प्रधान मुख्य आयुक्तालय, जीएसटी एव केन्द्रीय उत्पाद शुल्क : मुंबई ज़ोन

OFFICE OF THE PRINCIPAL CHIEF COMMISSIONER OF GST AND CX: MUMBAI ZONE

११५, जीएसटी भवन, एम.के. रोड, चर्चगेट, मुंबई-२०

115, GST BHAWAN M.K.ROAD, CHURCHGATE, MUMBAI-20.

E-mail:dcccunit@rediffmail.com & ccu-cexmum1@nic.in

Fax No.022-22014170

फा. सं. जीसीसीओ/आरटीआई/APP/743/2021-एडीएमएन-ओ/ओ पीआरसीसी-सीजीएसटी-जोने-मुंबई जोन

मुंबई, दिनांक: सितम्बर 2021

प्रति,
केंद्रीय जन सूचना अधिकारी
प्रधान आयुक्त वस्तु एवं सेवाकर,
अप्पील्स ।

महोदय,

विषय: श्री Disha Khetan द्वारा फ़ाइल किया गया ऑनलाइन आरटीआई आवेदन दिनांक 29.09.2021 के संदर्भ मे। (CCEM1/R/T/21/00066 and CCEM1/R/T/21/00067)

कृपया यहाँ संलग्नित Disha Khetan द्वारा फ़ाइल किया गया ऑनलाइन आरटीआई आवेदन दिनांक 29.09.2021 (CCEM1/R/T/21/00066 and CCEM1/R/T/21/00067) (received in this office through online under Section 6(3) of the RTI Act,2005 from Central Board of Excise and Customs –Central Excise Reference No CBECE/R/E/21/00937 and CBECE/R/E/21/00938) का संदर्भ ले।

आवेदक द्वारा मांगी गई जानकारी इस कार्यालय में उपलबद्ध नहीं है तथा आपके पास उपलबद्ध होने की संभावना है। अतएव, इस कार्यालय को सूचित करते हुए आवश्यक कार्यवाही एव आवेदक को सीधे जानकारी देने हेतु, उपरोक्त आरटीआई आवेदन सूचना के अधिकार अधिनियम के धारा 6(3) केतहत आपके कार्यालय को हस्तांतरित किया जा रहा है ।

आपका आभारी

Digitally Signed by Mohanan Appukuttan
Date: 30-09-2021 11:21:35
Reason: Approved

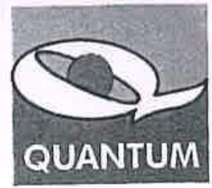
(ए मोहनन)
सहायक आयुक्त (सी पी ई ओ)
सीसीओ, वस्तु एवं सेवाकर , मुंबई क्षेत्र
ईमेल आईडी: **ccu-cexmum1@nic.in**

संलग्न: उपरोक्त अनुसार

प्रति प्रेषितः-1. Smt Disha Khetan 28th floor, Tower 3, India Bulls Centre, Elphistone Road (W) Pin 400 013.

2) CPIO and Under Secretary, Central Board of Excise and Customs-Central Excise New Delhi.

3) अधीक्षक ,कम्प्युटर सेक्शन, वस्तु एवं सेवाकर, मुंबई सेंट्रल , डीओपीटी, ओएम नंबर 1/6/2011-आईआर दिनांक 15/04/2013 के अनुसार आधिकारिक वेबसाइट पर अपलोड करने के ल



5 November 2018

To,

The Commissioner of Central Tax (Appeals)-I,

9th Floor, Piramal Chambers,

Jijibhoy Lane, Lalbaugh,

Parel, Mumbai – 400 012.

Respected Sir,

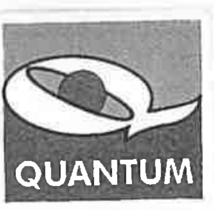
Ref: Order-In-Appeal No. IM/CGST A-I/MUM/357/18-19 dated 31 August 2018 received on 15 October 2018.

Service Tax Registration No.: AAACQ0281CST001

Sub: Application for Rectification of Mistake in Order-In-Appeal passed by Learned Commissioner of Central Tax (Appeals)-I.

This is with reference to the captioned Order-In-Appeal ('O.I.A') issued by Learned Commissioner of Central Tax (Appeals)-I ('Ld. Commissioner (Appeals)') to Quantum Advisors Private Limited situated at 6th Floor, Hoechst House, Nariman Point, Mumbai, 40021 (hereinafter referred as 'QAPL'/'We'/'Us'). The said O.I.A. is dated 31 August 2018 and received by us on 15 October 2018.

We would like to submit that there is an error apparent on record in the O.I.A., pertaining to the rejection of refund amount by contending that there is no export of services rendered prior to period 28 February 2010. The impugned O.I.A. has erroneously further challenged the legal existence of QAPL merely to reject the refund amount on export of services made to the Overseas Clients. It appears that your good office while passing the O.I.A. has not understood the business and the legal status of QAPL.



In view of the same, we have elaborately covered the error / mistake made by your goodself in the Application made in **Annexure A** to this letter.

We would like to humbly submit before your goodself that the impugned Order may be rectified at the earliest. In case your goodself would like to have the facts (as mentioned in Annexure A) substantiated, we would be pleased to appear before your goodself and substantiate the same with documentary evidence.

We would also like to submit before your goodself that we reserve our right to contest the matter on merits and / or on limitation to file an appeal against the O.I.A.

We crave leave to add, alter or amend all or any of the submissions mentioned hereinabove in this application for rectification of mistake and to lead such oral and / or documentary evidence as may be considered necessary.

Thanking You,

Yours sincerely,

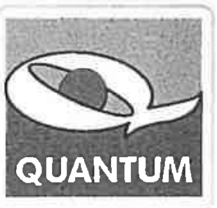
For Quantum Advisors Private Limited

(Piyush Thakkar)

(Chief Operating Officer)

Encl: a/a

Quantum Advisors Private Limited, 6th Floor, Hoechst House, Nariman Point, Mumbai - 400 021, India.
Tel. : 91-22-6144 7900 / 2283 0322 Fax : 91-22-2285 4318 E-mail : Info@QASL.com Website : www.QASL.com
CIN-U65990MH1990PTC055279



Rectification of Mistake **Annexure A**

1. This Application pertains to the Order-in-Appeal ('O.I.A.') received by M/s Quantum Advisors Private Limited ('QAPL/ We / Us / Our / Applicant') for the period 1 December 2009 to 30 June 2010 rejecting the refund amount of INR 5,61,150/-. The Applicant would like to submit that the amount of refund denied and the grounds taken for such rejection in the O.I.A. is completely erroneous as it results into questioning the legal existence of the company, which is outside the jurisdiction of the Ld. Commissioner (Appeals).

