

SPEED POST



F. No. 196/04/SZ/ST/2022-R.A.
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... 24/1/23

Order No. 81/23-ST dated 23.01.2023 of the Government of India, passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994.

Subject : Revision Application, filed under Section 35 EE of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994, against the Order-in-Appeal No. 74/2022 dated 28.02.2022, passed by the Commissioner Central Tax (Appeals-I), Bengaluru.

Applicant : M/s Fidelity Information Services India (India) Pvt. Ltd., Bengaluru.

Respondent : The Pr. Commissioner of CGST & Central Excise, Bengaluru East.

ORDER

A Revision Application No. 194/04/SZ/ST/2022-RA dated 03.06.2022 has been filed by M/s Fidelity Information Services India Pvt. Ltd., Bengaluru (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 74/2022 dated 28.02.2022, passed by the Commissioner of Central Tax (Appeals-I), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 203-206/2019 dated 29.06.2019, passed by the Assistant Commissioner of Central Tax, Bengaluru East Commissionerate.

2. Brief facts of the case are that the Applicants herein filed 04 rebate claims of 'Swachh Bharat Cess' (SBC) paid on inputs services for providing output services exported during the period April 2016 - June 2016, July 2016 - September 2016, October 2016 - December 2016 and January 2017 - March 2017. These 04 rebate claims, for a total amount of Rs. 8,65,217/-, were filed on 29.06.2018. The original authority, after following the principles of natural justice, rejected the claims as time barred for having been filed beyond the limitation period provided under Section 11B of the Central Excise Act, 1944. The appeal filed by the Applicants herein has been rejected by the Commissioner (Appeals), vide the impugned Order-in-Appeal.

3. The revision application has been filed, mainly, on the grounds that the time limitation under Section 11B of the Central Excise Act is not applicable to a rebate claim filed under Rule 6A of the Service Tax Rules read with Notification No. 39/2012-ST dated 20.06.2012; that Rules 6A read with the said notification is a self contained code providing specific scheme of rebate and, therefore, it does not have to yield to general substantive provisions; that general time limitation not prescribed in the special scheme cannot be made applicable to the special scheme; that the time limitation has to be specifically prescribed; and that limitation under Section 11B does not apply to rebate claims under the said section.

4. Personal hearing was held, in virtual mode, on 23.01.2023. Sh. Ankur Goel & Ms. Manavi Sharma, Deloitte made submissions on behalf of the Applicants and reiterated the contents of the RA. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the Respondent department has nothing to add in the matter.

5.1 The Government has carefully examined the matter. The issue that needs to be decided for disposal of the subject revision application is whether the limitation of one year provided under Section 11B of the Central Excise Act, 1944 is applicable to the rebate claims of Service Tax filed under Rule 6A of the Service Tax Rules, 1994 read with Notification No. 39/2012-ST dated 20.06.2012.

5.2 The Government observes that as per Section 83 of the Finance Act, 1994, inter-alia, Section 11B of the Central Excise Act, 1944 has been made to apply in relation to Service Tax. The contention of the Applicants is that as the Rule 6A of the Service Tax Rules, 1994 and Notification No. 39/2012-ST do not prescribe the limitation for filing of the rebate claims thereunder, the limitation provided under Section 11B cannot be made applicable to such claims. The Government observes that the Commissioner (Appeals) has relied upon the judgment of Hon'ble Supreme Court in the case of Union of India vs. Uttam Steels Ltd. {2015-TIOL-98-SC-CX} to negate this contention. In Uttam Steels Ltd., it has been held by the Apex Court that it was not open to the subordinate legislation to dispense with the requirements of Section 11B. The Supreme Court has also relied upon the earlier judgment of 09 Judge Bench in the case of Mafatlal Industries Ltd. vs. Union of India {1997 (89) ELT 247 (SC)}, wherein it has been held that all refund claims have to be made only under Section 11B and the limitation period therein has to be strictly applied.

5.3 The Government observes that the Hon'ble Supreme Court has, in a similar matter relating to rebate of Central Excise Duties under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT), held that the limitation prescribed under Section 11B of the Central Excise Act, 1944 shall be applicable even though, during the relevant period the said Rule 18 and the notification issued

thereunder, i.e., Notification No. 19/2004-CE (NT), did not specifically prescribe the limitation period nor did they adopt the limitation prescribed under Section 11B [Ref. Sansera Engineering Ltd. vs. Deputy Commissioner/ Tax Payer Unit-Bengaluru {2022-TIOL-102-SC-CX}]. In deciding so, the Hon'ble Supreme Court has relied upon the judgment in Uttam Steels Ltd. (supra). The Apex Court has also overruled the contrary judgments of Hon'ble High Courts in the cases of M/s. Dorcas Market Makers Pvt. Ltd. {2015 (321) ELT 45 (Mad.)}, Camphor and Allied Products Ltd. {2019 (360) ELT 865 (All.)}, JSL Lifestyle Ltd. {2015 (326) ELT 265 (P & H) and Gravita India Ltd. {2016 (334) ELT 321 (Raj.)}. These contrary judgments of the various High Courts have been relied upon by the Applicants herein in support of their RA. The ratio of judgment in Sansera Engineering (supra) applies on all fours in the present case.

5.4 Therefore, there is no doubt that the limitation provided under Section 11B is applicable to the cases of rebate of Service Tax under Rule 6A of the Service Tax Rules, 1994 read with the Notification No. 39/2012-ST.

6. In view of the above, the Government does not find any infirmity in the impugned Order-in-Appeal and the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Fidelity Information Services
India Pvt. Ltd., 2nd & 3rd Floor,
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Bengaluru-560066.

G.O.I. Order No. 01 /23-ST dated 23.1.2023

Copy to: -

1. The Pr. Commissioner of CGST & Central Excise, Bengaluru East, 3rd Floor, TTMC/BMTC Building, Old Airport Road, Domlur, Bengaluru-560071.

2. The Commissioner of Central Tax (Appeals-I), Traffic & Transit Management, BMTC Building, No. 9 4th Floor, Above BMTC Bus Stand, Domlur, Bengaluru-560071.
3. M/s Deloitte Haskins & Sells LLP, 7th Floor, Tower-B Building 10-B, DLF Cyber City Gurugram-122002 Haryana.
4. PA to AS (Revision Application).
- ✓ 5. Spare Copy.
6. Guard File.
7. Notice Board.

ATTESTED



23.01.2023

(लक्ष्मी राघवन)
(Lakshmi Raghavan)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi