

**SPEED POST**



F.No. 195/152-153/SZ/2018-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue...22/3/24

Order No. 10-11/2024-CX dated 22-03-2024 of the Government of India, passed by Ms. Shubhagata Kumar, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Applications filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal Nos. 255 & 256/2018(CTA-I) dated 24.05.2018, passed by the Commissioner of Central Excise ( Appeals-I), Chennai.

Applicant : M/s Standard Chartered Global Business Services Pvt. Ltd., Chennai.

Respondent : The Commissioner of CGST & Central Excise (North), Chennai.

**ORDER**

Two Revision Applications, bearing Nos. 195/152/SZ/2018-RA & 195/153/SZ/2018-RA, both dated 27.08.2018, have been filed by M/s Standard Chartered Global Business Service Pvt. Ltd., Chennai (hereinafter referred to as the Applicants) against the Order-in-Appeal Nos. 255 & 256/2018(CTA-I) dated 24.05.2018, passed by the Commissioner of GST & Central Excise ( Appeals-I), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal in the appeals filed by the Applicants against OIO No. 4 & 5/2017-18 dated 08.11.2017 passed by the Assistant Commissioner of GST and Central Excise, Nungambakkam Division of Chennai (North) Commissionerate held that after 03.02.2016, Swachh Bharat Cess is eligible for rebate and accordingly remanded back the issue to lower Adjudicating Authority to verify the records of the case for the period from 03.02.2016 to 31.03.2016.

2 Briefly stated, the Applicants herein were engaged in the business of providing and exporting information technology, software services and business auxiliary services. They filed two rebate claims seeking rebate of Swachh Bharat Cess (SBC) on input services in terms of Notification no. 39/2012-ST dated 20.06.2012 as amended vide Notification No. 03/2016-ST dated 03.02.2016, details of which are tabulated below as;

S.No.	Period covered	Date of rebate filing	Amount claimed (Rs.)
1.	December 2015 to January 2016	30.12.2016	9,92,872/-
2.	October 2015 to March 2016	03.02.2017	14,37,088/-

The applicant had claimed that they had not availed CENVAT credit on inputs and input services on which rebate had been claimed. However, the Respondent department during the processing of the claims found that the declaration of the Applicants to the effect that they had not availed CENVAT credit on inputs and input service was contrary to the fact that the Applicants had been utilizing/claiming refund of CENVAT credit under rule 5 of the CENVAT credit rules, 2004 read with Notification no. 27/2012-CE(NT) dated 18.06.2012. Accordingly, the applicants were issued two show cause notices both dated 19.05.2017,

wherein, rejection of the above mentioned rebates claimed by the applicant were proposed. After due process of law, the lower Adjudicating Authority vide the above mentioned OIOs rejected both rebate claims. Aggrieved, the Applicants preferred appeals with the Commissioner (Appeals) who vide the impugned OIA held that the Applicant were eligible for rebate of Swachh Bharat Cess (SBC) w.e.f 03.02.2016 in terms of Notification No. 03/2016-ST dated 03.02.2016 and thereafter remanded back the issue to lower Adjudicating Authority to verify the records of the case for the period from 03.02.2016 to 31.03.2016.

3. The Revision Applications have been filed, mainly, on the grounds that levy of Swachh Bharat Cess is a levy of Service Tax and hence is eligible to be claimed as rebate from the date of its levy under Finance Act,1994; that Service tax is eligible for rebate under Notification No.39/2012-ST dated 20.06.2012. Hence, SBC , being a levy of service tax is also eligible for rebate under the said notification; that amendment vide notification No. 03/2016-ST dated 03.02.2016 is clarificatory in nature and hence retrospective in nature.

4 Personal hearing in both cases was held on 03.01.2024. Ms. R. Charulatha, Advocate of M/s Lakshmikumaran & Sridharan Attorneys appeared on behalf of the Applicants and reiterated the submissions made in the revision applications. She also requested that her written submissions dated 03.01.2024 in the matter, be taken on record. She submitted that Notification no. 03/2016-ST dated 03.02.2016 can actually be treated as a clarification to Notification No. 39/2012-ST dated 20.06.2012 and thus may be considered as having retrospective effect, even though not expressly mentioned as such. No one appeared for the Respondent department nor has any request for adjournment been received. Hence, it is presumed that the department has nothing to add in the matter.

5. The Government has carefully examined the matter. The Government observes that the issue to decide upon in the instant matter is as to whether amendment vide

notification No. 03/2016-ST dated 03.02.2016 is clarificatory in nature and hence retrospective in nature as sought and emphasized by the Applicant.

6. At the outset, the Government observes that notification No. 03/2016-ST dated 03.02.2016 amends Notification No. 39/2012-ST dated 20.06.2012 and the amending notification stipulates that "in Notification No. 39/2012-ST dated 20.06.2012, in Explanation I , after clause (c) , the following clause shall be inserted namely:-

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

It is also seen that no date for application of this notification with retrospective effect has been given. Thus, the Government observes that a new clause has been added to the parent notification vide the amending notification which did not exist earlier.