2. In view of the above, we would like to highlight that there is a severe mistake apparent on record from the O.I.A. in rejecting service tax refund of INR 5,12,396/- on the premises that the Appellant is working on behalf of the Foreign Institutional Investor and has no separate legal existence.

3. **Background of the business of QAPL:**

Quantum Advisors Private Limited, was founded by Ajit Dayal as India's first institutional equity research house in January 1990. QAPL pioneered a quantitative as well as qualitative analytical approach to equity investing in India, providing – for the first time – consistently applied valuation metrics to evaluate investment opportunities in India's emerging stock markets. Over the years, QAPL has continued and enhanced its tradition of extensive financial analysis and value investing, as it has evolved into an investment advisor and asset manager.

As one of the first portfolio managers to adopt a fundamental approach to investing in Indian equities and having worked with leading fund managers in the United States, Europe, and Asia, QAPL has positioned itself to help international investors to capitalize on the investment opportunities in the Indian markets while being apprised of some of the unique risks associated with such opportunities.

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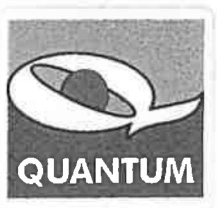

QAPL is currently registered as a Portfolio Manager with SEBI, an Investment Adviser with the SEC, and a Restricted Portfolio Manager with the Canadian Provinces of British Columbia (BCSC), Ontario (OSC), and Quebec (AMF). In addition, QAPL provides investment advisory services to its affiliate QIEF Management LLC, based in Mauritius.

QAPL currently provides discretionary investment advisory services to Indian individual clients and foreign institutional clients (such as offshore funds, sovereign funds, pension funds, university endowments etc.). Our clients are currently based in India, Europe, United States, Canada and Mauritius. We generally manage our client accounts with either a focus on the Indian listed equity market or a focus on the Indian fixed income securities market.

We also provide non-discretionary investment advisory and back office services to QIEF Management LLC, Mauritius, an SEC registered Investment Advisor (QIEF).

4. Rectification of Mistake

The Applicant would like to submit that the Ld. Commissioner (Appeals) has grossly factually erred in understanding the business and legal standing of QAPL as an distinct entity. The Appellant further submits that nature of the business and the legal status of QAPL has been communicated at the time of Personal Hearing on 30 August 2018 and was documented through the written submission furnished against the Order-in-Original No. KJS/R-159/2011 dated 13 October 2011, passes by Deputy Commissioner of Service Tax-I, Mumbai. However, the same was not considered by your goodself at the time of issuing the O.I.A.

4.1 Mistake on imposing an allegation on QAPL as a passive holding company of Foreign Institutional Investors (FIIs).

4.1.1 The relevant extracts alleged by Ld. Commissioner (Appeals) in O.I.A. in para 12 that QAPL is the passive holding company of FIIs is reproduced below:

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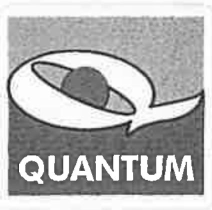
CIN-U65990MH1990PTC055279



'The company in India is a passive holding of the FIIs.'

- **Strongly disagreed** with the views of the Ld. Commissioner (Appeals)

4.1.2 The Appellant hereby submits that QAPL is not holding company of any FII and it does not own or holds any security for or on behalf of any of its clients.

The shareholding structure of QAPL as on 31-Mar-2010 was as below:

Shareholder Name	% of holding
Mr. Ajit Dayal	35.700%
M/s Menlo Oak Venture Investments	48.150%
Quantum Advisors ESOP Trust/ Employees	16.150%
Others	0.001%
Total	**100.001%**

Further, at para 12 of the impugned O.I.A., the Ld. Commissioner (Appeals) is referring QAPL as passive holding company of FIIs and in para 13 of the O.I.A., the allegation has been raised that QAPL has a parent company situated outside India. These statements are contradictory and the said appellate authority i.e. Ld. Commissioner (Appeals) has totally misunderstood the facts of the case as result of which he came to the above conclusion.

4.1.3 In view of the above, the Applicant would like to submit that the above accusation of the Ld. Commissioner (Appeals) in the O.I.A. is incorrect and therefore, needs to be rectified.

4.2 Mistake in striking a serious allegation on QAPL being an extended arm of foreign companies and have no existence of its own.

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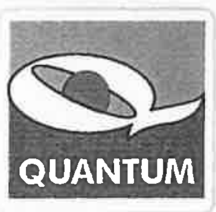

4.2.1 The relevant excerpts alleged by Ld. Commissioner (Appeals) in O.I.A. in para 12 on the above charge is reproduced below:

'It is an extended arm and mere establishment of the foreign companies in India. It has no legs to stand on its own as the very existence of the Indian Company is at the will and wish of parent company'

- **Strongly disagreed** with the views of the Ld. Commissioner (Appeals)

4.2.2 The Appellant does not have any Indian or foreign parent company and is in existence since 1990. Menlo Oak Venture Investments, which owns 48.15% stake in QAPL, is a passive financial shareholder and has no role in management and operations. Menlo Oak doesn't provide or receive any services from QAPL. It also doesn't have any contract with any of the clients of QAPL.

Our clients are currently based in India, Norway, United States, Canada and Mauritius. None of our clients own any shares in QAPL. Below is the details of client wise export revenue earned by QAPL during the financials year 2009-2010 from which we can see reimbursement of expenses are only.0.46% of total export revenue.

Client Name	Location	Amount (USD)	Amount (INR)
Norges Bank Investment Management	Norway	8,538,249	396,434,740
Russel	Ireland	3,302	149,057
QIEF Management LLC	Mauritius	481,529	22,803,915
Total Amount		**9,023,080**	**419,387,712**

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CIN-U65990MH1990PTC055279

Debit Notes for reimbursements of expenses	Mauritius	41,871	1,937,453
Debit notes as % of total revenue		0.46%	0.46%

4.2.3 Based on above, the Applicant would like to submit that the above accusation of the Ld. Commissioner (Appeals) in the O.I.A. is utterly concretely incorrect and therefore, necessities rectification.

4.3 Mistake on contention that QAPL cannot act on its own and cannot provide its services to other independent entities other than its parent company.

4.3.1 The relevant excerpts alleged by Ld. Commissioner (Appeals) in O.I.A. in para 12 on the above charge is reproduced below:

'it cannot act on its own and it cannot provide any service to any other independent entity except to the parent company.'

