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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 09.10.2023*

\+ **W.P.(C) No.2472/2023, CM Nos.9473/2023, 9474/2023 & 51283/2023**

VODAFONE IDEA LIMITED ..... Petitioner

Through: Ms. Vanita Bhargava & Mr. Shantanu Chaturvedi, Advs.

Versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Akshay Amritanshu, SSC with Mr. Ashutosh Jain & Mr. Samyak Jain, Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition impugning a common order dated 31.08.2022 passed by the Appellate Authority (**respondent no. 2**) dismissing the appeals (four in number) preferred by the petitioner under Section 107 of the Central Goods and Services Tax Act, 2017 (hereafter '**CGST Act**') against orders passed by the Adjudicating Authority.

2. The petitioner is, essentially, aggrieved by rejection of its claims for refund of Integrated Goods and Service Tax (hereafter '**IGST**') in

respect of telecommunication services rendered by the petitioner pursuant to agreements with Foreign Telecom Operators (FTOs).

3. The Adjudicating Authorities as well as the Appellate Authority rejected the refund claims on, essentially, two grounds. First, that the services provided by the petitioner in respect of which refund of IGST was claimed did not as qualify export of services. And second, that the claims preferred were beyond the period of two years from the relevant dates and therefore, were barred by limitation.

4. According to the petitioner, the connectivity services rendered by it to inbound subscribers of FTOs qualifies as export of services as the services are rendered to an entity resident outside India- FTOs. The petitioner also claims that its claims for refund were within the prescribed period as the petitioner had received payments after the date of invoices and its claims were made within a period of two years of receipt of remittances for the services in question.

5. The principal questions involved in the present petition are whether the telecom services provided by the petitioner to inbound subscribers of FTOs constitute export of services and whether its claims were within the period of limitation as specified under Section 54(1) of the CGST Act.

Factual Context

6. The petitioner holds a telecommunication license from Government of India, and is engaged in providing telecommunication

services including services in the nature of International Inbound Roaming Services ("IIR") and International Long Distance Services ("ILD") to inbound subscribers of FTOs.

7. The petitioner has entered into various service agreements (International Roaming Agreements) with FTOs for providing IIR and ILD services. Undisputedly, the consideration for providing IIR and ILD services to subscribers of FTOs during their visit to India, is paid by FTOs to the petitioner.

8. The petitioner filed its applications for refund of IGST claiming that it had exported services and paid integrated tax as provided under Section 16 (3) of the Integrated Goods and Services Tax Act (hereafter '**IGST Act**'). A tabular statement indicating the period for which refund was sought, the date for filing the refund claimed, and the amount of refund sought is set out below:

S No.	**Period**	**Amount Claimed (Rs.)**	**Date of filing the Refund Claim**
1.	September, 2018 - March 2019	3,08,08,847	29.09.2020
2.	April, 2019	70,75,578	14.10.2020
3.	May, 2019 - June, 2020	2,99,96,517	06.02.2021
4.	July, 2020 – October, 2020	33,57,782	18.05.2021

9. The petitioner claimed that it had entered into International Roaming Agreement for establishing connectivity between mobile services offered by it and those offered by FTOs to their customers. The customers using roaming services are not parties to these agreements, however, can avail of the connectivity services by virtue of being subscribers to FTOs, who have entered into agreements with the petitioner. According to the petitioner, it rendered services to FTOs, which in turn made available the services to their customers. By virtue of the International Roaming Agreements, customers of FTOs who visit India can connect to the petitioner's network. They pay the charges for the same to FTOs in terms of subscription agreements with their respective FTOs. The FTOs pay the petitioner for the services rendered in terms of the International Roaming Agreements. All other services such as attending to the queries and resolving the concerns of the customers are rendered by the concerned FTOs to their customers.

10. The Adjudicating Authority issued show cause notices dated 11.03.2021, 12.03.2021, 15.04.2021 and 15.07.2021 corresponding to the refund applications filed by the petitioner proposing to reject the said refund claims mainly for the following reasons:

- BRCs are not mentioned against the respective export invoices in Statement-2.
- The applications appeared to be time barred in accordance with Section 54 of the CGST Act, 2017.

