

REGISTERED
SPEED POST



F.No. 196/08/ST/13-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue.....

ORDER NO. 04/2018-ST dated 6-2-2018 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI RAJPAL SHARMA, ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE ~~CENTRAL EXCISE ACT, 1944 read with Section 83 of the Finance Act, 1994.~~

SUBJECT : Revision Application filed under section 35EE of the Central Excise Act 1944 read with Section 83 of the Finance Act, 1994 against the Order-in-Appeal No. 232/ST/DLH/2012 dated 14.09.2012, passed by the Commissioner of Central Excise, EIL Building, GST Building, GST South, Delhi-IV.

APPLICANT : M/s Avigo Capital Partners Pvt. Ltd.,

RESPONDENT : Commissioner of Central Excise, EIL Building, GST Building, GST South, Delhi

ORDER

A Révision Application No. 196/08/ST/13-RA dated 26.12.2012 has been filed by M/s Avigo Capital Partners Pvt. Ltd., Saket, New Delhi (hereinafter referred to as the applicant) against Order in Appeal No. 232/ST/DLH/2012 dated 14.09.2012, passed by the Commissioner (Appeals), Delhi-IV.

2. Brief facts of the case leading to the filing of the Revision Application are that the applicant filed a rebate claim of Rs. 1,09,72,290/- for export of services in terms of Rules 5 of Export of service Rules, 2005 read with Notification no. 11/2005-ST dated 19.04.2005. However, it was rejected by the original adjudicating authority for the reason that for no foreign exchange against export of services is received in this case and in addition out of the rebate claim of Rs. 1,09,72,290/- claim of Rs. 52,57,641/- is also time barred per section 11B of Central Excise Act, 1944. Their appeal before the Commissioner (Appeals) also did not succeed and the applicant has filed the above Revision Application mainly on the following grounds,

- a) Convertible foreign exchange is received in India as the drawer bank (HSBC Mauritius) debited the USD amount of Avigo Mauritius and sold the same to HSBC, Mumbai, to purchase INR and then the drawer bank remitted the INR to the applicant.
- b) Issuance of certificate of inward foreign remittance is proof of receipt of foreign exchange.
- c) The place of conversion of USD to INR is HSBC's prerogative and it is supported by the following case laws:
 - i) PSA Sical Terminals Ltd. Vs. Commissioner of Customs, Tuticorin 2004 (165) ELT 109 (Tri-Chennai).
 - ii) National Engineering Industries Ltd. Vs. Commissioner of Central Excise, Jaipur 2008(11) STR 156 Tri-Del.
 - iii) CCE Rajkot Vs. Shelpan Exports 2010 (19) STR 337

iv) Nipuna Services Ltd. Vs. Commissioner of Central Excise, Customs & Service Tax (Appeal-II), Hyderabad 2009(14) STR 706 (Tri-Bang)

d) Section 11B of Central Excise Act is not applicable to rebate claim filed under Notification No. 11/2005 dated 19.04.2005 and it is backed by the following decisions:

i) Arvind Ltd. Vs. Commissioner of Central Excise Ahmedabad dated 7.7.2010.

ii) M.R. Bhansali & Co. Vs. Union of India 1991 (56) ELT 24 (Bom).

iii) Mangalore Chemicals & Fertilizers Vs. Deputy Commissioner (1991) 55 ELT 437 (SC).

iv) Madhav Steel Vs. UOI ALT-2010-350-HC.

v) STI India Ltd. Vs. Commissioner of Central Excise, Indore 2009 (236) ELT 248 (MP).

vi) Uttam Steels Ltd. Vs. Union of India 2003 (158) ELT 2X (Bom).

vii) CCE Surat-1 Vs. Swagat Synthetics 2008(232)ELT/413 (Guj.)

viii) CCE Chennai Vs. Foxconn India Pvt. Ltd. 2011T IOL68 CESTAT MAD.

ix) M/s Global Energy Food Industries Vs. CCE, Ahmedabad 2010 TOIL 337 CESTAT-AHM.

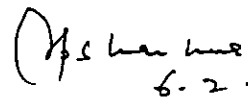
3. Personal hearing was offered on 15.12.2017 and 08.01.2018. But the applicant did not attend the personal hearing and no request for third date of hearing is also received. Moreover, the advocate of the applicant by his letter dated 08.01.2018 has withdrawn his Vakalatnama and the applicant has not even made any correspondence regarding the appointment of a new advocate. From these facts it is clear that the applicant is not interested in availing personal hearing and hence this case is taken up for decision on the basis of the Revision Application and other case records.

