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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. ST/66 /2008 - CU[DB] Date **18/11/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
WIPRO BPO SOLUTIONS LTD.

M/S WIPRO BPO SOLUTIONS LTD.239, OKHLA
INDUSTRIAL ESTATE,NEW DELHI-110029

WIPRO BPO SOLUTIONS LTD. Appellant

Vs

C.S.T. DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/593/ 2011 CU[DB]** dated 15.11.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE,
NEW DELHI.

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 05.10.2011

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Service Tax Appeal No. 66 of 2008
[Arising out of Order-in-Appeal No.38/ST/DLH/07 dated 16.11.2007 passed by the Commissioner of Central Excise (Appeals), New Delhi].

M/s Wipro BPO Solutions Ltd. Appellant

Vs.

CST, Delhi Respondent

Appearance:

Rep. by Sh. B. L. Narasimhan, Advocate for the appellants.
Rep. by Sh. R.K. Gupta, DR for the respondent.

Coram: **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

Final Order No. ST/593/11....Dated:5.10.2011

Per: Shri Rakesh Kumar:

The appellant provide Business Auxiliary Services. According to them, they have applied service tax registration which has since been granted to them by the jurisdictional Superintendent of Central Excise in March, 2007. They provide I.T. enabled services like technical support services, back office services, customer care services, etc. under the category of Business Auxiliary Services to their clients abroad. Since the services had been provided to their clients abroad, no service tax was paid in accordance with the provisions of Rule 4 of the Export of the Service Rules, 2005. For providing Business Auxiliary Services to their clients abroad, they had received input services from different service providers on which service tax alongwith education cess had been paid. As the output services had been exported, they filed two rebate claims – first rebate claim dated 15.12.2005 for an amount of Rs.1,98,24,267/- for the period 16.03.2005 to 30.09.2005 and second rebate claim dated 17.03.2006 for an amount of Rs.1,45,03,718/- for the period from 1.10.2005 to 31.12.2005 for rebate of service tax including education cess paid on input services used in providing the output services, which had been exported in terms of the provisions of Rule 3 of the Export Services Rules, 2005. These rebate claims were filed in accordance with the provisions of Rule 5 of the Export Services Rules, 2005 read with Notification No.12/2005-ST dated 19.04.2005.

1.1 The jurisdictional Dy. Commissioner, Service Tax, however, rejected both the rebate claims on the grounds that –

(a) the appellant have not followed the procedure prescribed for claiming rebate as prescribed in the Notification No.12/2005-ST issued under Rule 5 of the Export of Service Rules, 2005 inasmuch as no declaration under para 3.1 of the Notification was filed; and

(b) they did not obtain the service tax registration under the Service Tax Rules.

1.2 The appeals filed by the appellants against the order of the Dy. Commissioner were dismissed vide Order-in-Appeal dated 31.10.2007 of the Commissioner (Appeals). The Commissioner (Appeals) while dismissing the appeals observed that filing of the declaration prior to the export of the services regarding the output services to be exported and the details of the input and inputs services to be used and its verification by the jurisdictional Dy. Commissioner / Asstt. Commissioner so as to prevent the mis-use of this concession is a substantive condition and by not filing the said declarations, the appellant have deprived the authorities of the opportunity to conduct the necessary checks to rule out the likelihood of any evasion of duty by misuse of this facility. Against this order of the Commissioner (Appeals), these two appeals have been filed.

