



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय
Office of the Commissioner (Appeals)
केंद्रीय जीएसटी अपील आयुक्तालय - अहमदाबाद
Central GST Appeal Commissionerate- Ahmedabad
 जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



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टेलीफैक्स 26305136 - 079 :

DIN-20210964SW000011641E

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/17/2021/3002 To 3006
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-013/2021-22**
 दिनांक Date : 30.07.2021 जारी करने की तारीख Date of Issue : 10.09.2021
- आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST/WS08/Ref-02/ST/BSM/20-21
 dated 03.07.2020 passed by the Assistant Commissioner, Central GST
 Division-VIII, Ahmedabad South Commissionerate.
- ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant

M/s Vodafone Idea Ltd. ,
 (formerly known as 'Vodafone Mobile Services Ltd.')
 Vodafone House, Prahladnagar,
 Off S.G. Highway,
 Ahmedabad.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



- (क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।
- (A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

- (c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनोंक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-

Appeal to Custom, Excise, & Service Tax Appellate Tribunal:

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गत:-

Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 an appeal lies to :-

- (क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004
- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



- (2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.
- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contained in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (Section) खंड 11D के तहत निर्धारित राशि;
- लिया गलत सेनवैट क्रेडिट की राशि;
- सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

This appeal has been filed by M/s Vodafone Idea Ltd. (formerly known as 'Vodafone Mobile Services Ltd.'), Vodafone House, Prahladnagar, Off S.G. Highway, Ahmedabad (hereinafter referred to as the '*appellant*'), against Order-In-Original No. CGST/WS08/Ref-02/ST/BSM/20-21 dated 03.07.2020 (hereinafter referred as "*impugned order*") passed by the Assistant Commissioner, Central GST, Division-VIII, Ahmedabad South Commissionerate (hereinafter referred to as the "*adjudicating authority*").

2. The facts of the case, in brief, are that the appellant was engaged in the business of providing Telecommunication Services and was holding Service Tax Registration for the same. The appellant, inter alia, provided International Inbound Roaming Services to their customers and under an agreement with the Foreign Telecom Operators (in short '*FTOs*') by providing connectivity to its subscribers during their visit to India. The consideration for provision of the said services was received from the FTOs in convertible foreign exchange. The appellant considered the provision of the said services by them to FTOs as export of services under Rule 5 of the Export of Services Rules, 2005. Accordingly, they filed several refund claims amounting to Rs.3,65,22,866/- with their jurisdictional Deputy Commissioner of Service Tax, Division-I, Ahmedabad for rebate of service tax in terms of Notification No.11/2005-ST dated 19.04.2005 read with Rule 5 of Export of Services Rules 2005 in respect of services exported for the services provided during the period from April, 2008 to October, 2012, as detailed below:

Sr.No.	Date of filing of refund claim	Period for which refund claimed	Amount of refund claimed (in Rs.)
1	09-November-2011	April 2008 to March 2009	3,19,19,313/-
2	07-March-2012	April 2011 to September 2011	23,46,444/-
3	28-June-2012	October 2011 to March 2012	6,15,158/-
4	28-June-2012	April 2012 to May 2012	3,810/-
5	04-February-2013	February 2012	86,314/-
6	03-May-2013	April 2012	1,61,839/-
7	01-August-2013	July 2012	3,61,882/-
8	03-September-2013	August 2012	6,42,391/-
9	03-October-2013	September 2012	2,49,089/-
10	01-November-2013	October 2012	1,36,266/-
Total			3,65,22,866/-

2.1 The said refund/rebate claims were rejected by the concerned competent authority on the grounds that International Inbound Roaming Services provided by the appellant does not



qualify as exports as per the Export of Services Rules, 2005 and also on the ground that the refund was time barred for the period Financial Year 2008-09.

2.2 Being aggrieved with the above rejection, the appellant filed an appeal before the Commissioner (Appeals), Ahmedabad who also rejected the appeals filed by the appellant and upheld the Orders of the Deputy Commissioners vide Orders-in-Appeal (i) No.AHM-SVTAX-000-APP-014 to 17-15-16 dated 08.05.2015, (ii) No.AHM-SVTAX-000-APP-023 to 025-15-16 dated 22.05.2015 and (iii) No.AHM-SVTAX-000-APP-030 to 033-15-16 dated 01.06.2015.

2.3 The appellant carried the matter further to the Hon'ble CESTAT, Ahmedabad who vide their Order No. A/11984-11993/2019 dated 29.10.2019 has set aside the impugned Orders-in-Appeal and allowed the appeals of the appellant.

