SPEED POST

F. No. 196/18/ST/SZ/2021-R.A.
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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 27/03/23

Order No. 10-15/23-ST dated 27-03-2023 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 Applications, filed under Section 35 EE of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994, against the Orders-in-Appeal Nos. 107-112/2021 dated 11.03.2021, passed by the Commissioner of Central Tax (Appeals-I), Bengaluru.
Applicant	:	M/s Amadeus Software Labs India Pvt. Ltd., Bengaluru.
Respondent	:	The Pr. Commissioner of CGST, Bengaluru East, Bengaluru.

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ORDER

06 Revision Applications Nos. 196/18-23/ST/SZ/2021-R.A., all dated 27.12.2021, have been filed by M/s Amadeus Software Labs India Pvt. Ltd., Bengaluru (hereinafter referred to as the Applicant), against the Orders-in-Appeal Nos. 107-112/2021 dated 11.03.2021, passed by the Commissioner of Central Tax (Appeals-I), Bengaluru. The Commissioner (Appeals) has, vide impugned Orders-in-Appeal, upheld the Orders-in-Original Nos. 613/2019, 614/2019, 615/2019, 616/2019, 617/2019 & 618/2019, all dated 31.12.2019, passed by the Assistant Commissioner of Central Tax, East Division-8, Bengaluru East, and rejected the appeals filed by the Applicants herein.

2. Brief facts of the case are that the Applicants herein had filed rebate claims of Swatch Bharat Cess (SBC) paid on input services used in export of services, under Rule 6A of the Service Tax Rules, 1994 read with Notification No. 39/2012-ST dated 20.06.2012 for the periods Feb-Mar 2016, Apr-Jun 2016, Jul-Sep 2016, Oct-Dec 2016, Jan-Mar 2017 & Apr-Jun 2017. Details of the proceedings and amounts involved are as follows:

Sr. No	R.A. No.	Period involved	Date of first FIRC realized in claim period	Date of refund filing	O-I-O No. & date	Amt. involved (in Rs.)
1.	196/18/ST/ SZ/2021	Feb-Mar 2016	04.08.16	15.07.19	613/2019 dt.31.12.2019	6,20,453/-
2.	196/19/ST/ SZ/2021	Apr-Jun 2016	22.03.16	15.07.19	614/2019 dt.31.12.2019	6,80,390/-
3.	196/20/ST/ SZ/2021	Jul-Sep 2016	22.03.16	15.07.19	615/2019 dt.31.12.2019	8,26,484/-
4.	196/21/ST/ SZ/2021	Oct-Dec 2016	04.10.16	15.07.19	616/2019 dt.31.12.2019	11,61,889/-
5.	196/22/ST/ SZ/2021	Jan-Mar 2017	22.12.16	15.07.19	617/2019 dt.31.12.2019	9,04,943/-
3.	196/23/ST/ SZ/2021	Apr-Jun 2017	05.04.17	15.07.19	618/2019 dt.31.12.2019	10,97,089/-

The claims were rejected by the original authority on the grounds that these were hit by limitation of time, under Section 11B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. The appeals filed by the Applicant herein have been rejected by the Commissioner (Appeals).

3. The Revision Applications have been filed, mainly, on the grounds that the Applicants commenced their operations in India from 2nd July, 2012; that they are

primarily engaged in providing software development services to the parent company located outside India; that the said services rendered by the Applicants are in the nature of 'Information Technology Software Services' (ITS Services); that during the relevant period entire services rendered by the Applicants were exported to parent company located outside India; that during the course of its operation, the Applicants had received several taxable services, which were entirely used in its activity of exports of services and they have availed CENVAT credit of service tax paid on receipt of such taxable services, as per provisions of CENVAT credit Rules, 2004; that since the entire services rendered by the Applicants were exported outside India, the Applicants were entitled and had been claiming refund of unutilized CENVAT credit of services tax paid on input services under Rule 5 of the CENVAT credit Rules; that the Notification No. 39/2012-ST dated 20.06.2012, as amended by Notification No. 39/2016-ST dated 03.02.2012, allows the exporter of services to claim rebate of 'Swachh Bharat Cess' (SBC) paid on input services used in export of services, in terms of Rule 6A ibid; that the original authority, subsequently, rejected the rebate claims on the grounds of limitation of one year provided under Section 11B of the Central Excise Act, 1944; that all conditions and limitations as prescribed under the rebate notification had been duly fulfilled by the Applicants and, hence, rebate applications ought to have been sanctioned; that, similarly, all procedures prescribed under the notification have also been duly fulfilled; that the time limitation, prescribed under Section 11B ibid, is not applicable to rebate applications filed under Rule 6A, read with Notification No. 39/2012-ST dated 20.06.2012, as grant of rebate on export of services is a special scheme and the rule does not state that the special scheme of rebate shall be subject to conditions and limitations under the general provisions of Central Excise Act, 1944; that decisions of various Hon'ble High Courts are directly applicable in the matter, i.e., Deputy Commissioner of Central Excise vs. Dorcas Market Makers Pvt. Ltd. {2015 (321) ELT 45 (Mad.)}, Camphor and Allied Products Ltd. vs. Union of India {2019 (368) ELT 865 (All.)}, & JSL Lifestyle Ltd. vs. Union of India {2015 (326) ELT 256 (P&H)}; that mere procedural lapse cannot be a valid ground for denying the benefit of rebate.