2. Heard both the sides.

3. Shri B.L.Narsimahan, Advocate, ld. Counsel for the appellant, pleaded that the appellant had been issued the registration certificate in March, 2007, that though during the period of dispute, the registration certificate was not there, since the appellant were exporting the services being provided by them and were not liable to pay duty, they were not liable

to obtain registration, that for claiming rebate under Rule 5 of the Export of Services Rules, 2005 read with Notification No.12/2005-ST, service tax registration is not required as that there was no provision for obtaining registration in the notification no.12/2005-ST, that the main ground on which the rebate claim has been rejected is that the declarations as required under para 3.1 of the notification had not been filed, that while declarations had not been filed prior to export of the services as, at that stage, it is not possible to anticipate as to which services would be required to be availed, such declarations had been filed subsequently, that the Hon'ble Punjab & Haryana High Court in the case of **Commissioner of Service Tax Vs. Convergeys India Pvt. Ltd. reported in 2010 (20) STR 166 (P&H)** has held that when the rebate claims related to the period from 19.04.2005 to 31.05.2005, while the declaration under para 3.1 had been filed on 19.05.2005, the rebate claim cannot be rejected, as requirement of filing of declaration was complied within reasonable period and such filing of declaration before the export is not mandatory, that the ratio of the judgement of the Hon'ble Punjab & Haryana High Court is squarely applicable to the facts of this case and in view of the settled legal position on this issue, the impugned order upholding the rejection of their rebate claims for not filing the declarations prior to export of services is not sustainable.

4. Shri R.K. Gupta, the ld. Senior Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner (Appeals) in the impugned order and pleaded that in this case during the period of dispute to which rebate claims pertained, the appellant

has neither obtained service tax registration nor had filed necessary declarations prior to the export of services required under para 3.1 of the Notification No.12/2005-ST, that when in terms of the Notification No.12/2005-ST dated 19.04.2005 a declaration regarding the description, quantity, value, rate of duty and duty payable on inputs actually required to be used and description, value and amount of service tax & education cess payable on input services was required to be filed before the export of service and this declaration was required to be verified by the jurisdictional Assistant /Deputy Commissioner to satisfy himself that there is no likelihood of duty evasion, the filing of such a declaration is a substantive condition and in absence of such declaration, the sanctioning authority could not satisfy himself that there is no likelihood of misuse of this facility, that for violation of this important condition for rebate, the rebate claims have been rightly rejected, that in this regard he relies upon the judgement of the Apex Court in the case of **Eagle Flask Industries Ltd. vs. CCE, Pune reported in 2004 (171) ELT 296 (SC)** and **Indian Aluminium Company Ltd. vs. Thane Municipal Corporation reported in 1991 (55) ELT 454 (SC)** and that in view of this, there is no infirmity in the impugned order.

5. We have carefully considered the submissions from both the sides and perused the records. So far as the requirement of Service Tax Registration is concerned, if the appellant were providing Business Auxiliary Services only to their clients abroad, their output services were being exclusively exported, which appears to be the case in this matter, in terms of the provisions of Rule 4 of the Export of Service Tax Rules, 2005, they were not required to pay any duty and, therefore, in terms of the provisions of Section

69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 they were not required to obtain any registration, as under Section 69 of the Finance Act, 1994 as well as under Rule 4 of the Service Tax Rules, 1994, the requirement of obtaining registration is linked with liability for paying service tax, not with mere providing of taxable services. Thus a person providing taxable services would be liable to obtain service tax registration only if he was liable to pay the service tax. Moreover, we also find that neither in Rule 5 of the Export of Services Rules nor in the Notification No.12/2005-ST issued under this rule, there is any condition that the person claiming rebate must have service tax registration. In view of this, the rebate claim under Rule 5 of the Export of Services Rules or in the Notification No.12/2005-ST cannot be rejected just because the assessee did not have service tax registration which, as discussed above, he would not be required to obtain, if his output services was being exclusively exported and as such, he was not liable to pay any tax on the services being provided to his offshore clients.

6. Coming to the other ground on which the rebate claims has been rejected, under Rule 5 of the Export of the Services Rules, 2005, where any taxable service is exported, the Central Government may, by notification grant rebate of service tax paid on such taxable service or service tax or duty paid on inputs or input services, as the case may be, used in providing such taxable services and the <u>rebate shall be subject to such conditions or limitations, if any,</u> and <u>fulfillment of such procedure,</u> as <u>may be specified, in this notification</u>. Thus, this rule provides for –

(a) rebate of service tax on any service exported and'

(b) rebate of service tax paid on any input services and or central excise duty paid on any inputs used in providing the output services which had been exported.

