also submitted that there is no challenge by the department on the

services received in respect of the invoices. Hence when the nature of service received is not challenged then the only condition to receive the invoice on different address cannot change the basic character of receipt of service. The Applicant submits that since the eligibility of input service for availability of credit to applicant not disputed hence the only issue regarding the issuance of invoice on different address than the exporter address cannot be a valid ground to reject the rebate claim.

6.2.2 The Applicant relied on the following judgments:-

i. Adbur Pvt. Ltd. V/s. Comm. Of Service Tax, Delhi, 2017 (5) G.S.T.L. 334(Tri. Del).

ii. Modern Petrofils V/s. CCE Vadodara, 2010 (20) STR 627 (Tri-Ahmd.).

6.2.3 The Applicant contended that there is a rebate claim for an amount of Rs. 24,87,032/- which was rejected on the basis that invoices of NV Reality (RanjanGaon) are for rent paid for the premises 501-502, D-Block, Weikfield factory premises, Pune Nagar Road, Pune which is the place of business of M/s GTEC and is the place from where the services were actually exported. The Applicant submits that there is no dispute by the department regarding the eligibility of service and neither the service exported. They submitted copy of rent agreement which clearly indicates the place and exact address where the Applicant's unit was situated, that is, No. 501 & 502, D-Block, Weikfield IT Citi Info Park, Viman Nagar, Pune. In pursuance to the said agreement, NV Reality has been regularly raising invoices on the address where GTECH was located. They submitted sample invoices evidencing the same.

6.2.4 However, in few cases, NV Reality has been raising invoices on GTECH by inadvertently mentioning address where GTECH was located as well as the

address of unit based in Ranjangaon. In few other cases, NV Reality inadvertently missed out mentioning the address of GTECH, Pune and wrongly mentioned the address of Ranjangaon unit. They submitted copies of sample invoices.

6.2.5 The Applicant submitted that from the perusal of the Leave and License Agreement, it is clear that the services were provided by NV Reality to GTECH. Such being the case, the Ld. Commissioner wrongly disallowed rebate claim in respect of invoices raised by NV Reality. Thus, the Applicant prays that rebate claim amounting to Rs. 24,87,032/-, which relates to NV Reality needs to be allowed along with interest.

6.2.6 The Applicant relied on the following judgments:-

i. Stadmed Pvt. Ltd. V/s. Comm. of Central Excise, Allahabad, 1998 (102) EL T 466 (Tri.-Cal)

ii. Plastic Products Engg. Co. V/s. Comm. of C. Ex., Ahmedabad, 2009 (248) E.L.T. 859 (Tri. - Ahmd.)

6.3 **O-I-A VIOLATES THE PRINCIPLES OF NATURAL JUSTICE**

6.3.1 Applicant contended that it is a well settled principle of law that the order passed by Appellate authority shall be reasoned order after taking into consideration all the submissions made by the affected parties. Courts have time and again emphasized the cardinal need for the same. It is submitted that the impugned order has been passed in gross violation of well settled principles of law in as much various important additional submissions made by the Applicant were not considered at all and the impugned order has not

considered all submissions on facts and merit and passed the order without considering the same.

6.3.2 The Applicant relied on the various case laws wherein it is held that if issues raised were not properly adverted in impugned order then the order should be set aside. These are as follows:

i. *Sri Sukra Spinning Mills P. ltd.* V/s. *Commissioner of C. Ex., Salem, 2018 (359) EL. T. 176 (mad.)*

ii. *Commissioner of Customs, Amritsar* V/s. *Sheela Exports Pvt. Ltd, 2017 (358) EL. T. 804 (Tri. - Chan.)*

iii. *T. T. Ltd.* V/s. *Union of India, 2017 (349) EL. T. 130 (Del)*

iv. The Hon'ble Supreme Court in the case of Asstt. Commr, Commercial Tax Department V/s. Shukla & Brothers 2010 (254) E.L.T. 6 (S.C.).

7. A personal hearing in this case was held on 02.03.2022 which was attended by Shri Rajendra Bagade, C.A., on behalf of the applicant. He re-iterated the points already made in written submissions. He submitted that relevant case laws have been quoted. He further requested for interest also.

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

9. Government notes that the points to be decided here is whether the input services covered by Invoices raised to different units other than the applicant's

and located at different destinations can be considered to have been received and actually used in providing service exported by the applicant and whether interest is payable on the refunds.

10.1 As regards the applicant's contention that Invoices issued on different premises cannot be the basis to deny the rebate claim. Commissioner(Appeals) had observed that :-

"-----. The Respondent had questioned the receipt of service in the premises of the actual exporter of services and had accordingly observed that these services were not used for providing output services, which were exported, I do not agree with the Appellant that the issue is of procedural nature and could be ignored. For example, if the invoice for security services provided to the premises of M/s. Whirlpool, Pondicherry, is considered, can it be said that the services of security received at Pondicherry were used for providing output services from the premises of the exporter at Pune? In my opinion, the rebate of service tax paid, in respect of these services, which were not received at the premises of the exporter and not used for providing output service exported, cannot be held to be admissible.

