F NO. 199/02/ST/14-RA

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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005

F NO. 199/02/ST/14-RA/3184 Date of Issue: 28.06.2021

ORDER NO. 10 /2021-ST (SZ) /ASRA/MUMBAI DATED 07.06.2021
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : Commissioner of Central Excise(Appeals-II), Bangalore.

Respondent : M/s John Crone Sealing System India Pvt Ltd.

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.431/2011 dated 24.11.2011 passed by the Commissioner of Central Excise(Appeals-II), Bangalore.

ORDER

This Revision Application is filed by the Commissioner of Service Tax, Bangalore (herein after as "the Applicant") against the Order-in-Appeal No. 431/2011 dated 24.11.2011 passed by the Commissioner of Central Excise(Appeals-II), Bangalore.

2. The brief facts of the case are that the M/s John Crane Sealing System India Pvt. Ltd., No. 11, 1st Phase, Peenya Indl. Area, Bangalore – 560 058 (herein after as "the Respondent") is having Service Tax registration under the category of 'Engineering Service/Consulting Engineering Service' and had filed a refund claim dated 31.03.2009 for Rs. 12,84,362/- (Rupees Twelve Lakhs Eighty Four Thousand Three Hundred and Sixty Two Only) for the period from October 2007 to September 2008 under Rule 5 of the Export of Service Rules, 2005 read with Notification No. 11/2005-ST dated 19.04.2005. On scrutiny of the claim, it was found that

(i) No write-up on the nature of exported services, classification under the Finance Act, 1994 and the applicability of the provisions of the Export of Service Rules, 2005 was furnished;

(ii) There was no proper correlation between the export invoice and the foreign exchange received. Hence it appeared that there is no documentary evidence of receipt of payment against taxable service exported, for which rebate was claimed. The claim was time barred upto February 2008;

(iii) The following supporting documents/records which were essential for processing the rebate claim was not submitted:

(a) Purchase orders or copy of the agreement entered with the customers for providing the services;

(b) Detailed write up regarding nature of work undertaken/service provided;

(c) Documentary evidence indicating the correction between foreign exchange received and the connected export invoice;

(d) A statement showing the details of export invoice and date, amount biked, name and address of the service receiver, date of receipt of foreign exchange, amount of foreign received, banker's name, FIRC No. and date;

(e) Copy of Service Tax Registration Certificate;

(f) Copy of ST-3 return for which the claim had been filed;

(g) Original copies of tax paid challans GR/TR-6. If the payment was by cash or any other mode of payment documentary evidences on such payments.

(iv) Further, it was found that the invoices submitted did not confirm to the requirement of Rule 4A of Service Tax Rules, 2004 which are basic documents to ensure that the Service Tax paid on the taxable services provided. The invoices should invariably contain the description of taxable service, classification under the Finance Act and Service Tax payable as per the said provisions.

In view of the above, discrepancies and infirmities mentioned above, the claim appeared to be inadmissible on merits as it was not supported by documentary evidences of proof of payment of Service Tax. Hence the Respondent was issued Show Cause Notice dated 25.05.2009

3. The Assistant Commissioner of Service Tax, Division-III, Bangalore Commissionerate vide Order-in-Original No. 426/2009 dated 20.11.2009 rejected the rebate claim as inadmissible under the provisions of Export of Service Rules, 2005 read with Notification No. 11/05 dated 19.04.2005 on the following grounds:

(i) The claim filed on 31.03.2009 was time barred for the period October 2007 to February 2008 as per provisions of Section 11B of the Central Excise Act made applicable to Service Tax.

(ii) The services exported were in the nature of software development which was made taxable only from 16.05.2008.

(iii) The registration was obtained only on 24.11.2008 and did not cover the claim period October 2007 to February 2008 during which period the Respondent were not registered with Service Tax Department. Hence the export was treated as having taken place from an unregistered premise.

(iv) The Respondent had not furnished bifurcated figures for the period prior to 15.05.2008 (the exempted period) and the taxable period from 16.05.2008.