This rebate is subject to the conditions and limitation prescribed and following the procedure prescribed in the notification issued under this rule.

6.1 Notification No.12/2005-St dated 19.04.2005 issued under Rule5 of the Export of the Service Rules prescribes procedure for grant of rebate of excise duty paid on inputs and of service tax and education cess paid on input services used in providing taxable services, which had been exported. Para-2 of the notification contains the main conditions for grant of such rebate viz.—

(a) output services had been exported in terms of Rule 3 of Export of Service Rules, 2005 and payment for the same had been received in India in convertible foreign exchange;

(b) duty on the inputs and service tax and education cess on the input services in respect of which rebate has been claimed, has been paid;

(c) no cenvat credit in respect of inputs or input services on which rebate has been claimed, has been availed; and

(d) the total amount of rebate of duty, and service tax including education cess is not less than Rs.500/-.

There is no dispute about fulfillment of these conditions.

6.2 Para-3 of the Notification prescribes detailed procedure for claiming rebate. On perusal of para-3 of the Notification 3 it will be seen that there are two steps, for sanction of rebate. The first step as detailed in para 3.1 and 3.2, is filing of declarations by the exporter of output service prior to export in which the details of the services /service to be exported along with the details of the inputs and input services to be used is required to be given. This declaration is to be made to the jurisdictional Asstt./ Dy. Commissioner who in terms of para 3.2 of the notification, is required to verify the same, if necessary, by calling for any relevant information so as to satisfy himself that there is no likelihood of evasion of duty / service tax. Once the Asstt. Commissioner /Dy. Commissioner is satisfied, he may accept the declaration.

6.3. Para 3.4 of the notification provides that rebate claims must be filed before the Asstt./ Dy. Commissioner along with all the invoices for the inputs or input services, the documentary evidence regarding receipt of payment for the taxable services exported, the evidence of payment of duty on the inputs and input services received and also a declaration that the taxable services have been exported, along with documents supporting such exports.

7. On going through the Notification No.12/2005-ST, we find that though the requirement of filing of declarations prior to export of the services and its verification by the jurisdictional Asstt./ Dy. Commissioner is a procedural requirement, the purpose of this procedure is to ensure that there is no evasion of duty by misuse of this facility. The Apex Court in the

case of **M/s. Indian Aluminium Company Ltd. vs. Thane Municipal Corporation reported in 1991 (55) ELT 454** has held that not observing even a procedural condition is not to be condoned if such non-observance facilities commission of fraud and introduces administrative inefficiency and inconvenience. In this case, the Hon'ble Supreme Court observed that having failed to file the necessary declaration, the petitioner cannot claim concession and ask the authorities to make verification of the some records, as the verification at the time when the raw material was still there, is entirely different from the verification at a belated stage after it has ceased to be there, may be that the raw material was used in the industrial undertaking as claimed by the petitioner company or it may not be, and in any event, the failure to file the necessary declaration prevented authorities to have a proper verification. In this regard, para 3 to 7 of the judgement are reproduced below:

> **"3. The amended Rules came into force in 1970. Rule 4(2) provides for payment of octroi at a lower rate by certain industrial undertakings in respect of the goods mentioned in Part IA of Schedule II to the Rules. Aluminium is at Entry No. 77. Part IA reads thus :**
>
> **"PART IA**
>
> **List of goods on which octroi shall be payable at a lower rate by certain industrial undertakings.**
>
> **(1) All goods specified in Entries 6(c), 35, 40, 64, 65, 71, 77 and 86 in Schedule I, and khobra mentioned in Entry 25, raw rubber and latex mentioned in Entry 70 in that Schedule, when imported by an industrial undertaking for use as raw material for processing within that undertaking and when declaration in respect thereof is issued by the undertaking in Form 14, shall be subject to octori by any Council at a rate not exceeding 1.25 per cent and not less than 0.25 per cent.**
>
> **xx"xx**
>
> **xx**