4.1 Personal hearing in the matter was fixed on 17.02.2023, which was adjourned to 03.03.2023 at the request of the Applicants. The personal hearing fixed on 03.03.2023 was again adjourned to 20.03.2023 at the request of the Applicants. In the personal hearing held, in virtual mode, on 20.03.2023, Shri Ravi Banthia, CA appeared for the Applicants and reiterated the contents of the RA. He highlighted that:

(i) Case relates to rebate of service tax under a special scheme where general provisions of Section 11B will not apply.

(ii) Substantial benefit of rebate cannot be denied for procedural defect of not filing the claim in time.

At the request of Sh. Banthia, time upto 23.03.2023 was granted to make additional submissions. No one appeared for the Respondent department on any of the dates fixed for hearing, nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

4.2 Pursuant to the opportunity granted in the personal hearing held on 20.03.2023, the Applicants filed an additional submission dated 23.03.2023, wherein it has been submitted that the judgment of the Hon'ble Supreme Court in the case Sansera Engineering Ltd. {2022 (382) ELT 721 (SC)}, is in relation to Central Excise Act, 1944, read with the Central Excise Rules, 2002, whereas, present claims are filed under Finance Act, 1994, read with Service Tax Rules, 1994 and hence is not applicable; that Notification No. 39/2012-ST was not amended to include the time limit as per Section 11B ibid likewise, as amended in Notification 19/2004-CE NT dated 06.09.2004; that the judgment of the Hon'ble Supreme Court in the case of Sansera Engineering (supra) has not considered the amendment in Notification No. 19/2004-CE NT which includes the time limit under Section 11B ibid and the same shall be applicable on prospective basis and not on retrospective basis; that reliance placed by the Hon'ble Supreme Court on the judgment in the case of Uttam Steels Ltd. {2015 (319) ELT 598 (SC)} is distinguishable; that in the case of Sansera Engineering, the Supreme Court has not distinguished its judgment in Dorcas Market Makers Pvt. Ltd. {2015 (325) ELT A104 (SC)}; that Section 11B of the Central Excise Act, 1944 is not applicable with respect to rebate of SBC since duty does not include SBC; that mere procedural lapse cannot be valid ground for denying the rebate and cannot take away a substantial benefit.

5.1 The Government has carefully examined the matter. The issue involved in the present revision applications is whether limitation of one year provided under Section 11B of the Central Excise Act, 1944, is applicable to the claims of rebate under Rule 6A of the Service Tax Rules, 1994, read with Notification No. 39/2012-ST.

5.2 It is to be observed that the provisions relating to the service tax are contained in Chapter V of the Finance Act, 1994. Section 93A of the Finance Act, 1994 provides that where any goods or services are exported, the Central Government, may grant rebate of service tax paid on taxable services which are used as input services for the manufacturing or processing or removal or export of such goods or for providing any taxable services and such rebate shall be subject to such extent and manner as may be prescribed. Section 94 of the Act ibid, provide powers to make rules. Rule 6A of the Service Tax Rules, 1994 has been framed accordingly. As per sub-rule (2) of the said Rules 6A, where any service is exported, Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs as the case may be, used in providing such service and the rebate shall be allowed, subject to such safeguards, conditions and limitations as may be specified by the Central Government by notification. Notification No. 39/2012-ST dated 20.06.2012 has been issued in terms of said Rule 6A (2). It is the contention of the Applicants that neither Rule 6A nor Notification No. 39/2012-ST prescribe any limitation for filing of the rebate claims. The scheme of rebate of service tax paid on input services being a special scheme, the general provisions of Section 11B of the Central Excise Act, 1944 cannot apply.

5.3 The Government observes that Section 83 of the Finance Act, 1994, provides that, inter-alia, the provisions of Section 11B of the Central Excise Act, 1944 shall apply in relation to service tax as it applies in relation to a duty of excise. Therefore, there is no doubt that the provisions of Section 11B of the Central Excise Act, 1944 are applicable to the service tax as they are applicable in respect of duty of excise. As per Clause (A) of Explanation to Section 11B ibid, '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. Since, by virtue of Section 83 of the Finance Act, 1994, provisions of Section 11B ibid have been made applicable to service tax, as in respect of duty of excise, the rebate of service tax paid on input services used in export of services is also included in the purview of Section 11B ibid. Therefore, on a plain reading of the statute, i.e., Section 83 of the Finance Act, 1994 read with Section 11B of the Central Excise Act, 1994, there is no doubt that the rebate of service tax paid on the input services is to be governed by the provisions of Section 11B.