4. Being aggrieved, the Respondent filed appeal with the Commissioner of Central Excise(Appeals-II), Bangalore. The Commissioner(Appeals) vide Order-in-Appeal No. 431/2011 dated 24.11.2011 set aside the Order-in-Original dated 20.11.2009 with consequential relief on the following findings:

(i) The Respondent had exported Engineering Consultancy Services to UK vide Export Invoice No. 22/08-09 dated 18.12.2008 for which the Respondent had received the payment in the form Great Britain Pounds (GBP) vide FIRC No. 3129043475 dated 13.02.2009 issued by Citibank, Mumbai. The Respondent had filed their rebate claim on 31.03.2009 i.e. after a period of 102 days that is well within the permissible period of one year.

(ii) The Respondent had obtained Service Tax Registration on 24.11.2008. the export was made on 18.12.2008. Hence the question of non-registration and non taxability of the Service does not arise.

(iii) The observation of the original adjudicating authority that the Respondent had exported services which are in the nature of software development was without basis. Even if one was to go by the observation of the adjudicating authority that the services are in the nature of information technology service, the Respondent was still eligible for the said rebate by virtue of the fact that they

had exported the service only in the month of December 2008 and not prior to the Information Technology Software Service being taxable.

(iv) The bankers of the Respondent, Citibank, Mumbai had also confirmed that the amount received through the impugned FIRC pertains to the impugned invoice alone. And therefore, finds no reason to reject the claim of rebate.

5. Being aggrieved, the Applicant Department filed an appeal with the CESTAT, Bangalore. The Hon'ble Tribunal vide Final Order No. 26857/2013 dated 29.10.2013 held that

> *"2. Both sides agree that since the matter related to rebate of service tax paid and used in the export of service, the Tribunal has not jurisdiction to entertain the appeal. The decision of the Tribunal in the case of Glyph International Ltd, vide Misc. Order Nos. 125 & 126/2013 dated 15.04.2013 was relied upon and we find that in this decision the Tribunal had considered the relevant provisions in detail and came to the conclusion that Tribunal has no jurisdiction to consider appeals which relate to rebate claims. Accordingly, the appeal filed by the Revenue is reject as not maintainable. Stay application also gets rejected in view of the above decision."*

6. The Applicant Department filed the current Revision Application on the following grounds:

(i) The Commissioner(Appeals) Order-in-Appeal dated 24.11.2011, setting aside the Order-in-Original and granting the rebate was erroneous and cannot be accepted.

(ii) The Respondent was claiming rebate on the input services received during the period October 2007 to September 2008 and the claim has been filed on 31.03.2009 and thereby the rebate claim is hit limitation of time as prescribed under Section 11B of Central Excise Act, 1944 made applicable to Service Tax under Section 83 of the Finance Act, 1994. Therefore based on the provisions contained under explanation (B)(1) of Section 11B of Central Excise Act, the *"relevant date"* for filing of refund application seeking refund of duty paid in this case will be 'one year' from the date of payment i.e. October 2007 to September 2008, whereas the Respondent had filed the refund application on

31.03.2009 which is beyond one year from the date payment and thus the claim has been hit by limitation of time of one year from the relevant date as prescribed under Section 11B Central Excise Act, 1944 made applicable to Service Tax under Section 83 of the said Act.

(iii) The adjudicating authority vide Order-in-Original No. 426/2009 dated 20.11.2009, rejected the refund amount in toto on the ground that the Respondent had got registered on 24.11.2008 and does not cover the claim period of October 2007 to September 2008 during which they had not registered with Service Tax authorities and thus the rebate claim for the said period is liable for rejection for non-registration.

(iv) The rebate claim was for the period October 2007 to September 2008 and the export had taken place vide Export Invoice No.22/08-09 dated 18.12.2008, thus no export had taken place during the said claim period of October 2007 to September 2008 and therefore the claim is liable for rejection on this ground also. The Respondent had also not submitted bifurcated figures for the exempted period upto 15.05.2008 and taxable period from 16.05.2008 as the service of 'Information Technology Software Services' came into effect from 16.05.2008.

(v) The Commissioner (Appeals)'s observation that even one was to go by the observation of the original adjudicating authority that the services are in nature of Information Technology Software services, the Respondent was still eligible for the said rebate by virtue of the fact that he has exported the services only in the month of December 2008 and not prior to the Information Technology service being made taxable, cannot be accepted as it was seen that the registration for the said services was taken on 24.11.2008 and export had taken place during December 2008. The Respondent had claimed rebate for the period of October 2007 to September 2008 on accumulated Cenvat Credit lying in their book of accounts in discharging the Service Tax on the export services. They are supposed to avail the credit of input/input services that have go into

the export of the output services. From this it concludes that the Respondent had availed the credit of input/input services which had got no nexus between the input/input services and the services exported. Hence the tax paid on the output services was irregular and rebate on such irregular payment is improper and cannot be sanctioned.