6.1 The Applicant has submitted that Notification No. 03/2016-ST dated 03.02.2016 should be treated as clarificatory to Notification No. 39/2012-ST dated 20.06.2012. Relying upon the decision of Hon'ble Apex Court in the case of *Commissioner of Income tax Vs Vatika Township (P) Ltd., (2015) 1 SCC 1*, the Applicant has submitted that if a legislation confers a benefit on some persons then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect.

On the above submission of the Applicant, the Government observes that the Hon'ble Apex Court in the case *L.R. Brothers Indo flora Ltd. Vs Commissioner of Central Excise {2020 (373) E.L.T. 721 (S.C.)}* distinguished the decision of Hon'ble Apex Court in the case of *Commissioner of Income tax Vs Vatika Township (P) Ltd(supra)* in the following terms:

**"30.** *In Vatika Township (supra), Constitution Bench of this Court has analysed the principle concerning retrospectivity. The appellant heavily relies upon the observation made at paragraph 30 of the decision, which reads thus :*

*"30. ... If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, then the*

*presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. ...".*

*The appellant clearly misinterprets the context of the above observation by reading the same in isolation. To have a better understanding of the said principle, it is relevant to read the preceding and subsequent paragraphs. We may here refer to Paragraph 32 of the said decision, which is extracted below :*

*"32. Let us sharpen the discussion a little more. We may note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labelled as "declaratory statutes". The circumstances under which provisions can be termed as "declaratory statutes" are explained by Justice G.P. Singh in the following manner :*

*"Declaratory statutes*

*The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies and approved by the Supreme Court : 'For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a Preamble, and also the word "declared" as well as the word "enacted".' But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. **An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law***

*retrospective operation is generally intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law."*

*The above summing up is factually based on the judgments of this Court as well as English decisions."*

*Upon reading the observations at Paragraph 30 and juxtaposed with paragraph 32, it is crystal clear that an essential requirement for application of a legislation retrospectively is to show that the previous legislation had any omission or ambiguity or it was intended to explain an earlier act. In absence of the above ingredients, legislation cannot be regarded as having retrospective effect."*

(Emphasis supplied)

Now the moot question that arises is as to what Notification No. 03/2016-ST dated 03.02.2016 clarifies or intend to explain in parental Notification No. 39/2012-ST dated 20.06.2012 in order to give it a retrospective effect. The Government observes that neither the amending notification clarifies any ambiguity nor does it explain the parental notification in any manner. It is rather an insertion of a new clause in the parental notification. Therefore, the Government does not agree with the submission of the Applicant that Notification No. 03/2016-ST dated 03.02.2016 may be treated as clarificatory to Notification No. 39/2012-ST dated 20.06.2012.

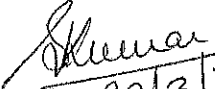
6.2 The Hon'ble Apex Court in the case of *MRF Ltd. Vs Assistant Commissioner (Assesment) Sales Tax {2008(12) S.T.R. 206(SC)}* held that:

"27 The provisions of the Act or notification are always prospective in operation unless the express language renders it otherwise making it effective with retrospective effect. This Court in *S.L. Srinivasa Jute Twine Mills (P) Ltd. v. Union of India & Anr.*, 2006 (2) SCC 740, has held that it is a settled principle of interpretation that :

*"retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication; there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary."*

The Government observes that nowhere in the amending notification No. 03/2016-ST dated 03.02.2016 has it been mentioned in express language that it is effective with retrospective effect. In light of the judgment of Hon'ble Apex Court (Supra), the amending notification No. 03/2016-ST dated 03.02.2016 will have a prospective effect. Hence, the Government is in agreement with the Commissioner (Appeals) finding at para 7 of the impugned OIA that SBC is eligible for rebate from 03.02.2016 only. In the instant case, the rebate periods mentioned in the impugned orders are from December , 2015 to January,2016 and October,2015 to March, 2016. Hence, the rebate of SBC is eligible for rebate from 03.02.2016 only as per Notification no. 03/2016-ST and the periods prior to 03.02.2016 are not eligible for rebate of SBC. The Government finds no infirmity with the impugned OIA. The impugned OIA is upheld.

7. Both the Revision Applications are, accordingly, rejected.

  
22/3/24  
(Shubhagata Kumar)

Additional Secretary to the Government of India

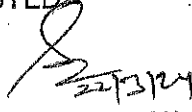
M/s Standard Chartered Global Business Services Pvt. Ltd.,  
No.1, Haddows Road, Nungambakkam,  
Chennai-600034.

G.O.I. Order No. 10-11/24-CX dated 22-3-2024

Copy to:

1. The Principal Commissioner of CGST, Chennai (North), 26/1, Mahatma Gandhi Marg, Chennai-600034.
2. The Commissioner of CGST (Appeals-I), 26/1, Mahatma Gandhi Marg, Chennai-600034.
3. M/s Lakshmikumaran & Sridharan Attorneys, No.2, Wallace Garden, 2<sup>nd</sup> Street, Chennai-600006.
4. PPS to AS (RA).
5. Notice Board.
- ✓ 6. Guard File.
7. Spare Copy

ATTESTED



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