It can be seen from the above rule that to avail the concession, a declaration in Form 14 has to be made in respect of the raw material imported. Form 14 is as under :

"PART 14

(Part IA and II of Schedule II)

Declaration to be made by an importer importing dutiable goods as raw material for his industrial undertaking

I........ do hereby declare that the goods in respect of which I have separately given a declaration under Rule 14 have been imported by me as raw material to be used in the manufacture of .... in my industrial undertaking, viz. (here give full name and address of the undertaking)... and I shall not use them for any other purpose for sale or otherwise dispose them of to any other party for any other purpose, except, having previously paid the difference between the octroi due on such goods at ordinary rates and the octroi paid on concessional rates under Schedule II to the Maharashtra Municipalities (Octroi) Rules, 1968.

Date................ Signature of the Importer"

The declaration contemplated in Form 14 is to the effect that the goods imported shall not be used for any other purpose for sale or otherwise etc. It can thus be seen that an incentive is sought to be given to such entrepreneurs by such concession if the raw material which is imported is also utilised in the industrial undertaking without selling or disposing of otherwise. That being the object a verification at the relevant time by the octroi authorities becomes, very much necessary before a concession can be given. In the absence of filing such a declaration in the required Form 14, there is no opportunity for the authorities to verify. Therefore the petitioner Company has definitely failed to fulfil an important obligation under the law though procedural. The learned Counsel, however, submitted that even now the authorities can verify the necessary records which are audited and submitted to the authorities and find out whether the material was used in its own undertaking or not. We do not think we can accede to this contention. Having failed to file the necessary declaration he cannot now turn around and ask the authorities to make a verification of some records. The verification at the time when the raw material was still there is entirely different from a verification at a belated stage after it has ceased to be there. May be that the raw material was used in the industrial undertaking as claimed by

the petitioner Company or it may not be. In any event the failure to file the necessary declaration has necessarily prevented the authorities to have a proper verification.

4. Shri Ganesh, learned Counsel for the petitioner Company relied on the judgment of this Court in *Kirpal Singh Duggal* v. *Municipal Board, Ghaziabad* in support of his submission that the non-fulfilment of procedural requirement does not bar the claimant from pursuing his remedy in a court of law. That was a case where the appellant entered into a contract and supplied the goods to the Government. The Municipal Board collected toll when the trucks were passing through the toll barrier. The appellant obtained a certificate that the transported goods were meant for Government work. The appellant claimed exemption on the basis of the certificate but not within time. The Court observed thus :

> **"But Counsel for the respondent contended that the rules framed by the Government regarding the procedure constituted a condition precedent to the exercise of the right to claim refund and recourse to the Civil Court being conditionally strict compliance with the procedure prescribed, the Civil Court was incompetent to decree the suit unless the condition was fulfilled. We are unable to agree with that contention. The rules framed by the Government merely set up the procedure to be followed in preferring an application to the Municipality for obtaining refund of the tax paid. The Municipality is under a statutory obligation once the procedure followed is fulfilled, to grant refund of the toll. The application for refund of the toll must be made within fifteen days from the date of payment of the toll. It has to be accompanied by the original receipts. If these procedural requirements are not fulfilled, the Municipality may decline to refund the toll and relegate the claimant to a suit. It would then be open to the party claiming a refund to seek the assistance of the Court, and to prove by evidence which is in law admissible, that the goods transported by him fell within the order issued under Section 157(3) of the Act. The rules framed by the Government relating to the procedure to be followed in giving effect to the exemptions on April 15, 1939, do not purport to bar the jurisdiction of the Civil Court if the procedure is not followed."**