- Non-submission of self-certified copy of service agreement between the company and foreign customer.
- The refund amount as well as the period for which refund has been claimed in the refund application is not consistent in CA certificate dated 28.08.2020 with that of the refund application.
- Non-submission of reconciliation of export invoices with BRCs and bank statement.
- Non-submission of all the BRCs with respect to all the export invoices for the relevant period for which refund has been claimed.
- Non-submission of certified copies of all the export invoices for the relevant period to the period for which refund has been claimed.
- Non-submission of copy of all the purchase invoices along with reconciliation with respect to export invoices.
- Copy of all the service agreements with your suppliers relevant to the period for which refund has been claimed has not been submitted.
- Non submission of payment details regarding inputs/ input services and imports made along with relevant documents relevant to the period for which refund has been claimed.
- In the CA certificate, it has been mentioned that some payment regarding export of services has been netted off against the import payables.

11. The petitioner responded to the said show cause notices, *inter alia,* stating that the prescribed process of assessment of refund is not adhered to by the respondent and that the deficiencies were not

communicated within the prescribed period. The petitioner also stated that the said show cause notices were issued without mentioning date and Document Identification Number (DIN) on the show cause notices and therefore, the said cause notices were bad in law. The petitioner claimed that the services rendered were export of services and that the applications for refund within the period of limitation of two years as stipulated under Section 54 (1) of the CGST Act.

12. The Adjudicating Authority did not accept the refund claims made by the petitioner and rejected the same in terms of four separate orders. The details of the said orders are set out below:

S.No.	Order No. & date	Period	Refund rejected
1.	GST East/MCIE/R-165/ Refund/Vodafone/643/2021 dated 31.05.2021	September 2018 to March 2019	3,08,08,847/-
2.	GST East/MCIE/R-165/ Refund/Vodafone/645/2021 dated 31.05.2021	April, 2019	70,75,578/-
3.	GST East/MCIE/R-165/ Refund/Vodafone/651/2021 dated 31.05.2021	May 2019 to June 2020	2,99,96,517/-
4.	GST East/MCIE/R-165/ Refund/Vodafone/693/2021 dated 09.08.2021	July 2020 to October 2020	33,57,782/-
		Total	7,12,38,724/-

13. The Adjudicating Authority rejected the claims, essentially, on three grounds. First, that the refund application filed by the petitioner was time barred in view of Clause (c) of Explanation (2) of Section 54

of the CGST Act. Second, that the supply of services is in India and the supply of services cannot be treated as 'export of services' as "*the recipient of service i.e. Inbound Roamers were physically present in India and services were consumed in India by the Inbound Roamers"*.And third that "*the service provider is bound by the provisions of Indian Telegraph Act, 1885 and it cannot provide service to FTO as the FTO is situated in foreign land and the Indian Telecom Operatoris not licenced to render service to FTO under the Indian Telegraph Act, 1885*".

14. The petitioner appealed the orders passed by the Adjudicating Authority before the Appellate Authority by filing appeals under Section 107 of the CGST Act. The details of the said appeals are as under:

S.No.	Order No.	Period	Amount
1.	Appeal No. 269/GST/Appeal-1/East/2021	May 2019 to June 2020	2,99,96,517/-
2.	Appeal No. 270/GST/Appeal-1/East/2021	April, 2019	70,75,578/-
3.	Appeal No. 271/GST/Appeal-1/East/2021	September 2018 to March 2019	3,08,08,847/-
4.	Appeal No. 322/GST/Appeal-1/East/2021	July 2020 to October 2020	33,57,782/-
		Total	7,12,38,724/-

15. The said appeals were rejected by the impugned order.

16. The first and foremost question to be addressed is whether the claims made by the petitioner are barred by limitation. The petitioner's refund claims were rejected on the ground that the petitioner had received payments for part of the services rendered prior to issuance of the invoices and therefore, claims in respect of invoices issued more than two years prior to the date of the applications were barred by limitation.