(vi) Hence, the Commissioner (Appeals)'s decision in allowing appeal with consequential relief is not legal and proper.

(vii) The Applicant prayed that the operation of Order-in-Appeal No. 431/2011 dated 24.11.2011 may please be stayed and rebate granted as a consequential relief may please be held as in-eligible.

7. The Respondent filed cross-objections on the following grounds:

(i) Revision application filed is barred by Period of Limitation: 1. The Respondent submits that the revision application filed by the Applicant is barred by period of limitation. The Applicant had received Order-in-Appeal No. 431/2011 dated 24.11.2011 on 30.11.2011. The sub-section 2 of section 35EE provides that the revision application should be filed within three months from the date of receipt of communication of the order appealed against. Further the proviso to sub-section 2 of Section 35EE provides for the condonation of delay, if the revision application is not filed within three months but however it was filed within a further period of three months and there is sufficient cause which prevented the Applicant from filing the application. The proviso to sub-section 2 is very much clear with the extension period for condoning the delay. Where any revision application is filed beyond the time limit provided under the said proviso, cannot be admitted or condoned. Therefore, the Applicant should have filed the revision application within three months from the date of communication of the order appealed against i.e. within 25.02.2012 or at least by 25.05.2012 with condonation of delay. However, the Applicant had filed the revision application on 08.01.2014 with a delay of 683 days which cannot be condoned. The Respondent relies upon the case laws in the case of Re: Indian

Oil Corporation Ltd. [2013 (297) ELT 472 (GOI)] and Commissioner of Customs and Central Excise, Ahmedabad Vs Ratnamani Metals & Tubes Ltd [2003(161) ELT 246 (Tri-Mumbai)]

(ii) Further, the Applicant had submitted that the subject appeal was to be filed before the Revisionary Authority, however, inadvertently the appeal was filed before the CESTAT, Bangalore. Section 35EE was inserted by the virtue of Section 50 of the Finance Act, 1984. The provision of revision application has been introduced for more than 30 years and the department is taking the shelter by using that term inadvertently submitted the appeal to CESTAT Bangalore. If the same reason was quoted by a layman it is understandable that he is unaware of the laws and provisions, it is every day's affair of the department to deal with provisions of law. The reason stated by the department is not acceptable and hence the revision application is liable to set aside as time barred.

(iii) The Applicant had stated that the Respondent had claim refund of credits accumulated during October 2007 to September 2008 had objected that the claim was time barred. The Respondent submitted that they had filed rebate application for the export invoice raised in December 2008 and rebate was claimed in March 2009 which was within the statutory time limit of one year.

(iv) Assuming but not admitting the contention of the Applicant is correct, as per Explanation A to Section 11B (5), *"refund includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India"*. However, the Export of Service Rules, 2005 as given in Notification No 4/2005-ti as well as Notification No. 11/2005-ST dated 19.04.2005 issued in respect of rebate procedure does not state that the provisions of Section 11B is applicable for the rebate.

(v) As could be seen from the various provisions of the Export of Service Rules, Notification No. 11/2005-ST read with Section 11B of the Central Excise Act, the provisions of Section 11B is not applicable for claiming the rebate of Service

Tax paid on export of services. The provisions of Section 11B is applicable only when the rebate of "input" is claim on the exported goods or rebate is claimed on the duty paid on the final goods exported itself. When the Service Tax is paid on the exported services, the provisions of Rule 5 of Export of Service Rules read with Notification No. 11/2005-ST are only applicable. Hence the adjudicating authority had wrongly applied the provisions of Section 11B of the Central Excise Act and rejected the rebate of the Respondent.

(vi) Even if the same is made applicable, the Respondent had claimed the rebate of Service Tax paid and not the refund of inputs or input services. Even if the refund of input or input service is claimed, the relevant date is not from the date of availing the credit, but from the date of export. In the present case, they had exported the service on 18.12.2008 under rebate and the rebate claim was filed on 31.03.2009, which was much within the time period of one year. Therefore, the claims filed by the Respondent is in order.