- **Strongly disagreed** with the views of the Ld. Commissioner (Appeals)

4.3.2 QAPL does not have any Indian or foreign parent company and provides its advisory services to various other clients like sovereign funds, off shore funds, pension funds, universities. All the clients of the Applicant are situated in different parts of the world like US, Mauritius, Ireland, India, Norway etc. All of our clients are independent entities and none of them are shareholders of QAPL.

4.3.3 The Applicant hereby requests to rectify the O.I.A.

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4.4 Mistake on the objection that the agreement signifies that QAPL is acting on behalf of the parent company by providing asset or portfolio management in India as fund manager.

4.4.1 The relevant citations alleged by Ld. Commissioner (Appeals) in O.I.A. in para 12 on the above allegation is reproduced below:

'It is further evident from the agreement that the applicant have been acting on behalf of their parent company by way of Asset/Portofolio Management in India as Fund Manager.'

- **Strongly disagreed** with the views of the Ld. Commissioner (Appeals)

4.4.2 QAPL don't have any Indian or foreign parent company and is not acting on behalf of any of its shareholders while providing services to its clients.
Menlo Oak Venture Investments, which owns 48.15% stake in QAPL, is a passive financial shareholder and has no role in management and operations of QAPL. Menlo Oak doesn't provide or receive any services from QAPL. It also doesn't have any contract with any of the clients of QAPL.

QAPL has direct agreement with its clients and it provides its services directly to clients located in various parts of the world.

4.4.3 The Applicant hereby requests to rectify the O.I.A.

4.5 Mistake on the allegation that QAPL is a communication channel for information flow between the investee company and FIIs.

4.5.1 The relevant citations alleged by Ld. Commissioner (Appeals) in O.I.A. in para 12 on the above allegation is reproduced below:

'Further, the appellant as Fund Manager/Director entrusted with the responsibility of an observer, monitoring investee company's

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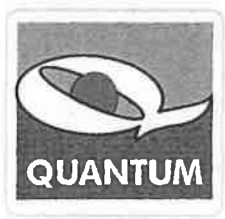

performance & developments and as a communication channel for information flow between the investee company and FIIs.'

- **Strongly disagreed** with the views of the Ld. Commissioner (Appeals)

4.6 Mistake on the allegation that QAPL is conducting business on behalf of the parent company.

4.6.1 The relevant citations alleged by Ld. Commissioner (Appeals) in O.I.A. in para 12 on the above allegation is reproduced below:

'Thus, it is evident that the appellant is conducting its business in India on behalf of their parent company i.e. FIIs'

- **Strongly disagreed** with the views of the Ld. Commissioner (Appeals)

4.6.2 QAPL does not have any Indian or foreign parent company. It has its own business of investment advisory services. Details of revenue

4.6.3 generated during financials year March 2009-2010 from clients located in various parts of the world are mentioned in point no. 4.2.2. above.

4.6.4 The Applicant hereby requests to rectify the O.I.A.

4.7 Mistake on the allegation that QAPL plays an active role in conclusion of contracts between FII and its clients, and provides support services, hence falls under the definition of Intermediary.

4.7.1 The relevant citations alleged by Ld. Commissioner (Appeals) in O.I.A. in para 12 on the above allegation is reproduced below:

'Hence, the appellant plays an active role in the conclusion of the contract between FIIs and their clients in India and provides support services in matter and as such correctly falls in the

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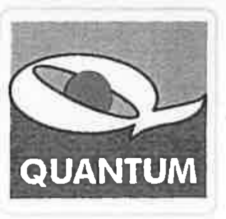

definition of "intermediary" as per Rule 2(f) of the Place of Provision of Services Rules, 2012. '

- **Strongly disagreed** with the views of the Ld. Commissioner (Appeals)

4.7.2 QAPL is currently registered as a Portfolio Manager with SEBI, an Investment Adviser with the SEC, and a Restricted Portfolio Manager with the Canadian Provinces of British Columbia (BCSC), Ontario (OSC), and Quebec (AMF). It has FII as its own clients and negotiates with its FII clients on its own and for its own business of investment advisory services. Hence, Ld. Commissioner (Appeals) conclusion that QAPL is acting as an intermediary is wholly incorrect.

4.7.3 The Applicant hereby requests to rectify the O.I.A.

4.8 Mistake on the allegation that QAPL failed to prove that there are exports involved. Neither FIRC reflects nature of export nor do export invoices claimed to have been raised by QAS contain any details of exporter.

4.8.1 The relevant citations alleged by Ld. Commissioner (Appeals) in O.I.A. in para 13 on the above allegation is reproduced below:

'Further, it is seen that the appellant failed to prove that there is export involved. Neither the FIRC reflects the nature of export not export invoices claimed to have been raised by the appellant do not contain any details of export nor the amount of FIRC co-relatable with the invoices. '

- **Strongly disagreed** with the views of the Ld. Commissioner (Appeals)

4.8.2 The Applicant submits that the services of Investment Advisory, Portfolio Management, Back Office and Support Services are

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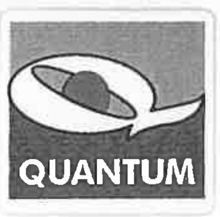

provided by QAPL to its various clients. The export invoice is raised in foreign currency and the due consideration is also received by QAPL in convertible foreign exchange. The said fact is documented in the written submissions furnished to Ld. Commissioner (Appeals).

Further, sample copies of FIRC reflecting nature of inward remittance and export invoices reflecting nature of services provided to Overseas Clients are attached herewith as Annexure B.

4.8.3 Based on above submission, the Applicant hereby requests to rectify the O.I.A.

4.9 Mistake on the allegation that QAPL is receiving reimbursement of expenses against the employee expenses, which is depicted based on financials records, and therefore, the relation between QAPL and their parent company of employer and employee

4.9.1 The relevant citations alleged by Ld. Commissioner (Appeals) in O.I.A. in para 13 on the above allegation is reproduced below:

'The financial records shows that they are receiving the receiving the reimbursement of expenses against the employees expenses. Thus from the entire transaction it is evident that the relation between their parent company and the appellant is that of employer-employee relationship.'

- **Strongly disagreed** with the views of the Ld. Commissioner (Appeals)

4.9.2 Kindly refer point no. 4.2.2 above about details of export revenue earned by the QAPL by raising export invoices and export debit notes during the year ended March 2010. QAPL has received reimbursement of expenses from its associate company based out of Mauritius. This associate company is not the parent company of QAPL. From the list, it can be seen that QAPL has received a very

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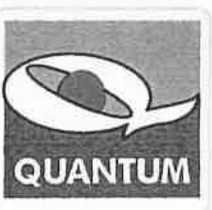

small portion as reimbursement of expenses as compared to the export revenue generated by it, from various clients. Also, the reimbursement of expenses doesn't include any employee related expenses.