2.4 In pursuance of disposal of appeals by the Hon'ble CESTAT in their favour, the appellant approached the department for the refund/rebate of Rs.3,65,22,866/- which was filed by them as discussed in Para 2 above. The said claim of the appellant was decided by the adjudicating authority vide the impugned order wherein he had observed that the amount of rebate eligible to the appellant in view of the Hon'ble CESTAT order is only Rs.46,03,553/- as one rebate claim of Rs.3,19,19,313/- for the period from April 2008 to March 2009 is hit by limitation. However, he had rejected the claims of rebate of Rs.46,03,553/- admissible in terms of the Hon'ble CESTAT's Order on the ground that an application for Rectification of Mistake (ROM) has been filed in respect of the said CESTAT Order dated 29.10.2019 by the department for correcting the Order-in-Appeal number mentioned in page 2 of the said Order and the result thereof is still awaited and that the said refund claim has not been cleared from pre-audit for want of revised CESTAT Order and RRA acceptance letter and hence the appellants are not eligible for refund at this stage.

3. Being aggrieved with the above order, the appellant has filed the present appeal challenging the legality, correctness and propriety of the Order for the period April 2011 to October 2012 on the following grounds:

- The refund of Rs.46,03,553/- has been rejected with pre-conceived intention to delay the grant of refund to the appellant;
- It is clear that sole reason for rejection of refund claim is due to ROM application being filed by the department against the Tribunal Order for correction of a typographical error;
- Matter on merits was decided in favour of the appellant by the Hon'ble Tribunal vide its Order dated 29.10.2019;



- ROM can be filed only for rectification of mistakes apparent from record and cannot challenge the merits of the case based on which the Order has been passed. Hence, it is clear that Law provides that ROM application is to be filed in case of typographical errors and the same should not result in re-opening of the assessment or delay in granting of the refund claim to the appellant. They rely on the case laws in the case of M/s MM Brothers Vs. The Commissioner, Central Excise and Customs [2020-TIOL-1682-CESTAT-DEL] and in the case of Shri Ram Life Insurance Company Ltd. Vs. Commissioner of Customs, Central Excise [2009 (15) TMI CESTAT-Hyderabad] in this regard;
- Admittedly, in the instant case ROM application has been filed for correction of a typographical error on the Order of the Tribunal. It is evident that ROM application does not have any impact on the merits of the case and the *ratio decidendi* remains intact. Accordingly, it is submitted that rejection of refund merely on account of a typographical error on the Tribunal Order is unjust to the appellant;
- There must be reasonableness in reading the Order and the same cannot be construed to be verbatim. An insignificant/immaterial typographical error should not result in denial/deferral of the benefit to the assessee. They rely on the Tribunal decision in the case of D H Jadhav Vs. Commissioner of Central Excise, Kolhapur [2017-TIOL-352-CESTAT-MUM] in support of their contention;
- Denial of refund claim even after receiving a favourable Order is in violation of Article 300A of the Constitution. Denying the refund to the appellant on such insignificant error is equal to depriving the appellant of its property. The appellant cannot be made to suffer or deprived of its property for a mere typographical error, by the Revenue which has no bearing on the merits of the case;
- The rejection of refund on the ground that the order is not correlating with the case is baseless and same has been rejected with a preconceived intention of delaying the refund to the appellant;
- Though there was an incorrect reference of the OIA number on the Tribunal Order, however, there are other references in the CESTAT Order on the basis of which refund claim could easily be co-related. Order of the CESTAT had reference to all the Appeal Numbers for which the Order was passed. Based on the Appeal numbers, the details of refund claims could have been easily correlated;
- Further, the fact that Revenue has filed a ROM application makes it abundantly clear that the refund claims were correlated and the same was in the knowledge of the department. Given this, it is submitted that rejection of refund claim on the premise that the Tribunal Order was not co-relating with the refund claim filed by the appellant is fallacious;
- It is well settled principle that Order of the higher authority are binding on the lower authorities and the same has to be accepted unless and until such Order is stayed by



the higher authorities. Lower authorities are bound by this principle of judicial discipline. They rely on the case laws in the case of Union of India Vs. Kamalaxi Finance Corporation Ltd. [2002-TIOL-484-SC-CX-LB] and Triveni Chemicals Ltd. Vs. Union of India [2006-TIOL-184-SC-CX] in this regard;

- The rejection of the refund claim on the ground that RRA has not accepted the Order is in violation of the principle of judicial discipline and it is obligatory on the part of the Revenue to follow the judicial discipline and implement the Order of the higher authorities; and
- Unless and until the order of the CESTAT has been stayed by High Court, it shall be binding on the Adjudicating Authority and accordingly, the refund amount should be sanctioned to the appellant. The Department has not filed any appeal against the said Tribunal's Order and the Tribunal's Order has attained finality to this extent.

4. Personal hearing in the matter was held on 22.06.2021 through virtual mode. Shri NiravWorah, Senior Manager, appeared on behalf of the appellant for hearing. He reiterated the submissions made in the appeal memorandum.

