SPEED POST

F. No. 196/01/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 15/02/23

Order No. 08 /23-ST dated 15-02-2023 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. 06/2022 dated 17.01.2022, passed by the Commissioner of Central Tax (Appeals-I), Bengaluru.
Applicant	:	M/s Boltell Infomedia Pvt. Ltd., Bengaluru.
Respondent	:	The Pr. Commissioner of CGST & Service Tax, Bengaluru East, Bengaluru.

****

ORDER

Revision Application No. 196/01/ST/2022-RA dated 18.04.2022 has been filed by M/s Boltell Infomedia Pvt. Ltd., Bengaluru (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 306/2022 dated 17.01.2012, passed by the Commissioner of Central Tax (Appeals-I), Bengaluru. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, upheld the Orders-in-Original Nos. 26 & 27/2020-21 (R) dated 02.06.2020, passed by the Deputy Commissioner of CGST, East Division-I, 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 service tax & cess paid on inputs used in providing taxable services exported by them, in terms of Rule 6A of the Service Tax Rules, 1994 read with Notification No. 39/2012-ST dated 20.06.2012. The claims amounting to Rs. 10, 48,110/- (for April 2016- March 2017) and Rs. 2, 81,234/- (for April 2017- June 2017) were both filed on 28.09.2017. These claims were initially rejected by the original authority but were remanded for fresh consideration by the Commissioner (Appeals), vide Order-in-Appeal No. 285-286/2019 dated 24.10.2019. In the de-novo proceedings, the original authority, vide the aforesaid Order-in-Original dated 02.06.2020, sanctioned the claim for the period April-June 2017, in full, but, partly, rejected the claim for the period 2016-2017 as time barred-out of the total amount of Rs. 10,48,110/-, claim for Rs. 6,27,166/- was sanctioned whereas the claim for Rs. 4,20,944/- was rejected. The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals).

3. The revision application has been filed, mainly, on the grounds that the provisions of Section 11B of the Central Excise Act, 1944 have been made applicable to service tax by virtue of Section 83 of the Finance Act, 1994; that, on a conjoint reading of Section 11B ibid and Section 83 ibid, expression 'refund' includes rebate of service tax paid in respect of services exported; that, therefore, time limit prescribed

under Section 11B ibid shall also apply to a claim of rebate of service tax filed under Notification No. 39/2012-ST dated 20.06.2012; that there is no dispute regarding the date of FIRCs and the fact that the claims were filed on 28.09.2017; and that several Benches of the CESTAT have held in respect of refund of CENVAT credit under Rule 5 of the CENVAT Credit Rules, 2004 that the period of one year shall commence from the end of quarter in which export proceeds were realised. Further written submissions have been filed on 23.01.2023, by email.

4. Personal hearing was fixed on 23.01.2023 & 13.02.2023. In the personal hearing held on 13.02.2023, in virtual mode, Sh. R. Kumaravel, CA appeared for the Applicant and requested that the additional submissions dated 23.01.2023 may be taken on record. He reiterated the contents of the RA and the additional submissions dated 23.01.2023. Sh. Kumaravel also undertook to submit the proof of payment of RA fee by 6 PM of 13.02.2023 by email. Finally a copy of e-challan for payment of Rs. 1000/- towards GST (other payments) has been emailed on 15.02.2023. 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.

5.1 The Government has carefully examined the matter. At the outset, it is observed that the RA fee has not been paid by the Applicants, despite being advised to do so, vide letters dated 06.01.2023 & 24.01.2023 as well as during the personal hearing held on 13.02.2023. The e-challan emailed on 15.02.2023 relates to payment of GST (other payments) and not towards payment of fee under Section 35EE of the Central Excise Act, 1944. As per sub-section (3) of Section 35EE ibid, the revision application fee "shall be accompanied by a fee" of the amounts specified in clause (a) or (b), as applicable. The usage of word "shall" makes it apparent that the payment of RA fee is mandatory for a revision application to be entertained. The Applicants have, in the past, relied upon the judgment of Hon'ble Allahabad High Court, in the case of M/s Glyph International Limited {2014-TIOL-525-HC-ALL-ST}, to claim that RA fee was not payable in the present case. However, the Government observes that Glyph International (supra) relates to fee payable for filing appeals before the CESTAT in refund/rebate matters and not to the fee payable for filing revision