4.9.3 Based on above submission, the Applicant hereby requests to rectify the O.I.A.

5. Therefore, it is clear that the O.I.A. passed by your goodself contains the mistake apparent on record which needs to be rectified and a revised order needs to be issued.

6. It is prayed that the mistake apparent on record may kindly be rectified and the O.I.A. is modified accordingly.

For Quantum Advisors Private Limited

Piyush Thakkar
Chief Operating Officer
Encl: a/a

Quantum Advisors Private Limited, 6th Floor, Hoechst House, Nariman Point, Mumbai - 400 021, India.
Tel. : 91-22-6144 7900 / 2283 0322 Fax : 91-22-2285 4318 E-mail : Info@QASL.com Website : www.QASL.com
CIN-U65990MH1990PTC055279

OFFICE OF THE COMMISSIONER OF CENTRAL TAX (APPEALS-I), MUMBAI, 9TH FLOOR, PIRAMAL CHAMBERS, JIJIBHOY LANE,LALBAUG, PAREL, MUMBAI-400012

Email ID:.appeal1mum@gmail.comTel Phone No.:022-24700913

F.No./फा.सं .V2(A)ST-I/66/2012 &
Mumbai, dated 11 .10.2018

ORDER-IN-APPEAL NO. IM/ CGST A-I/ MUM/ 357/ 18-19 dated 31.08.2018

पारित करने की दिनांक / Date of Passing : 31.08.2018

जारी करने की दिनांक / Date of Issue : .10.2018

जारीकर्ता डॉ.आई.मरियन्ना	आयुक्त(अपील)-I, मुंबई	Passed by Dr. I. Marianna	COMMISSIONER (APPEALS)-I, CGST & CX, MUMBAI
मूल आदेश संख्या/ORDER-IN-ORIGINAL NO.:- KJS/R-159/2011 dated 13.10.2011			
जारीकर्ता/ PASSED BY:- Deputy Commissioner, Service Tax - I, Mumbai			

अपीलार्थी/ प्रत्यार्थी का नाम व पता:

Name & Address of the Appellant
1. M/s. Quantum Advisors Pvt. Ltd.,
Regent Chambers, 503,
5th Floor, Nariman Point,
Mumbai – 400021.

Name & Address of the Respondent:
Deputy Commissioner,
CGST & C.Ex
Mumbai South Commissionerate
Mumbai.

इसअपीलीयआदेशसेव्यथितकोईभीव्यक्तिमामलेकेअनुसारनिम्नलिखितप्राधिकारीकेसमक्षअपीलकरसकताहै :-
Any person aggrieved by this Order-In-Appeal may file appeal application to the authority as the casemaybe:-

(I)(i) केन्द्रीयउत्पादशुल्कअधिनियम,१९४४कीधारा३५इइकेतहतनिम्नलिखितकेसम्बन्धमेसंयुक्तसचिव, भारतसरकार, वित्तमंत्रालय, राजस्वविभाग, हुडकोविशालाबिल्डिंग, १४, बी-विंग, छठामाला, भीकाजीकामाप्लेस, नईदिल्ली–११००६६,केसमक्ष अपील स्वीकार्य है।©I)(i) Under Section 35EE of the Central Excise Act, 1944, an appeal lies to the **Joint Secretary** to the Government of India, Ministry of Finance, Department of Revenue, **HUDCO Vishala Building, 14, B- Wing, 6 Floor, BhikajiCama Place, NEW DELHI-110 066**, in respect of the following:-

(क) ऐसेमामलोंजहाँकिसीफेक्टरीसेवेरहॉउसयादूसरीफेक्टरीयाएकवेरहॉउससेदूसरेमेंमाललेजातेअथवालेजातेसमयमालकी क्षतिहुईहोअथवावेरहाउसमेंयास्टोरमेंमालप्रसंस्करणकेदौरानक्षतिहुईहो(a) A case of loss of goods where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another or during the course of processing of the goods in a warehouse or in storage whether inafactoryorinawarehouse;

(ख)देशअथवाक्षेत्रकेबाहरनिर्याततिमालपरउत्पादशुल्कमेंछूटअथवाऐसेउत्पादशुल्कमेंछूटजिनकाउपयोगकिसीअन्यदेशअथवा क्षेत्रमेंभेजेजानेवालेमाल केनिर्माणमेंकियाजाताहो(b) A Rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any Country or territory outside India;(ग)शुल्ककाभुगतानकिऐबगैरभारतकेबाहर(नेपालऔरभूटान)निर्यातकिऐमालपर(c) Goods exported outside India (export to Nepal or Bhutan) without payment of duty.(घ)शुल्कचूकानेहेतूउत्पादशुल्कक्रेडिटकाउपभोगइसअधिनियमऔरइसकेतहतबनाएगएनियमसेसंबन्धिततथाआयुक्त उसकेबादकीतारीखजैसा(अपील)वित्तअधिनियम) न(२.,१९९८केधाराकेतहतनिर्दिष्टितहैं १09,आदेशपारितकीगयीहो।(d) Credit of any duty allowed to be utilized towards payment of excise duty on final product under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under Section 109 of Finance (No. 2) Act, 1998(ड) वित्त अधिनियम १९९४ केधारा (1)86 केप्रोविजोंकेतहतसर्विसटैक्समेंछूटसंभन्धितमामले (e)matter involving rebate of Service Tax under proviso to Section 86(1) of Finance Act, 1994. (ii).केन्द्रीय उत्पाद शुल्क अधिनियम १९४४ कि धारा३५इइ कि उपधारा(३) केअनुसार आवेदनइसहेतुनिर्धारितनियमोंकेअनुरूप तथा तरीके से प्रस्तुत किये जाना चाहिए तथा सत्यापित किया जाना चाहिए तथाउसकेसाथ -/200या -/1000केचालानटीआर6-संलंग्न किया जाना चाहिए।

(ii). The application shall be made in such form and verified in such manner as may be specified by Rules made in this behalf and should be accompanied by a fee as below or as prescribed by the appropriate authority:- Two hundred rupees. where the amount of duty/tax and interest demanded, fine or penalty levied by any Central Excise officer in the case to which the application relates is one lakh rupees or less;(a)One thousand rupees, where the amount of duty/tax and interest demanded, fine or penalty levied by any Central Excise officer in the case to which the application relates is more than one lakh rupees or less;In terms of Sub-Section (3) of Section 35EE of

the Central Excise Act, 1944 and should be accompanied by a copy of TR-6 challan evidencing payment of fee as mentioned above under major heads of accounts.