Relying on these observations, Shri Ganesh, learned Counsel for the petitioner Company contended that in the instant case though the procedural requirement is not fulfilled by filing a declaration in Form 14, still that is not a bar to invoke the jurisdiction of the Civil Court or the High Court by way of a writ and seek a refund. We are unable to agree. In *Duggal's* case, (1968) 3 SCR 551 the

appellant, as a matter of fact, obtained certificate but failed to make the application for refund within time. It is in that context this Court observed that the Municipality was under a statutory obligation once the procedure followed is fulfilled and if it is not fulfilled the Municipality may decline. The granting of a certificate that the appellant used the goods for Government work made all the difference. But, in the instant case, the non-fulfilment of the requirement even though procedural, has disentitled the petitioner Company because there was no way to verify whether it was entitled for such concession. In *HMM Limited and Another* v. *Administrator, Bangalore City Corporation and Another* no doubt the view taken in *Duggal's* case was confirmed but it does not make any difference so far as the present case is concerned for the reasons stated above. In that case the question was whether the goods namely Horlicks was consumed within the city or not and there was no dispute as to the quantum which was credited pursuant to the directions of the High Court. Hence no further verification was necessary. Therefore these two cases are distinguishable.

5. However, a concession has to be availed at the time when it was available and in the manner prescribed. The common dictionary meaning of the word "concession" is "the act of yielding or conceding as to a demand or argument, something conceded; usually implying a demand, claim, or request, "a thing yielded", "a grant". In the Dictionary of English Law by Earl Jowitt, the meaning of "concession" is given as under :

> **"Concession, a grant by a central or local public authority to a private person or private persons for the utilisation or working of lands, an industry, a railway waterworks, etc."**

6. The expressions – "rebate" and "concession" in the commercial parlance have the same concept. In Halsbury's Laws of England, 4th Edn. Para 198 it is observed as under :

> **"Application for rebate. - When a rating authority receives an application for a rebate it has a duty to determine whether the residential occupier is entitled to a rebate and, if so, the amount to which he is entitled; and it must request him in writing to furnish such information and evidence as it may reasonably require as to the persons who reside in the hereditament, his income, and the income of his spouse. *Unless the rating authority is satisfied that the residential occupier has furnished all the information and evidence it requires, it is under no duty to grant a rebate."* (emphasis supplied)**

7. In *Kedarnath Jute Manufacturing Co.* v. *Commercial Tax Officer, Calcutta and Ors.* the appellant which was a Public Limited Company, sought exemption under the provisions of the Bengal Finance (Sales Tax) Act, 1941 in respect of certain sales but did not produce before the Officer the declaration forms from the purchaser dealers required to be produced under the proviso to that sub-clause granting exemption. It was contended on behalf of the appellant that proviso to the sub-clause was only directory and the dealer is not precluded where the proviso is not strictly complied with from producing other relevant evidence to prove that the sales were for the purposes mentioned in the said sub-clause. The contention on behalf of the respondent was that the dealer can claim exemption under the sub-clause but he must comply strictly with the conditions under which the exemption can be granted. Rejecting the appellant's contention, this Court held thus :

"Section 5(2)(a)(ii) of the Act in effect exempts a specified turnover of a dealer from sales tax. The provision prescribing the exemption shall, therefore, be strictly construed. The substantive clause gives the exemption and the proviso qualifies the substantive clause. In effect the proviso says that part of the turnover of the selling dealer covered by the terms of sub-clause (ii) will be exempted provided a declaration in the form prescribed is furnished. To put it in other words, a dealer cannot get the exemption unless he furnishes the declaration in the prescribed form."

It was further held as under :

"There is an understandable reason for the stringency of the provisions. The object of Section 5(2)(a)(ii) of the Act and the rules made thereunder is self-evident. While they are obviously intended to give exemption to a dealer in respect of sales to registered dealers of specified classes of goods, it seeks also to prevent fraud and collusion in an attempt to evade tax. In the nature of things, in view of innumerable transactions that may be entered into between dealers, it will well-nigh be impossible for the taxing authorities to ascertain in each case whether a dealer has sold the specified goods to another for the purposes mentioned in the section. Therefore, presumably to achieve the two-fold object, namely, prevention of fraud and facilitating administrative efficiency, the exemption given is made subject to a condition that the person claiming the exemption shall furnish a declaration form in the manner prescribed under the section. The liberal construction suggested will facilitate the commission of fraud and introduce administrative inconveniences, both of which the provisions of

the said clauses seek to avoid."