17. In terms of Section 54(1) of the CGST Act, a claim for refund may be made within a period of two years from the relevant date. The term 'relevant date' is defined under Explanation (2) to Section 54 of the CGST Act. Clause (c) of the said Explanation (2) of Section 54 is relevant and set out below:

> "54. Refund of tax.
>
> xxx xxx xxx
>
> *Explanation*.—For the purposes of this section,--
>
> xxxx
>
> (2) 'relevant date' means—
>
> xxx xxx xxx
>
> (c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—
>
> (i) receipt of payment in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of

India], where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;"

18. In the present case, the petitioner claims that it had received payments in all cases after the invoices were raised. Thus, the date on which payments had been received from FTOs would be the relevant date for the purpose limitation under Section 54(1) of the CGST Act. The petitioner had also furnished a tabular statement clearly indicating the invoices raised and the dates of receipt of payments. However, the authorities had rejected the claim by mentioning that payments in respect of some of the invoices were received in advance. It is material to note that there is no specific reference to the invoices in respect of which payments are held to have been received in advance, that is, prior to the date of their issuance. The respondents have also not referred to any particular instance where payments in respect of any invoices were received prior to the date of invoices. Undisputedly, in case the payments had been received after the invoices were raised, the date on receipt of payments would be relevant for the purposes of computing the limitation for filing claims for refund.

19. We are of the view that it is not necessary to examine this issue in any details as after the impugned order was rendered, the Central Board of Indirect Taxes and Customs (CBIC) had issued a notification (GST Notification 13/2022-Central Tax dated 05.07.2022) relaxing the period of limitation, *inter alia*, for filing a claim for refund under section

54(1) of the CGST Act. In terms of the said Notification, the period commencing from 01.03.2020 to 28.02.2022 is required to be excluded for computing the period of limitation.

20. In view of the above, the controversy whether the petitioner had made the claims within the period of limitation, is no longer a contentious issue.

21. The next issue to be examined is whether the services in question constitute 'export of services' within the meaning of Section 2(6) of the IGST Act. It is the petitioner's case that FTOs are recipient of services in question and since they are located outside India, the place of supply of services is outside India in terms of Section 13 of the IGST Act. According to the Revenue, the place of service is in India by virtue of Section 13(3)(a) of the IGST Act. According to the Revenue, the recipient of the services are subscribers of FTOs and their presence in India is necessary for availing the services in question.

22. Concededly, this issue is covered by the decision of the Co-ordinate Bench of this Court in ***Verizon Communication India Pvt. Ltd. v. Assistant Commissioner of Service Tax, Delhi-III: 2018 (8) GSTL 32***. Although the decision in *Verizon Communication India Pvt. Ltd.* (*supra*) was rendered in the context of service tax imposed by virtue of the Finance Act, 1994. Rule 6A(1) of the Service Tax Rules, 1994 (hereafter '**ST Rules**') reads as under:

> "**6A. Export of Services**

(1) The provision of any service provided or agreed to be provided shall be treated as export of service when, –

(a) the provider of service is located in the taxable territory,

(b) the recipient of the service is located outside India,

(c) the service is not a service specified in the Section 6D of the Act,

(d) the place of provision of the service is outside India,

(e) the payment for such services has been received by the provider of service in convertible foreign exchange, and

(f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act."

23. It is apparent that the provisions for ascertaining the place of supply of services under Rule 6A of the ST Rules are similar to Section 2(6) of the IGST Act inasmuch as the services will be treated as export of services when (a) the provider of service is located in the taxable territory, (b) the recipient of the service is located outside India, and (d) the place of provision of the service is outside India. There is no cavil that the decisions rendered on the question of export of services in the context of Rule 3 of the Export of Services Rules, 2005 are also applicable to the controversy in question.

24. It is also not disputed that the Customs Excise and Service Tax Appellate Tribunal has in several cases following the aforesaid decision, allowed the appeals preferred by the petitioner and directed

the refund. The predecessor of the petitioner (Vodafone India Ltd.) had prevailed before the learned Customs Excise and Service Tax Appellate Tribunal on the question whether the services in question qualified for export services [Final Order No. A/1381-1385/2014-WZB/C-I(CSTB) dated 21.08.2014]. The Revenue has filed an appeal before the Supreme Court [Civil Appeal Diary No.38259/2014), which was admitted by the Supreme Court by an order dated 02.12.2014. However, the direction to grant refund was not stayed. The learned counsel for the petitioner also informed this court that in some cases, the Revenue has refunded the amount claimed by the petitioner.

25. In view of the above, the present petition is allowed and the respondents are directed to refund the amounts as claimed by the petitioner. The pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

OCTOBER 9, 2023
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