(vii) In respect of input service pertaining to period prior to registration, the Applicant had made an erroneous submission to misguide the authority by stating that the Respondent had availed the Cenvat Credit prior to the date of registration. The Applicant had contested that the registration for the said services had been taken on 24.11.2008 and the export have been taken place during December 2008, however the Respondent had claimed the rebate for the period of October 2007 to September 2008 on the accumulated Cenvat credit lying in their book of accounts in discharging the Service Tax on the export of services. They were supposed to avail the credit of input /input services that have gone into the export of the output services. Therefore, the Respondent had availed the credit of input/input services which have got no nexus between the input/ input services and services exported.

(viii) In this, the Respondent submitted that they had registered with Service Tax on 03.01.2005. The service exported in the month of December 2008 was Engineering Service which falls under the category Consulting Engineer Service

and for the said service the Respondent had taken take registration w.e.f 03.01.2005.

(ix) Assuming but not admitting that the contention of the Applicant was correct, there is no provision in the Cenvat Credit Rules specifically prohibiting availment of Cenvat credit in respect of inputs/input service which had been received prior to their registration as an output service provider. So long as one can establish that they had borne the incidence of duty on the inputs/input services and they had utilized the same in providing taxable output services, they are eligible for the tax credit on the inputs/ input services.

(x) The Respondents rely upon the decision in Well Known Polysters Ltd Vs Commissioner of Central Excise, Vapi [2012 (25) STR 411 (Tri. - Ahmd)] wherein it held by Hon'able Cestat that

> *"Cenvat credit - Availment of -Registration under Central Excise - It is not necessary for taking credit - For goods manufactured when assessee is unregistered, credit can be taken subsequently - Rule 3 of Cenvat Credit Rules, 2004."*

(xi) Further the Respondent also rely on the decision Cestat in Imagination Technologies India Pvt. Ltd Vs Commr of C.Ex., Pune-III [2011 (23) STR 661 (Tri. - Mumbai)] wherein it has been held that

> *"Cenvat credit - Input service - Received prior to registration of assessee with Central Excise Department - No dispute that Service tax was paid on them, and their use in providing taxable output Service - HELD : There was no provision in Cenvat Credit Rules, 2004 denial of credit on tax paid on such services."[para 5]*

(xii) The contention in the appeal is not correct. The Respondent was registered under Service Tax on 03.01.2005 for the following services:

(a) Management or Business Consultant Service
(b) Consulting Engineer Services
(c) Market Research Agency Service
(d) Online Information and Database Access Service and/or Retrieval Service through Computer Network
(e) Maintenance or Repair Service
(f) Erection, Commissioning and Installation Service

(g) Business Auxiliary Service
(h) Intellectual Property Rights Service other than Copyright
(i) Transport of goods by road/ goods Transport Agency Service

Thereafter the Registration Certificate had been amended for various other services. When the Information Technology Software Service was introduced, the certificate was amended on 22.11.2009. Therefore, the contention of the Applicant is improper and misleading.

(xiii) The Respondent prayed that the appeal may be dismissed.

8. The Applicant delayed filing the Revision Application, details of which is given below:

Sl. No.	Revision Application	OIA dt	Date OIA recd	Date Cestat filed	Cestat order date	Date RA/COD filed	No. of days delay
1	199/02/ST/14-RA	24.11.11	30.11.11	23.02.12	29.10.13	15.01.14	90+73=163

The Applicant filed the Revision Application along with the letter for Condonation of Delay (herein after as 'COD') on the grounds that the appeal was inadvertently filed before the Tribunal and hence there was a delay in submitting the Revision Application and requested to condone the delay and prayed that the application be considered, in the interest of revenue.

9. Personal hearing in this case was fixed for 06.06.2018, 25.02.2020, 03.03.2020 and 29.01.2021. However, no one appeared for the hearing. Hence the case is taken up for decision based on records on merits.

10. Government has carefully gone through the relevant case records available in case files, oral & written submissions/counter objections and perused the impugned Order-in-Original and Order-in-Appeal.