II (i)बाकीमामलोंमेंकेन्द्रीयउत्पादशुल्कअधिनियम१९४४किधारा३५बीवित्तअधिनियम१९९४केअध्याय V किधारा८६केतहतअपीलनिम्नलिखितकेसमक्षविवादितशुल्कटैक्सरऔपेनाल्टीका/टैक्सयाशुल्क/10% अथवापेनाल्टीका % 10जहांसिर्फपेनाल्टीविवादितहोकेभुगतानपश्चात,स्वीकार्यहैं I सीमाशुल्क, केन्द्रीयउत्पादशुल्कतथासेवाकर, अपीलीयप्राधिकरण [पश्चिमक्षेत्रियबेंच (WZB)],जयसेंटर,मंजिलवी4 , 34,पीडीमेल्लोरोड,पूनास्ट्रीट,मस्जिदबंदर(पूर्व),मुंबई- ४०००९II(i) In all other cases, appeal under Section 35B of Central Excise Act, 1944 / Under Section 86 of Chapter V of the Finance Act, 1994, appeal lies to **The Customs, Excise & Service Tax Appellate Tribunal, [West Zonal Bench (WZB)], Jai Centre, 4th floor, 34, P. D'Mello Road, Poona Street, Masjid Bunder (E), Mumbai-400009**, on payment of 10% of the duty/tax demanded where duty/tax or duty/tax and penalty are in dispute, or penalty, penalty alone is in dispute, in terms of Section 35F of Central Excise Act, 1944 .

(ii) केन्द्रीयउत्पादशुल्कअधिनियम१९४४किधारा३५बी(6)/वित्तअधिनियम१९९४केअध्यायकिधारा८६(6) केतहतअपीलीयप्राधिकरणकेसमक्षकिजानेवालीअपीलकेसाथट्रीब्युनलबेंचकेसहायकरजिस्ट्रारकेनामआहरितनिम्नलिखित शिकीफ़ीसकाआपेरियतबैंकड्राफ्टसंलग्नहोनाचाहिये I (ii) In terms of Section 35B(6) of Central Excise Act, 1944 / Section 86(6) of Chapter V of the Finance Act, 1994, an appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, irrespective of the date of demand of duty/service tax and interest or levy of penalty in relation to which the appeal is made, be accompanied by a FEE in the form of crossed Bank Draft in favour of Assistant Registrar of the Tribunal. The FEE payable is mentioned below:-

(क) जिनमामलोंमेंशुल्क/टैक्सतथाउसपरमांगकियाब्याजएवंउसपरलगायेगएअर्थदंडकीराशिपांचलाखरुपयेअथवाउससेक महोवहाँ१००० (एकहजार) रुपयेकाबैंकड्राफ्ट I

(a) Where the amount of duty/tax and interest demanded and penalty levied by an Central Excise Officer in the case of which the appeal relates is five lakh rupees or less, one thousand rupees,

(ख) जिनमामलोंमेंशुल्कटैक्स/तथाउसपरमांगकियाब्याजएवंउसपरलगायेगएअर्थदंडकीराशिपांचलाखरुपयेसेऊपरलेकिन पचासलाखरुपयेसेज्यादानहोऐसेमामलोमे, ५००० (पांचहजार) रुपयेकाबैंकड्राफ्ट, और ;

(b) Where the amount of duty/tax and interest demanded and penalty levied by any Central Excise Officer in the case of which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees,

(ग) जिनमामलोंमेंशुल्कटैक्/सतथाउसपरमांगकियाब्याजएवंउसपरलगायेगएअर्थदंडकीराशिपचासलाखरुपयेअथवाउससे अधिकहोवहाँ१०००० (दसहजार) रुपयेकाबैंकड्राफ्ट I

(c) Where the amount of duty/tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees;

(iv)ट्रिब्यूनलकेसमक्षस्थगनहेतुअथवात्रुटिकेसंसोधनहेतुअथवाअन्यकिसीउद्देश्यहेतुअथवाअपीलयाआवेदनकोवापसमान्यकिएजानेहेतुकियेगएप्रत्येकआवेदनकेसाथशुल्ककेरूपमेपांचसौरुपयेकाबैंकड्राफ्टसंलग्नकियाजानाचाहिए(iv)ry application made before the Appellate Tribunal in an appeal for grant of stay or for rectification of Mistake or for any other purpose or for restoration of an appeal or an application shall be accompanied by a fee of five hundred rupees.

(v)यदिइसआदेशकेअंदरऐसेकईमूलआदेशआजातेहेतोयहअपीलशुल्कराशिउक्ततरीकेसेहीबैंकड्राफ्टमेंहीभूगतानकीजायताकिअनावश्यकलिखापढ़ीनकरनीपड़े (v) If this order covers a number of Orders-In-Original, fee of Rs. 200/- / Rs. 1000/- / Rs.5000/- / Rs 10000/- for such Order-in-Original should be paid in the aforesaid manner notwithstanding the fact that the appeal to the Appellate Tribunal or any application to the Central Government, as the case may be, filed.

2.(I)क्रमांक(१)केमामलेमेआवेदनपत्रदोप्रतियोमेकेंद्रसर्कारकोदाखिलकियाजायतथाउसकेसाथआदेशकीदोप्रतियातथामूलआदेश, जिसकेखिलाफयहआवेदनदायरकियाजारहाहे,कीदोप्रतिया,संलग्नकीजाय2. (I) In case of Para No. I (i), an application to Central Government should be in duplicate and be accompanied by two copies of the Order and two copies of Order-in-Original which has given rise to the order. One copy of each application, the order appealed against and the order of the Adjudicating authority shall bear an item 6 of the Court Fee Act,1870, as amended

2.(II)इसआदेशसेव्यथितकोईभीव्यक्तिआदेशप्राप्तहोनेकितारिखसे३महीनोकेअंदरसंबंधितप्राधिकारीकोसंबोधितअपीलउपरोक्त(I)एवं(II)केअनुसारनिर्धारितप्रपत्रमेंकरसकताहे2. (II) In case of Para No.1 (ii) the appeal to the Appellate Tribunal should be accompanied by four copies (One copy of which at least shall be certified copy).2.(III)इसआदेशसेव्यथितकोईभीव्यक्तिइसआदेशकेसंसूचितकिएजानेकीतारीखसेतीनमहीनेकेअंदरआदेशकेपैरा(i)औरपैरा(ii)मेंयथाउल्लिखितप्राधिकारीकेसमक्षनिर्धारितफार्ममेंअपीलकरसकताहै2.(III) Any person aggrieved of this order may file an appeal in prescribed form to the authority as mentioned in Para I (i) and I (ii) within 3 months from the date of communication of this order and be addressed to the authority as the case may be.