7.1 In this regard, I take the support of the decisions of the Hon'ble CESTAT in the case of Bharti Airtel Ltd. V/s. CCE Panchkula [2016(43) STR 400 (Tri-Del)]. The relevant portion of the case law is reproduced below:

> *4. The original authority has disallowed CENVAT credit on the ground that credit availed relates to invoices that do not pertain to the appellant. He has relied upon Rule 4A of Service Tax Rules, 1994 which is required to be complied with, as per Rule 9(2) of Cenvat Credit Rules, 2004, and lays down the contents that documents should contain. The adjudicating authority, on scrutiny of sample invoices, has concluded that a majority of them relate to M/s. Bharti Cellular Services Ltd. It is the contention of the appellant that the wrong address was printed by a clerical error and has since been clarified by the five service providers. It was also submitted that the names detailed in the invoices are the names of the erstwhile entities that were merged with that of the appellant. Certificate of*

Amalgamation of the transferor, M/s. Bharti Cellular Services Ltd. with the appellant dated 9th June, 2005 was produced by the Learned Counsel for appellant. He has also cited the decisions of this Tribunal in Showa India (P) Ltd. v. Commissioner of Central Excise, Faridabad [2012 (275) E.L.T. 128 (Tri.-Del.) = 2012 (25) S.T.R. 152 (T)], Lanco Industries Ltd. v. Commissioner of Central Excise, Tirupati [2008 (223) E.L.T. 550 (Tri.-Bang.)], Commissioner of Central Excise, Meerut-II v. Flex Laminators [2000 (120) E.L.T. 114 (Tri.-Del.)], Joja Chemicals Pvt. Ltd. v. Commissioner of Central Excise & Service Tax, Mangalore [2014 (302) E.L.T. 312 (Tri.-Bang.)], Commissioner of Central Excise v. Aditi Foams (P) Ltd. [2004 (175) E.L.T. 351 (Tri.-Del.)] and AMA India Enterprises P. Ltd. v. Commissioner of Central Excise & Service tax, Ludhiana [2015 (316) E.L.T. 268 (Tri.-Del.)]. Learned Authorized Representative drew attention to the Rules cited in the impugned order which do not allow for any flexibility in relation to certain material particulars. Undoubtedly, the amalgamated entity comprised many erstwhile units which may have accumulated credit in the course of their earlier existence. Nevertheless, the onus vests on the claimant of credit to evidence the receipt of such services at such premises as are pertinent to the taxable services being rendered. Goods permit a certain ease of ascertainability by the tax officer; services are not easily amenable to such authentication and mere evidence of amalgamation of an entity with appellant will not suffice for the purpose of Rule 9(2) of Cenvat Credit Rules, 2004 without evincing place of receipt of input service as the place pertinent to supply of output service. The claim of the appellant fails, rendering the order of the original authority unassailable on this count."

The applicant has failed to show the nexus between the input services which were not received at the premises of the applicant with the output services which were exported, therefore, it cannot be held to be admissible.

10.2 The applicant has also contended that a rebate claim for an amount of Rs. 24,87,032/- which was rejected on the basis that invoices of NV Reality (RanjanGaon) were for rent paid for their premises 501-502, D-Block, Weikfield factory premises, Pune Nagar Road, Pune, which is the place of business of the applicant and is the place from where the services were actually exported. Since there is no dispute regarding the eligibility of service and neither that the services were exported, 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.

11. The applicant has placed reliance upon several decisions stating that interest on the rebate claim due to the applicant was not considered by the Appellate Authority. It is observed that the applicant had not raised this ground during the proceedings before the lower appellate authority viz. the Commissioner(Appeals) at the time of passing of impugned Order-in-Appeal No. PUN-EXCUS-001-APP- 1080/17-18 Dated 15.02.2018. The fact that the applicant had not raised this ground before the Commissioner(Appeals) would mean that they had acquiesced to the order of the original authority holding that they were eligible for the sanctioned rebate only. Government places reliance upon the judgment of the Hon'ble Supreme Court in the case of Commissioner of Cus. & C. Ex., Goa V/s. Dempo Engineering Works Ltd.[2015(319)ELT 359(SC)] to hold that when the applicant had not raised this ground before the Commissioner(Appeals), the applicant cannot raise this new ground in the revision proceedings.

12. In the light of the above observations and respectfully following the judgments cited above, Government holds that the refund claims filed by the applicant for service tax paid on services, not received in the premises of applicant are not admissible. However, as regards the applicants contention that the rent paid for their premises was wrongly rejected, it would be in the interest of justice the matter is remanded back to the original authority for the limited purpose of verification of the applicant's claim(Para 10.2 supra). To this extent, Government modifies the Order-in-Appeal No. PUN-EXCUS-001-APP-1080/17-18 Dated 15.02.2018 passed by the Commissioner (Appeals-I), Central Tax, Pune.

13. 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.

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

29/12/22

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

ORDER No. 89 /2022- (WZ)/ASRA/MUMBAI DATED 29/12/2022.

To,

M/s Whirlpool of India Ltd.,
28, NIT, Industrial Area,
Faridabad, Haryana-121 001.

M/s. Whirlpool of India Ltd.
M/s. Global Technology & Engineering,
Centre 501-502, D-Block,
Weikfield IT, CIT Infopark,
Weikfield factory premises,
Pune – 411 014.

Copy to:

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