It can thus be seen that the submission namely that the dealer, even without filing a declaration, can later prove his case by producing other evidence, is also rejected. This ratio applies on all fours to the case before us. As already mentioned the concession can be granted only if the raw material is used in the industrial undertaking seeking such concession. For that a verification was necessary and that is why in the rule itself it is mentioned that a declaration has to be filed in Form 14 facilitating verification. Failure to file the same would automatically disentitle the Company from claiming any such concession."

8. In our view, the ratio of this judgement is squarely applicable to the facts of this case. When the amount of rebate is a two step process- first step being filing of declaration and its verification so as to rule out any possibility of evasion of duty by misuse of this facility and second stage being filing of the rebate claim, if an assessee does not fulfill the requirement of first step and does not file necessary declaration at all, prior to the export of taxable services, and as such, there has been no opportunity for the department to verify his declaration, the assessee cannot claim rebate by asking the officer to verify his records presented along with rebate claims. In the case of **CST Vs. Convergys India Pvt. Ltd. decided by the Hon'ble Punjab & Haryana High Court** cited by the appellant, there was some delay in filing of the declaration required under para 3.1, as while the rebate claim pertained to the period from 19.09.2005 to 31.05.2005, the declaration had been filed on 19.05.2005. This judgement, in our view, would not be applicable in a case where the declaration had not been filed at all. This judgement would help only in those cases where the declarations regarding the input services and inputs required to be used had been filed, though after some delay but such declarations had been filed much before

the completion of export of service. If the deviation from prescribed procedure is limited only to not mentioning some inputs and/or input services specifically in the declaration, the same can be condoned by sanctioning authority, if on the basis of inquiry and on the basis of the invoices submitted he is satisfied that the same had been received. But, if the declaration as prescribed under para 3.1 have not been filed at all or the declaration has been filed after completion of export, as a result of which the sanctioning authority had no opportunity to verify the declaration and satisfy himself that there is no likelihood of evasion of duty, the assessee cannot ask the sanctioning authority to verify the receipt of inputs and input services from records and sanction the rebate claim. The condition prescribed in para 3.1 is for the purpose of preventing the evasion of duty by misuse of this facility and, therefore, if this condition, though a procedural condition, is violated, the rebate would not be admissible.

9. In this case, according to the department, the appellant have not filed any declaration whatsoever as required under para 3.1. According to the appellant, however, since prior to the export of the services, it was not possible to file detailed declaration regarding input and input services required to be used, such declaration had been filed every month, though after some delay. However, this aspect can be verified only by the original adjudicating authority for which this matter has to be remanded. Accordingly, the impugned order is set aside and the matter is remanded back to the original adjudicating authority for de novo decision after verifying the appellant's claim that every month they had been filing the required declaration under para 3.1 of the notification. If the appellant every

month were filing the required declaration, though after some delay, as in the case of **CST Vs. Convergys India Pvt. Ltd. reported in 2010 (20) STR 166 (P&H),** the ratio of this judgement would be applicable and in that case, the delay would be condonable. If however the declaration under para 3.1 had not been filed at all or had been filed after the completion of export of service for which rebate had been claimed, and thereby depriving the sanctioning authority of the opportunity to verify the correctness of the declaration and satisfy himself that there is no possibility of evasion of duty by misuse of this facility, the requirement of para 3.1 & 3.2 cannot be said to have been satisfied and the rebate would not be admissible. The impugned order is, therefore, set aside and the matter is remanded to the original adjudicating authority for de novo adjudication of the matter in terms of our above directions. The appeal is disposed off by way of remand.

(Operative portion of the order already pronounced in the Court).

[Archana Wadhwa]
Member (Judicial)

[Rakesh Kumar]
Member (Technical)

Ckp