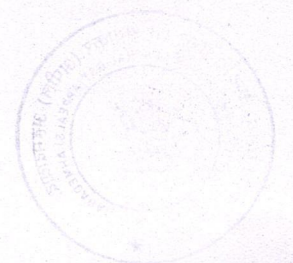
5. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum and oral submissions made at the time of personal hearing. The issue to be decided in the case is as to whether the impugned order passed by the adjudicating authority rejecting appellant's claim for refund in the case in pursuance of the Hon'ble CESTAT's Order No.A/11984-11993/2019 dated 29.10.2019, is legally proper and correct or otherwise.

6. It is observed that the appellant is in appeal against the rejection of the refund for an amount of Rs.46,03,553/-, which was found admissible to them as refund by the adjudicating authority in terms of the Hon'ble Tribunal's Order dated 29.10.2019 but was rejected on the ground that the same is not eligible at this stage as an application for Rectification of Mistake filed by the department against the said CESTAT order for correction of a typographical error in the said Order in mentioning the Orders-in-Appeal therein, is yet to be decided. The amount of refund of Rs.3,19,19,313/- rejected on the ground of limitation is not disputed by the appellant. It is the contention of the appellant that ROM application filed by the department does not have any impact on their claim for refund as the issue under dispute in the case already stand decided by the Hon'ble Tribunal on merits in their favour and the correction sought vide the ROM application is insignificant in deciding their claim for refund and the department cannot deny or delay the legitimate benefit earned by them in terms of the Tribunal Order on such technical reasons.




6.1 After going through the impugned order, I find that the adjudicating authority has observed that the appellant is eligible for refund of Rs.46,03,553/- in terms of the Hon'ble Tribunal's Order dated 29.10.2019 but decided to reject it in view of the objection raised during the pre-audit of the refund claim. It was observed during pre-audit that the CESTAT order, on the basis of which this fresh refund claim has been filed, is not fully co-relating with the case and is in the process of rectification and that RRA Section has also not accepted the CESTAT order till date and hence without revised CESTAT Order and RRA acceptance letter, the refund claim is not cleared from pre-audit. I find that the above view of the department is not a legally sustainable reason to reject the refund eligible to the appellant in terms of the Tribunal's Order. It is a fact undisputed that the issue under dispute before the Hon'ble Tribunal is clearly stand settled in favour of the appellant on merits and the rectification is sought by the department only for correction of the error crept in the in Tribunal Order in mentioning the Orders-in-Appeal therein, which is merely technical in nature. Except for the inadvertent error of mentioning of OIA numbers incorrectly, no other error of any kind is pointed out by the department in the Tribunal Order. It is quite obvious that the outcome of the rectification sought in the case is in no way going to affect the eligibility of the refund which stand allowed to the appellant by the Tribunal. ROM application does not have any impact on the merits of the case and the *ratio decidendi* remains intact, as rightly contended by the appellant. When that being the case, there is no merit in the contention that the appellant is not eligible for refund allowed by the Tribunal till the rectification sought by the department is decided by the Tribunal because the nature of rectification sought by the department in the case *ipso facto* does not have any bearing on the eligibility of the refund to the appellant. . It is, therefore, observed that the refund allowed to the appellant by the Tribunal cannot be withheld or denied for such trivial reasons.


6.2 It is further observed that for the inadvertent minor typographical error which occurred in mentioning the Order-in-Appeal numbers in the Tribunal Order, it does not seem to be correct to conclude that the Order passed by the Hon'ble Tribunal in the case is not fully co-relating with the case. Such an inference on the face of the order is fallacious when the Tribunal Order under reference otherwise quite clearly and exhaustively discusses the entire facts of the case for the appeals under consideration before them. The order of the Tribunal indisputably mentioned all the Appeal Numbers which were decided by the said Order and a verification of the details of the said Appeal Numbers, can easily co-relate the Orders-in-Appeals under challenge in the said appeals which were decided vide the Tribunal Order. The case status report available on the CESTAT website clearly shows the details of Orders under challenge in an appeal. A specimen of such a report found on random verification of the appeals under reference in the present case is reproduced below for better appreciation of facts:




21

https://cestatnew.gov.in/Ahmadabad/services/case_detail_report_action2.php

	
CASE STATUS	
Diary no/Year	115272015
Case Type/Case No/Year	SERVICE TAX/11476/2015
Date of Filing.	04/09/2015
Case Status.	Disposed
Impugn Type	OIA
Impugn Number.	AHM-SVTAX-000-APP-030-033-15-16
Impugn Date	29/05/2015
CASE CURRENT STAGE	
Hearing Date	29-10-2019
Bench	DIVISION BENCH (CUSTOM, EXCISE & SERVICE TAX)
Date of Disposal	29-10-2019
Disposal Nature	
PETITIONER AND PETITIONER ADVOCATES	
Petitioner Name	VODAFONE WEST LIMITED
Petitioner Advocate	PDS LEGAL, ADVOCATES & SOLICITORS
RESPONDENTS AND RESPONDENTS ADVOCATES	
Respondent Name	SERVICE TAX - AHMEDABAD
Respondent Advocate	