3.आपकाध्यानकेन्द्रीयउत्पादशुल्क(१)संशोधितनियमावली१९८२सीमाशुल्क,उत्पादशुल्कएवंस्वर्णनियंत्रणअपीलीयप्राधिकरण(प्रकिया)मेंनिहितमामलोंसेसंबंधितनियमोंकीऔरभीआकर्षितकियाजाताहे3.Attention is also invited to Rules governing these and other related matters contained in Central Excise (Appeals) Rules, 2001 and the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

ORDER-IN-APPEAL NO:- IM/ CGST A-I/ MUM/ 357/ 18-19 Dated :- 31.08.2018

1. **BRIEF FACTS OF THE CASE** :-The present appeal is filed by M/s. Quantum Advisors Pvt. Ltd. (hereinafter referred to as "the appellant"), situated at Regent Chambers, 503, 5th Floor, Nariman Point, Mumbai - 400 021 against Order-In-Original No. KJS/R-159/2011 dated 13.10.2011, passed by the Deputy Commissioner, Service Tax-I, Mumbai

2. The brief is that the appellants having Service Tax Registration No. AAACQ0281CST001 under the category of 'Banking & other Financial Services' had filed three (3) refund claims totally amounting to Rs.1,20,86,404/- of unutilized Cenvat Credit for the period Oct.2009 to June 2010 i.e [(i)Oct.09 to Dec.09-Rs.72,930/- ii) Jan.10 To Mar.10-Rs.90,30,936/- iii) April.10 to June.10 –Rs.29,82,538/-]under Notification No.5/2006 - CE (NT) dated 14.03.2006 as amended read with Rule 5 of CENVAT Credit Rules,2004 and the Adjudicating Authority rejected the partial amount of refund claim of Rs.6,34,080/- on merits as per the provisions of Section 11B of the Central Excise Act,1944 as made applicable to the service tax by virtue of Chapter V of section 83 of Finance Act,1994on the grounds that 1) some input invoices were missing 2) some input invoices were not eligible as input service and have no nexus with the output service exported 3) cenvat credit prior to 28.02.2010 did not qualify as export. 4) the claim for the period ' Oct. 2009 to Dec.2009'as Time barred

3. **APPELLANT'S DEFENSE:** Aggrieved by the impugned order, the appellants have filed the present appeal on the following grounds:

- The appellant submitted that they accepted that the refund claims for the period 'Oct. 2009 to Dec.2009' is barred by limitation of time as prescribed under Sec.11B of the Central Excise Act,1944 as made applicable to the service tax by virtue of Section 83 of the Finance Act,1994 . Therefore, they dropped its claim for refund of Rs . 72930/- in this respect.

- It is submitted that the insurance premium is paid towards insurance for professional indemnity. It is also one of the very important Human Resource(HR) initiatives to retain the appellant's employees. They further relied on the decision in the case of Commissioner of Central Excise, Pune-II vs.I.J.Muthu Foods Pvt.Ltd. 2009 (234) E.L.T 95 (Tri-Mumbai)

- Conditions for export of services are fulfilled for the period before 27.02.2010-

  If the service is delivered to the principal beneficiary who is outside India it ought to be that the same are also 'used outside India". Services provided by the appellant used by the FIIs which are located outside India in its business and the benefit of such services arises to FIIs situated outside India. All these services are provided to and are exclusively meant for use in the business of such FIIs. Thus, it may be said that the services are provided from India and used outside India. Also, the Circular No. 141/10/2011 ST dt 01.05.2011 based on which the adjudicating authority has concluded that the services provided by the appellant to its overseas customers are not used outside India states that Circular no. 111/05/2009-ST was issued on 24.02.2009 on the applicability of the provisions of the Export of Services Rules,2005 in certain situations. It had clarified on the expression 'used outside India' in Rule 3(2)(a) of the Export of Service Rules,2005 as prevalent at that time. Further Circular no. 111/05/2009-ST(Supra) has not been rescinded or superseded and that the same is still binding for determination whether a transaction of providing service may be regarded as export of services. The issue whether the services provided by Indian entities to financial institutions who ultimately invest in India could be regarded as export of services was specifically examined in the above circular and it was clarified that BOFS are classified under category III as defined under Rule 3(1) (iii) of the Export of Service Rules,2005 and for category III services [Rule 3(1) (iii)] it is possible that export of service may take place even when all the relevant activities take place in India so long as the benefits of these services accrue outside India.

Thus, the appellant is specifically covered by the clarification made in theCircular no. 111/05/2009-ST(Supra). Hence, the services provided by the appellant should be regarded as export of services and the refund of the CENVAT credit availed and remaining unutilized should be allowed to the appellant as refund.

- Rejection of Rs.1359/- on account of Non availability of input service invoice – In this regard, it is submitted that copies of all invoices as mentioned to have been missing in the refund claim had been submitted again for perusal. Further, vide circular No.120/01/2010 –ST dated 19.01.2010 that in case of incomplete invoices, the department should take a liberal view in view of various judicial pronouncements by Courts.

- Denial an amt. of Rs.623/- pertaining to service tax paid on service charges paid for procurement of food coupons from Sodexo pass Service Pvt.Ltd - These services pertain towards service charge on non-convertible food coupons supplied to the appellant by Sodexo. These are in turn distributed among the employees of the appellant who use it for purchase of food /beverages for consumption during working hours. Thus, it is one of very important HR activity which would be core to any service organization like the appellant's. Thus, these services are essential in order to provision of output services by the appellant and hence qualify as input services as per CCR.

4. **PERSONAL HEARING:-**The personal hearing in the matter was held on 30.08.2018. The same was attended by Mr.SandeepJaiswal, CA and Ms.DishaKhetan, CA on the behalf of the appellants. The appeal is on the rejected amount of Rs.6,34,080/- on the ground that they have not fulfilled the condition of Rule 3(2) of Export Service Rules,2005. Out of said amount Rs.72,930/- Not pursued + Rs.5,61,150/- (Rs.5,12,396/- export prior to 28.02.2010+Rs.46,772/- General Insurance +Rs.1359/- Missing invoices +Rs. 623/- not pursued). For Rs. 5,12,396/- the appellant reiterated the submission made and relied upon the case laws a) FIL Capital Advisors(I) P.Ltd – 2015(40) S.T.R.543 (Tri-Mumbai) b) Commr. of S.T.,Mumbai vs N.V. Advisory Services Pvt.Ltd - 2015(39) S.T.R.210 (Tri-Mumbai). For Rs. 1359/-Missing invoices are submitted.ForRs.46,777/- it is contended that the General Insurance are required for business and not for personal use. Further as far as export rules are concerned the appellants falls under Rule 3 (iii) of the Export of Service Rules,2005 as the recipient of service is outside India so benefit accrued to service recipient outside India

5. **DISCUSSION & FINDINGS-** I have carefully gone through the facts of the case, the impugned O-I-O, the grounds of appeal filed by the appellant, the submissions made at the time of P.H. The issue to be decided is whether the adjudicating authority has correctly rejected the claims of refund or otherwise.

