

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
WEST ZONAL BENCH AT MUMBAI  
COURT No. I**

**APPLICATION No. ST/S/93019/17  
APPEAL No. ST/87600/17**

(Arising out of Order-in-Appeal No. PK/ST-I/MUM/40/2017-18 dated 18.5.2017 passed by Commissioner of Service Tax (Appeals), Mumbai-I)

**Commissioner of GST, Mumbai Central**

**Appellant**

**Vs.**

**Everstone Capital Advisors Pvt. Ltd.**

**Respondent**

**Appearance:**

Shri D. Shinde, Assistant Commissioner (AR), for appellant  
Shri Abhijeet Saha, Advocate, for respondent

**CORAM:**

**Hon'ble Mr. Ramesh Nair, Member (Judicial)**

Date of Hearing: 20.2.2018

Date of Decision: 20.2.2018

ORDER No. A/85324/2018

Revenue filed this appeal against the order of the Commissioner (Appeals). The issue involved in the present case is:

- (i) Whether the period of one year for filing the refund should be taken from the date of receipt of foreign exchange i.e. date of FIRC or from the date of invoice;
- (ii) Whether the remittance received against the export in Indian rupees will be considered as receipt of convertible foreign exchange for the purpose of qualifying the supply of service as export.

2. Shri D. Shinde, learned Assistant Commissioner (AR) appearing on behalf of the Revenue, reiterates the grounds of appeal. He submits that the export of service should be considered on the basis of invoice. Therefore, the date of export should be taken as date of invoice not from the date of FIRC. As regards the receipt of remittance against the service, he submits that in the present case, undoubtedly the remittance was received in Indian rupees. Therefore, the same is not considered as receipt of convertible foreign exchange. Therefore, the supply of service does not qualify the export of service.

3. Shri Abhijeet Saha, learned counsel appearing on behalf of the respondent, submits that as regards the relevant date for filing appeal under the service tax provision, supply of service is qualified for export on the condition that the provider of service receive the remittance in convertible foreign exchange. Therefore, the date of receipt of foreign exchange or date of FIRC should be the relevant date and the appellant has filed the refund claim on 29.6.2014 as against the FIRC date i.e. 7.7.2014 and 11.7.2014. Therefore, the refund is in time. As regards the receipt of service charges in Indian rupees, he submits that the payment was received through HSBC Bank. In case of even Indian rupees received through foreign bank, the payment is considered as convertible foreign exchange. The identical issue has been dealt in detail in the case of *Sun-Area Real Estate Pvt. Ltd. vs. CST, Mumbai-I – 2015 (39) STR 897 (Tri.-Mumbai)*.

4. I have carefully considered the submissions made by both the sides and perused the records. I find that in case of export of service, the same qualifies as export only when convertible foreign exchange is received. In the present case, the appellant has admittedly filed the refund claim within one year from the receipt of convertible foreign exchange. Therefore, the relevant date is the date of FIRC and not the date of service. As regards the receipt of remittance in Indian rupees, the issue has been considered in the case of *Sun-Area Real Estate Pvt. Ltd.* (supra) wherein in the identical facts, it was held that the Indian rupees received through foreign bank is considered as the payment in convertible foreign exchange. The aforesaid judgment was given by considering the various provisions of the Reserve Bank of India and Foreign Exchange Management Act. Therefore, the issue on this count is no longer *res integra*.

5. As per my above discussion, the impugned order is upheld. The Revenue's appeal is dismissed. The stay application is also disposed of.

(Pronounced in court)

**(Ramesh Nair)**  
**Member (Judicial)**