5.4 It is the contention of the Applicants that Rule 6A read with Notification No. 39/2012-ST provides for a special scheme of rebate which cannot be governed by the general provisions of Section 11B. The Government, however, finds that this issue is no longer res-integra. In the case of Uttam Steels Ltd. (supra), the Hon'ble Supreme Court has held that *"it is not open to subordinate legislation to dispense with the requirements of Section 11B".* The judgment in Uttam Steels (supra) has been followed by the Hon'ble Supreme Court in the case of Sansera Engineering Ltd. (supra), wherein, the Hon'ble Supreme Court has, in respect of an identical issue related to rebate of Central Excise duty, under Rule 18 of the Central Excise Rules, 2002, held that the period of limitation prescribed under Section 11B ibid shall have to be applied and is applicable to such claims of rebate. In the case of Sansera Engineering Ltd. also, the Rule 18 and the Notification No. 19/2004-CE NT, at the relevant time, did not prescribe any limitation nor did they specifically adopt the limitation provided under Section 11B, ibid. Therefore, the ratio of Sansera Engineering Ltd. (supra) applies on all fours to the cases of rebate under Rule 6A of the Service Tax Rules, 1994 as well.

5.5.1 The Applicant has attempted to distinguish the judgment of Hon'ble Supreme Court in Sansera Engineering Ltd., (supra) on various grounds. The first ground is that Sansera Engineering relates to rebate of central excise duties paid, under Rule 18 of the Central Excise Rules, 2002, read with Notification No. 19/2004-CE (NT), whereas the present case relates to rebate under Rule 6A of the Service Tax Rules, 1994, read with Notification No. 39/2012-ST and, therefore, ratio of Sansera Engineering is not applicable in the present case. The Government is, however, not persuaded to accept this contention in as much as, as brought out hereinabove, provisions of Section 11B ibid are applicable to the service tax as in respect of duty of excise. Further, in the case of Sansera Engineering, the grain of argument was that the rebate under Rule

18, read with Notification 19/2004-CE (NT), was a special scheme and since the special scheme did not at the relevant time, provide for any limitation nor did it adopt specifically the provisions of limitation under Section 11B, the limitation under Section 11B will not be applicable. The grain of argument against applicability of limitation under Section 11B in the present case is also identical. As already stated, the law in this regard has been settled by the Hon'ble Supreme Court in Uttam Steels Ltd. (supra) wherein the Hon'ble Supreme Court has held that the provisions of the parent statue cannot be dispensed with by subordinate legislation. In other words, the absence of a provision in the subordinate legislation corresponding to the provision in the parent statue cannot dispense with requirement of parent statue. This decision in Uttam Steels Ltd. (supra) has been relied upon by the Hon'ble Supreme Court in Sansera Engineering Ltd. (supra). It is also observed that the Applicants have in support of their contention that the limitation under Section 11B shall not be applicable in the present case relied upon judgments of Hon'ble Madras High Court in the case of Dorcas Market Makers Pvt. Ltd. (supra), that of Hon'ble Punjab & Haryana High Court in the case of JSL Lifestyles Ltd. (supra) and that of Hon'ble Allahabad High Court in the case of Camphor and Allied Products (supra). All these cases also relate to rebate of central excise duties, under Rule 18 of Central Excise Rules, 2002, read with Notification 19/2004-CE NT. Therefore, in effect, the Applicants are, on one hand, attempting to distinguish the judgment of the Hon'ble Supreme Court in Sansera Engineering Ltd. (supra) terming it to be a case under Rule 18, read with Notification 19/2004-CE NT, but at the same time, relying upon the judgments of the Hon'ble High Courts relating to the very same Rule 18 and the notification in support of their case. Suffice it to say, the present contention is, therefore, also self-contradictory and disingenuous.

5.5.2 Another ground urged by the Applicants to distinguish the judgment of Hon'ble Supreme Court in Sansera Engineering Ltd. is that while passing the judgment, Hon'ble Supreme Court did not take into account its earlier decision as reported in 2015 (325) ELT A104 (SC). The Government observes that the judgment of the Division Bench of the Hon'ble Madras High Court, in Dorcas Market Makers Pvt. Ltd., was contested by the Union of India before the Hon'ble Supreme Court by way of Special Leave to Appeal (Civil) CC No. 17561 of 2015. However, the said SLP came to be dismissed by the Hon'ble Supreme Court in following terms:

"Delay condoned

Dismissed."