In brief that the appellants had filed three (3) refund claims totally amounting to Rs.1,20,86,404/- of unutilized Cenvat Credit for the period Oct.2009 to June 2010 i.e. [(i)Oct.09 to Dec.09-Rs.72,930/- ii) Jan.10 To Mar.10-Rs.90,30,936/- iii) April.10 to June.10 – Rs.29,82,538/-] under Notification No.5/2006 - CE (NT) dated 14.03.2006 as amended read with Rule 5 of CENVAT Credit Rules, 2004 and the Adjudicating Authority rejected the partial amount of refund claim of Rs.6,34,080/- on merits as per the provisions of Section 11B of the Central Excise Act,1944 as made applicable to the service tax by virtue of Chapter V of section 83 of Finance Act,1994 on the grounds that they have not fulfilled the condition of Rule 3(2) of Export Service Rules,2005. The details are as follows-

6. a) **Time barred** -With regard to the refund claim for the period ' Oct. 2009 to Dec.2009' the appellant submitted that they have accepted that the refund claim for the period ' Oct. 2009 to Dec.2009' is barred by limitation of time as prescribed under Sec.11B of the Central Excise Act,1944 as made applicable to the service tax by virtue of Section 83 of the Finance Act,1994 . Therefore, they dropped its claim for refund of Rs.72930/-- **not pursued**

b) **Cenvat Credit in respect of "General Insurance Service":**-The Adjudicating Authority has disallowed Cenvat Credit of Rs.46772/- on "General Insurance Service" on the ground that

the appellant has failed to declare that the said input service is eligible as an Input serviceand therefore no nexus with the output services exported . In this regard, the appellant has submitted that the insurance premium is paid towards insurance for professional indemnity. It is also one of the very important Human Resource (HR) initiatives to retain the appellant's employees and are required for business and not for personal use.

In the instant case, it is seen that the said services relating to employee's insurance are for the personnel use of the employees and do not have any nexus with output service. Since, the appellant has not established that the said input service had any nexus with the output service exported, they are not eligible for taking the cenvat credit - **Disallowed.**

c). **Rejection of Rs.1359/- on account of Non availability of input service invoice&Rs. 623/- as food coupons–** The appellant has availed cenvat credit of Rs.1359/-on account of Tele-communication services and Rs.623/-on food coupons.The Adjudicating Authority has disallowed Cenvat Credit of Rs.1359/- on the ground that the subjectinput invoices were missingandRs.623/- pertaining to service tax paid on service charges paid for procurement of food coupons. Now at appellate stage, the appellants have submitted the copies of the subject invoicesi.e Tele-communication services. However, as the above said services were used by the appellant for personal benefit and also theyhad not established that the said input services had any nexus with the output service exported. Hence liable to be rejected- **Disallowed.**

7. **Rejection of Rs. 5,12,396/- on the ground that there is no export of service:** In brief, the appellants had filed refund claims under Notification No. 05/2006-CE (NT) dated 14.03.2006 for unutilized balance Cenvat Credit availed on input services used for providing output services exported without payment of service tax and the Adjudicating Authority vide impugned orders has rejected the refund claim as the services provided by the appellant did not qualify as export for the period prior to 28 February,2010 in terms of Board Circular no. 141/10/2011 dated 13.05.2011

In this regard the appellant submitted thatif the service is delivered to the principal beneficiary who is outside India it ought to be that the same are also "used outside India". Services provided by the appellant used by the FIIs which are located outside India in its business and the benefit of such services arises to FIIs situated outside India. All these services are provided to and are exclusively meant for use in the business of such FIIs. Thus, it may be said that the services are provided from India and used outside India. Also, the **Circular No. 141/10/2011 ST dt 01.05.2011** based on which the adjudicating authority has concluded that the services provided by the appellant to its overseas customers are not used outside India states that **Circular no. 111/05/2009-ST was issued on 24.02.2009** on the applicability of the provisions of the Export of Services Rules, 2005 in certain situations. It had clarified on the expression 'used outside India' in Rule 3(2)(a) of the Export of Service Rules,2005 as prevalent at that time. Further Circular no. 111/05/2009-ST(Supra) has not been rescinded or superseded and that the same is still binding for determination whether a transaction of providing service may be regarded as export of services. The issue whether the services provided by Indian entities to financial institutions who ultimately invest in India could be regarded as export of services was specifically examined in the above circular and it was clarified that BOFS are classified under category III as defined under Rule 3(1) (iii) of the Export of Service Rules,2005 that export of service may take place even when all the relevant activities take place in India so long as the benefits of these services accrue outside India. Thus, the appellant is specifically covered by the clarification made in the Circular no. 111/05/2009-ST(Supra). Hence, the services provided by the appellant should be regarded as export of services and the refund of the CENVAT credit availed and remaining unutilized should be allowed to the appellant as refund.

8. Firstly it is to mention that the Circular 141/10/2011 issued clarifying the instructions issued in Circular 111/05/ 2009 vis a vis the Rule 3(2) (a) of the Export Service Rules which has been amended w.e.f 28-02-2010. The appellant's contention on the above circulars is correct. In

the light of the above submission of the appellant, it is relevant to peruse the observations made by the adjudicating authority.The adjudicating authority vide para no. 6 of Order-In-Original has elaborately discussed the above issue and concluded that "*the effective use and enjoyment of the service will of course depend on the nature of the service. Further para 2 of the said circular states that in a situation where the consultancy, though paid by a client located outside India , is actually used in respect of a project or an activity in India the service cannot be said to be used outside India, also in para 5 of the Circular, it is clearly stated that the Circular no. 111/05/2009-STexplained the expression 'used outside India' only and the other conjunct conditions ,as applicable from time to time ,also need to be independently satisfied for availing the benefit of an export.*" *And Further* vide para no. 8 of Order-In-Original it was concluded that "*In light of Circular No.141/10/2011-TRU dated 13.05.2011,it appears that as the investment advisory services (activities) are being used in India, the same cannot be treated as export of service for the period prior to 27.02.2010 till clause(a) of Rule 3(2) of Export Service Rules,2005 which interalia stated " such service is provided from India and used outside India" was in force Therefore refund claim of the accumulated Cenvat credit prior to 27.02.2010 is liable for rejection.*"

9. For more clarity it is desirable to peruse the relevant provisions at that relevant point of time.

Export of Service Rules – 2005.(As existed prior to 27-02-2010)

Vide para 3 Export of taxable service.-

....