4. On examination of all relevant case records, it is evident that the rebate claims of the applicant have been rejected mainly on two grounds that the entire claim for Rs. 1,09,72,290/- is not maintainable as foreign exchange against export of services is not received in this case and out of the rebate claim of Rs. 1,09,72,290/- claim of Rs. 52,57,641/- is also time barred as per section 11B of the Central Excise Act made applicable to Service Tax matters by virtue of section 83 of the Finance Act. As regards receipt of export proceeds, Rule 3(2)(b) of Export Service Rules, 2005 clearly mandates that payment should be received in convertible foreign exchange to qualify as export of service. Hence if export proceeds is not received in convertible foreign exchange, the service cannot be accepted as having been exported as per the above Rule. In the instant case, while the applicant has claimed that payment in foreign currency has been received in India against export of services by them, no evidence has been produced to support their claim. They have merely stated that Avigo (Mauritius) received the payment in foreign currency and then the amount in INR of export proceed is received in India through HSBC Bank, Mauritius. But from this version of the applicant it is manifest that payment in India for the exported service is received in Indian currency only and not in foreign currency. The adjudicating authority has expressly stated in his order that payment for export of service is not received in convertible foreign currency and the Commissioner (Appeals) has also arrived at a conclusion that payment for export of service is received in Indian currency and not convertible foreign currency. Thus, the claim of the applicant that payment is received in foreign currency is found without basis and the receipt of payment for export of services in foreign currency by Avigo (Mauritius) and its conversion in Indian rupees by HSBC (Mauritius) cannot be considered as receipt of payment in foreign currency in India by any standard. Therefore, the Government agrees with the views of the Assistant Commissioner and the Commissioner (Appeals) who have reached the conclusion that the Rule 3(2)(b) of Export Service Rules, 2005 has not been satisfied in this case. Consequently it cannot be accepted that the applicant has exported service in this case as per rule 3(2)(b) of the Export Service Rules and accordingly the rebate of Service Tax is not admissible to the applicant under notification no. 11/2005-ST dated 19.04.2005. The

case laws relied upon by the applicant as mentioned in para 2(c) are not found relevant in the present proceeding as in none of these decisions it has been held that receipt of payment in foreign currency in a bank situated in a foreign country can be considered as payment in foreign currency in India.

5. Coming to the other ground for rejection of rebate of service tax of Rs. 52,57,641/- on the ground of time limitation, the applicant has claimed that Rule 5 of Export of Service Rules and notification no. 11/2005-ST are not governed by section 11B of the Central Excise Act, 1944. However, the applicant has conveniently overlooked the vital fact that section 11B has been specially borrowed under section 83 of the Finance Act and as a result time limitation of one year as stipulated under section 11B of the Central Excise Act is applicable for the maintainability of the rebate of Service Tax under the Finance Act. Therefore, the lower authorities have rightly held rebate claim of Rs. 52,57,641/- as time barred. The decisions relied upon by the applicant as mentioned in para 2(d) are not found applicable in the present case as the application of time limitation specified under section 11B for the rebate of Service Tax in the light of Section 83 of Finance Act, 1994 has not been examined in any decision.

6. In view of the above discussion, the Government does not find any fault in the order of the Commissioner (Appeals) and, therefore, the Revision Application is rejected.


6.2.18

(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

M/s Avigo Capital Partners Pvt. Ltd.,
503-504, DLF Place, A-4, District Centre,
Saket, New Delhi-110017

ORDER NO. 04/2018-ST dated 6-2-2018

Copy to:-

1. The Commissioner of Centre Excise & Service Tax GST Delhi-South, 2nd & 3rd Floor, EIL Building, Bhikaji Cama Place New Delhi-110066.
2. The Office of Commissioner of Service Tax (Appeals), Delhi-IV, Commissionerate, CR Building, IP Estate, New Delhi.
3. The Assistant Commissioner, Service Tax, Division-I, 37, 2nd Floor, Nehru Place, New Delhi-110019.
4. PS to AS(RA)
- ✓ 6. Guard File.
7. Spare Copy

ATTESTED

6.2.2018

(Debjit Banerjee)

STO (REVISION APPLICATION)