	
CASE STATUS	
Diary no/Year	114862015
Case Type/Case No/Year	SERVICE TAX/11448/2015
Date of Filing.	27/08/2015
Case Status.	Disposed
Impugn Type	OIA
Impugn Number.	AHM-SVTAX-000-APP-023-025-15-16
Impugn Date	21/05/2015
CASE CURRENT STAGE	
Hearing Date	29/10/2019
Bench	DIVISION BENCH (CUSTOM, EXCISE & SERVICE TAX)
Date of Disposal	29-10-2019
Disposal Nature	
PETITIONER AND PETITIONER ADVOCATES	
Petitioner Name	VODAFONE WEST LIMITED
Petitioner Advocate	PDS LEGAL, ADVOCATES & SOLICITORS
RESPONDENTS AND RESPONDENTS ADVOCATES	
Respondent Name	SERVICE TAX - AHMEDABAD
Respondent Advocate	



	
CASE STATUS	
Diary no/Year	115052015
Case Type/Case No/Year	SERVICE TAX/11460/2015
Date of Filing.	31/08/2015
Case Status.	Disposed
Impugn Type	OIA
Impugn Number.	AHM-SVTAX-000-APP-014-017-15-16
Impugn Date	08/05/2015
CASE CURRENT STAGE	
Hearing Date	29/10/2019
Bench	DIVISION BENCH (CUSTOM, EXCISE & SERVICE TAX)
Date of Disposal	29-10-2019
Disposal Nature	
PETITIONER AND PETITIONER ADVOCATES	
Petitioner Name	VODAFONE WEST LIMITED
Petitioner Advocate	PDS LEGAL, ADVOCATES & SOLICITORS
RESPONDENTS AND RESPONDENTS ADVOCATES	
Respondent Name	SERVICE TAX - AHMEDABAD
Respondent Advocate	

Therefore, on the facts of the case, it is not legally and logically correct to observe that the Tribunal Order is not fully co-relating with the case for the mere reason of an inadvertent error in mentioning the Order-in-Appeal numbers in the said order when it otherwise clearly discussed the facts of appeals under consideration therein and there is no dispute on the said aspect by the department. On the contrary, the rectification sought by the department in the case itself evidences the correlation of facts in the case. In view thereof, it is observed that the view of the department in this regard is too technical in nature to merit any consideration and is not sustainable and deserved to be rejected for being devoid of any merits.

6.3 The fact of non-acceptance of the Tribunal Order by the department awaiting outcome of the ROM application filed is also not a valid reason to reject the refund under dispute for reasons discussed hereinabove. Further, the review of an Order and its acceptance or non-acceptance is altogether a different proceeding of the department and it cannot affect any consequential benefit/relief arising out of such Order unless the operation of such an Order is stayed by a higher appellate/judicial forum. As per records, no such situation exists in the present case.

6.4 It is further observed that the adjudicating authority while rejecting the refund under dispute in the present case has acted in contravention of the principles of judicial discipline by not giving effect to the Order passed by the Hon'ble Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities/forums should be followed unreservedly by the subordinate authorities. This view has been consistently emphasized by the various judicial forums including the apex court in catena of decisions.



The CBEC has also issued an Instruction F.No.201/01/2014-CX.6 dated 26.06.2014 in this regard directing the all adjudicating authorities to follow judicial discipline scrupulously. The impugned order passed by the adjudicating authority in the case is, therefore, bad in law for this reason also.

7. In view of the above discussions, it is observed that impugned order passed by the adjudicating authority in rejecting the refund claim of Rs.46,03,553/- eligible to the appellant in terms of the Hon'ble Tribunal is not legally sustainable both on facts and merits and is therefore liable to be set aside. Accordingly, I set aside the impugned order for being not legal and proper and allow the appeal of the appellant.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed off in above terms.

Akhilesh Kumar
 (Akhilesh Kumar)
 Commissioner (Appeals)
 Date: 30.07.2021

Attested

Anilkumar P.
 (Anilkumar P.)
 Superintendent (Appeals),
 CGST, Ahmedabad.



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3. The Assistant Commissioner, CGST& Central Excise, Division-VIII, Ahmedabad-South.
4. The Assistant Commissioner (System), CGST HQ, Ahmedabad South.
 (for uploading the OIA)

~~2~~ 5. Guard file

6. P.A. File