(iii) specified in clause (105) of section 65 of the Act, but excluding
(a) sub-clauses (zzzo) and
(b) those specified in clause (i) of this rule except when the provision of taxable services specified in sub-clauses (d),(zzzc),(zzzr) does not relate to immovable property; and
(c) those specified in clause (ii) of this rule,
when provided in relation to business or commerce, be provision of such services to a recipient located outside India and when provided otherwise, be provision of such services to a recipient located outside India at the time of provision of such service:

Provided that where such recipient has commercial establishment or any office relating thereto, in India, such taxable services provided shall be treated as export of service only when order for provision of such service is made from any of his commercial establishment or office located outside India

(2) The provision of any taxable service shall be treated as export of service when the following conditions are satisfied namely :-

*(a) such service is **delivered outside India and used outside India**; and*
(b) payment for such service provided outside India is received by the service provider in convertible foreign exchange.

The above Sub Rule 2 (a) of Rule 3 of Export of Services Rules, 2005, provides for the provision of export service shall be treated as export of service, if said service is delivered outside India and used outside India. In the present case there is no export invoice showing the details of nature of service and purportedly to have delivered outside India. Further, it is also seen that it is not only not delivered outside India, but also said services were used within India. Therefore, they have not fulfilled the conditions of Rule 3(2)(a) of Export Rules as mentioned above to consider as export of service.

10. From the OIO, it is seen that the appellant is engaged in advising the Foreign Institutional Investors (FIIs) in Indian Equities and primarily engaged in providing the 'Banking and other Financial Service." in the nature of investment advisory, research and analytical services to the

foreign clients. Also,vide para 4(i) it is mentioned that 'As persection 3.1.1 of agreement "providing general information and advice on developments in Indian economy, the corporate sector and the stock markets having a bearing on investment opportunities in India"reveals thatthe benefits of the advisory service is accrued in India and hence it cannot be said that there is an export. Therefore, the provisions of service consumed in India and also benefit of the services accrued in India only.

11. In the instant case, it could be seen that the appellantsare associate company of the Foreign Institutional Investors. The advice given by the appellants are being used by the associate/investment companies to invest in India only. Therefore, the benefit is accrued to India. Vide **Circular No.141/10/2011-TRU dt 13.05.2011,** it is clarified that the term"accrual of benefit" are not restricted to mere impact on the bottom line of the persons who pays for the services and that the condition provided in the rule that 'the service should be used outside India' may be interpreted in the context where the effective use and enjoyment of the service has been obtained. In the instant case, the effective use and the enjoyment of services are happening in India andthe accrual of benefit and their use outside India are also not in conflict with each other. The appellants could not prove the so called benefit of services is used outside India and the benefit of the services accrued outside India. . Further it is to mention that the said Circular has clarified the position prior to amendment to the Export of Service Rules 2005 w.e.f 27-02-2010. The present claim pertains to the period from April 2009 to March 2010 (prior to the amendment) and the said clarification is already covered the period of refund claim. Therefore, I am of the considered view that the adjudicating authority have rightly concluded that there is no export of services in terms of the **Circular 141/10/2011-TRU dated 13.05.2011**.

12. The company in India is a passive holding company of the FIIs.It is an extended arm and mere establishment of the foreign companies in India. It has no legs to stand on its own as the very existence of the Indian Company is at the will and wish of parent company and it cannot act on its own and it cannot provide any service to any other independent entity except to the parent company. Therefore it can be considered as an extended arm and mere establishment of parent company. It is further evident from the agreement that the appellant have been acting on behalf of their parent company by way of Asset/Portfolio Management in India as Fund Manager. Further, the appellant as Fund Manager/Director entrusted with responsibility of anobserver, monitoring investee company's performance & developments and as a communication channel for information flow between the investee company and FIIs. Thus, it is evident that the appellant is conducting its business in India on behalf of their parent company i.e FIIs. Hence, the appellant plays an active role in the conclusion of the contract between FIIs and their clients in India and provides support services in matter and as such correctly falls in the definition of "intermediary" as per Rule 2(f) of the Place of Provision of Service Rules, 2012.

13. Further, it is seen that the appellant failed to prove that there is a export involved. Neitherthe FIRC reflects the nature of export nor export invoices claimed to have been raised by the appellant do not contain any details of exportnor the amount of FIRC co-relatable with the invoices. This point is of more relevance as the appellants are the part of their parent company acting on behalf of their parent company overseas by way of managing their business affairs in India and also they are reimbursing the expenses towards maintenance of their office employees working in the subsidiary company in India. The financial recordsshows that they are receiving the reimbursement of expenses against the employees expenses. Thus from the entire transaction it is evident that the relation between their parent company and the appellant is that of employer – employee relationship.

14. Further, even in the regime of post negative list, if it is assumed that the appellant provided BOFS to FIIs in terms of Rule 9(a) and 9(c) of the POPS Rules, 2012 the place of provision of the said BOFS services would be the place of provider of the service. Therefore in this case, the claimant being a service provider for banking services, their place of service would be the taxable territory i.e. in India, which is provided by the claimant to their associated

enterprise i.e FIIs and consumed for the clients of FIIs in India.Further, even if it is assumed that the appellant provided BOFS to FIIs in terms of Rule 9(a) and 9(c) of the POPS Rules, 2012 the place of provision of the said BOFS services would be the place of provider of the service. Therefore in this case, the claimant being a service provider for banking services, their place of service would be the taxable territory i.e. in India, which is provided by the claimant to their associated enterprise i.e FIIs and consumed for the clients of FIIs in India.

15. Further it could be seen by the agreement that the appellants were reimbursed all the expenses incurred in relation to providing service to their parent company abroad. This reimbursable expenses denotes the fact that even the taxes are reimbursed to the appellants. In this regard, the appellants have not stated anything contrary to the above observation. Therefore claiming refund of taxes again amounts to double advantage and therefore, it amounts to unjust enrichment which is not allowable under the law.

16. In view of the above findings and discussions, the Order-in-Original is upheld and the appeal filed by the party is dismissed.

31/8/18

(Dr. I. Marianna)
Commissioner of Central Tax
Appeals-I, Mumbai.

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