Thus, the Hon'ble Supreme Court has by a non-speaking order dismissed the SLP filed by the Government. In the case of Kunhayammed vs. State of Kerala, {(2000) 6 SCC 359}, the Hon'ble Supreme Court has held as under:

> *"27. A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. Whatever be the phraseology employed in the order of dismissal, if it is a nonspeaking order, i.e., it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand*

substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution for there is no law which has been declared."

In the present case, as already brought out, the SLP has been dismissed by the Hon'ble Supreme Court by a non-speaking order without specifying any reasons. Therefore, neither the judgment of the Hon'ble Madras High Court can be said to have merged with the order of the Hon'ble Supreme Court nor can the decision of the Apex Court to dismiss the SLP be taken as a declaration of law by the Hon'ble Supreme Court under Article 141 of the Constitution. As such, subject contention of the Applicants can also not be accepted.

5.5.3 It is also to be observed that the judgments of Hon'ble High Courts in the cases of Dorcas Market Makers Pvt. Ltd. and JSL Lifestyle Ltd. have been specifically overruled by the Hon'ble Supreme Court in the case of Sansera Engineering Ltd. Therefore, the judgment of the Hon'ble Allahabad High Court in the case of Camphor and Allied Products Ltd., which is based on these overruled judgments, cannot also be relied upon.

5.6. Another contention of the Applicants is that provisions of Section 11B of the Central Excise Act, 1944 are not applicable with respect to rebate of SBC since duty does not include SBC. It is observed that SBC was imposed by virtue of Section 119 of the Finance Act, 2015, which reads as under:

"119. (1) This Chapter shall come into force on such date as the Central Government may be 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 initiative 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 services tax leviable on such taxable service 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 tax on such taxable services under Chapter V of the Finance Act, 1994 or the rules made thereunder, as the case may be."

On a plain reading of the said Section 119, it is clear that SBC is levied and collected as service tax and the provisions of Chapter V of Finance Act, 1994 and the rules made thereunder including those relating to refunds are applicable in respect of SBC on taxable services as they are applicable in relation to levy and collection of service tax, under Chapter V of the Finance Act, 1994. Therefore, for the purposes of refund, SBC has to be dealt with in the same manner as service tax. As brought out hereinabove, by virtue of Section 83 of the Finance Act, 1994, provisions of Section 11B have been made applicable to service tax as in respect of duty of excise. Therefore, on a combined reading of Section 119 of the Finance Act, 2015 and Section 83 of the Finance Act, 1994, the provisions of Section 11B of the Central Excise Act, 1944 are also applicable to the refund/rebate of SBC. In any case, the Applicants themselves have approached for rebate of SBC by invoking the provisions of Rule 6A of the Service Tax Rules, 1994. Thus, the present argument that the provisions of Section 11B are not applicable while, at the same time, claiming rebate in terms of the provisions relating to service tax in respect whereof the provisions of Section 11B are directly applicable, the Applicants are again indulging in self-contradiction and are again being dis-ingenious in their approach.

5.7 Another argument of the Applicants is that the substantive benefit of rebate cannot be denied due to procedural lapses. The Government observes that, in the case of Uttam Steels Ltd., the Hon'ble Supreme Court has relied upon the judgment of a nine judge bench in the case of Mafatlal Industries Ltd. vs. UOI {1997 (89) ELT 247 (SC)} to lay down that, *"all claims for rebate/refund have to be made only under Section 11B ---------- . Further, the limitation period ---------- has to be strictly applied."* Therefore, the present argument of the Applicants is in the teeth of law laid down by the Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. and Uttam Steels Ltd.. In any case, if this argument was to be accepted, no rebate claims can be denied on the grounds of limitation, which would render the corresponding provisions of Section 11B of the Central Excise Act, 1944, read with Section 83 of the Finance Act, 1994 redundant, a proposition which cannot be countenanced in law.

5.8 In view of the above, the Government has no hesitation in holding that the limitation prescribed under Section 11B ibid, is also applicable in the claims of rebate, filed under Rule 6A of the Service Tax Rules, 1994 read with Notification No. 39/2012-ST.

6. In view of the above, the revision applications are rejected.

(Sandeep Prakash)
Additional Secretary to the Government of India

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G.O.I. Order No. 10-15 /23-ST dated 27-03-2023

Copy to: -

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2. The Commissioner of Central Tax (Appeals-I), Traffic & Transit Management Centre, BMTC Building, 4th Floor, Above BMTC Bus Stand, Domaluru, HAL Airport Road, Bengaluru-560071.
3. PPS to AS (RA).
4. Spare Copy.
5. Guard File.
6. Notice Board.

ATTESTED

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