applications before the Government. Further, in terms of Section 35EE read with first proviso to Section 35B (1) of the Act ibid, powers of revision extend to (a) cases of loss of goods in transit, (b) rebate of duty and (c) goods exported without payment of duty. Glyph International (supra) was decided on the grounds that Section 86 (6) of the Finance Act, 1994 did not speak specifically of refund/rebate whereas in respect of revision under Section 35EE, 'rebate' is a specifically covered subject. Therefore, the ratio of Glyph International is, even otherwise, not applicable in this case. Hence, the revision application is liable to be rejected as non-maintainable.

5.2.1 On merits, indubitably, as by virtue of Section 83 of the Finance Act, 1994, provisions of Section 11B of the Central Excise Act, 1994 have been adopted for the purposes of service tax, the 'refund' would include 'rebate' and the limitation of one year prescribed under Section 11B shall also apply to the rebate claims filed under Rule 6A read with Notification No. 39/2012-ST. However, as the Section 11B does not define 'relevant date' for the purposes of export of services, the issue that arises for consideration is what would be the 'relevant date' in case of rebate claims, filed under Rule 6A ibid, in respect of service tax or duty paid on input services or inputs used in providing the services exported. The original authority has treated the date of realisation of export proceeds, i.e., the date of FIRCs as the 'relevant date' whereas the contention of the Applicants is that it is the end of the quarter in which the FIRCs are received, which should be treated as the 'relevant date'.

5.2.2 Applicants have heavily relied upon the judgment of the Hon'ble Karnataka High Court (i.e., Hon'ble Jurisdictional High Court), in the case of Suretex Prophylactics India Pvt. Ltd. vs. Commissioner of Central Excise, Customs & Service Tax, Bengaluru {2020 (373) ELT 481 (Kar.)}, in support of their contention. At the outset, it is to be observed that the judgment in the case of Suretex Prophylactics India Pvt. Ltd. (supra) and the decisions of CESTAT in the case of Aircheck India Pvt. Ltd. [Indian Kanoon Document 94814885] and Ocean Connect India Pvt. Ltd. vs. Commissioner of Central Excise (Final Order No. A/89239-89242/2016-WZB/SMB dated 18.08.2016), which have also been relied upon by the Applicants, relate to the claims of refund of unutilized CENVAT credit, under Rule 5 of the CENVAT Credit Rules, 2004 (CCR, 2004). However, the Government finds that guidance can still be

drawn from the judgment in the case of Suretex Prophylactics for deciding the present matter. In the case of Suretex Prophylactics India Pvt. Ltd. (supra), Hon'ble Karnataka High Court has framed certain substantial questions of law, inter-alia, in respect of CEA No. 35/2018, which arose from the decision of CESTAT, in the case of Continental Automotive Components India Pvt. Ltd., (Final Order No. 20374-20385/2018 dated 08.03.2018). The substantial question of law no. 2 framed in the said CEA No. 35/2018 is relevant to the present consideration. In para 13 of its judgment, the Hon'ble High Court has answered the aforesaid substantial question of law no. 2 and has upheld the view of CESAT that the relevant date will be the end of quarter in which FIRC's are received as per the extant Notification No. 27/2012-CE (NT) dated 18.06.2012.

5.2.3 The Government observes that while deciding the case of Continental Automotive Components India Pvt. Ltd., the CESTAT, Bengaluru Bench has followed the interim order of a larger bench of the Tribunal in the case of CCE., CUS. & S.T., Bengaluru vs. Span Infotech India Pvt. Ltd. {2018 (12) G.S.T.L. 200 (Tri.-LB)}. Para 13 of the order of the larger bench in Span Infotech India Pvt. Ltd. (supra) reads as under:

> *"Revenue has expressed the view that relevant date in the case of export of services may be adopted on the same lines as the amendment carried out in the Notification No. 27/2012, w.e.f. 1-3-2016.* ***Essentially, after this amendment the relevant date is to be considered as the date of receipt of foreign exchange.*** *While this proposition appears attractive, we are also persuaded to keep in view the observations of the Hon'ble Supreme Court in the case of Vatika Township (supra), in which the Constitutional Bench has laid down the guideline that any beneficial amendment to the statue may be given benefit retrospectively but any provision imposing burden or liability on the public can be viewed only prospectively. Keeping in view the observations of the Apex Court, we conclude that in respect of export of services,* ***the relevant date for purposes of deciding the time limit for consideration of refund claims under Rule 5 of the CCR may be taken as the end of the***

quarter in which the FIRC is received, in cases where the refund claims are filed on a quarterly basis." *(Emphasis supplied)*

Thus, the Tribunal, essentially, agreed with the proposition that the 'relevant date' in the case of export of services should be the date of receipt of foreign exchange, i.e., FIRC date. However, keeping in view the fact that the refund claims under Rule 5 of CCR, 2004 were to be filed on quarterly basis, it decided that the 'relevant date' may be taken as the end of the quarter in which FIRC is received.

5.2.4 In the case under Rule 6A of the Service Tax Rules, 1994 read with Notification No. 39/2012-ST dated 20.06.2013, there is no requirement of filing of rebate claims on a quarterly basis. As per clause (a) (i) of para 3.4 of the Notification No. 39/2012-ST, *"claim of rebate of the duty paid on the inputs or the service tax and cess paid on input services shall be filed with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, after the service has been exported."* Thus, the rebate claims under Rule 6A ibid can be filed after every case of export and these need not be filed on a quarterly basis. As brought out in para 5.2.3 above, the CESTAT has, in the case of Span Infotech, which has been relied upon in the case of Continental Automotive Components (supra) - a decision that has the imprimatur of Hon'ble Karnataka High Court, essentially agreed that the date of receipt of foreign exchange, i.e., the date of FIRC would be the 'relevant date' in respect of export of services but has finally taken a view that the 'relevant date' should be the end of quarter, in which the FIRCs are received, only because the refund claims under Rule 5 of CCR, 2004 were required to be filed on a quarterly basis. Such a requirement of filing of claim on quarterly basis being not applicable to the rebate claims under Rule 6A of the Service Tax Rules, 1994, it would only be logical and reasonable to treat the date of receipt of foreign exchange, i.e., date of FIRC as the 'relevant date' for the purposes of claiming rebate under Rule 6A.

5.2.5 As such, the Government does not find any infirmity in the view taken by the original authority as upheld by the Commissioner (Appeals).

6. The revision application is rejected for the reasons aforesaid.

(Sandeep Prakash)
Additional Secretary to the Government of India

M/s Boltell Infomedia Pvt. Ltd.,
Ground Floor, Curley Street,
Langfor Road, Bengaluru-560025.

G.O.I. Order No. 08 /23-ST dated 15-02-2023

Copy to: -

1. The Pr. Commissioner of CGST & Service Tax, Bengaluru East, TTMC/BMTC Bus Stand Complex, Hall Airport Road, Domlur, Bengaluru-560071.
2. The Commissioner of Central Tax (Appeals-II), Traffic & Transit Management Centre, BMTC Building, 4th Floor, Above BMTC Bus Stand, Domlur, Old Airport Road, Bengaluru-560071.
3. M/s B.K. Khare & Co., CA, 7th Floor, 706-708, Sharda Chambers, New Marine Line, Mumbai-400020.
4. PPS to AS (RA).
5. Spare Copy.
6. Guard File.
7. Notice Board.

ATTESTED

पूनम गुग्गल / Poonam Guggal
अधीक्षक / Superintendent (R.A. Unit)
वित्त मंत्रालय / Ministry of Finance
राजस्व विभाग / Department of Revenue
Room No. 605, 6th Floor, B-Wing
14, Hudco Vishala Building, Bhikaji
New Delhi-110066