11. Government first proceeds to discuss the issue of delay in filing the revision application. It is clear that Applicant Department has filed the revision application

after 3 months + 73 days when the time period spent in proceedings before CESTAT is excluded. As per provisions of Section 35EE of Central Excise Act, 1944 the revision application can be filed within 3 months of communication of Order-in-Appeal and delay up to another 3 months can be condoned provided there are justified reasons for such delay. In view of judicial precedence that period consumed for pursuing appeal bonafidely before wrong forum is to be excluded in terms of Section 14 of Limitation Act, 1963 for the purpose of reckoning time limit of filing revision application under Section 35EE of Central Excise Act, 1944. Government, in exercise of power under Section 35EE of Central Excise Act, 1944 condones the said delay and takes up revision application for decision on merit.

12. On perusal of the records, Government observes that Respondent had filed rebate claim dated 31.03.2009 for Rs. 12,84,362/- for the export of service vide Export Invoice No. 22/08-09 dated 18.12.2008 under Rule 5 of the Export of Service Rules, 2005 read with Notification No. 11/2005-ST dated 19.04.2005. On scrutiny of the claim, the Respondent was issued Show Cause Notice dated 25.05.2009 and the original adjudicating authority vide Order-in-Original No. 426/2009 dated 20.11.2009 rejected the rebate claim as inadmissible under the provisions of Export of Service Rules, 2005 read with Notification No. 11/05 dated 19.04.2005. Aggrieved, the Respondent filed appeal with the Commissioner of Central Excise(Appeals-II), Bangalore. The Commissioner(Appeals) vide Order-in-Appeal No. 431/2011 dated 24.11.2011 set aside the Order-in-Original dated 20.11.2009 with consequential relief.

13. Government observes that the Applicant Department has filed the current Revision Application on the following grounds:

(i) The relevant date for filing the refund application is seeking the refund of duty paid is one year from the date of payment, the period of claim is claim is October 2007 to September 2008 and the claim was filed on 31.03.2009 which is beyond one year from the date of payment and thus the claim is hit by time limitation under Section 11B.

(ii) The Respondent got registered on 24.11.2008 which does not cover the claim period of October 2007 to September 2008.

(iii) Rebate claim was for the period of October 2007 to September 2008 and the export had taken place vide export invoice No, 22/08-09 dated 18.12.2008 and thus no export had taken place during the claim period.

(iv) The Respondent had claimed rebate on the accumulated Cenvat credit lying in their book of accounts in discharging the Service Tax on their export service. They are supposed to avail the credit of input/input services that have gone into the export of the output services. From this is concludes that the Respondent had availed the credit on the input/input services which have got no nexus between the input/input services and the services exported. Hence the tax paid on the output services is irregular and rebate on such irregular payment is improper and cannot be sanctioned.

14. Issue - claim being hit by time limitation under Section 11B

14.1 Government observes that the Respondent had submitted that they had not claimed any refund, rather the rebate was claimed in respect of export of service which took place in December, 2008 vide Invoice No. 22/08-09 dated 18.12.2008 and paid the Service Tax on export of service and claimed rebate on 31.03.2009. They had claimed the rebate of Service Tax paid and not the refund of inputs or input service. The provisions of Section 11B is applicable only when the rebate of "input" is claim on the exported goods or rebate is claimed on the duty paid on the final goods exported itself. When the Service Tax is paid on the exported services, the provisions of Rule 5 of Export of Service Rules read with Notification No. 11/2005-ST are only applicable. Therefore, the claim filed by them is in order.

14.2 Government notes that Rule 6A(2) of Service Tax Rules, 1994 -

"6A. Export of services.-

(1) The provision .....

(2) Where any service is exported, the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification"

and the relevant portion of Section 11B of Central Excise Act, 1944 as made applicable to matter relating to Service tax by Section 83 of Finance Act, 1994 'relevant date" means

"SECTION 11B - Claim for refund of [duty and interest, if any, paid on such duty
[Explanation. — For the purposes of this section, -
(A) .....
(B) "relevant date" means, -
(a) ....
(b) ....
(c)....;
(d) ....
(f) in any other case, the date of payment of duty"

Government finds that in the current case, the date of payment of duty is 18.12.2008 and date of filing of rebate claims is 31.03.2009. Hence the rebate claim is well within the permissible period of one year from the date of payment of duty. Therefore, the claim is not time barred.

15. Issue raised - The Respondent got registered on 24.11.2008 which does not cover the claim period of October 2007 to September 2008.

15.1 Government observes that the contention of the original adjudicating authority that the service is in the nature of software development which was made taxable only form 16.05.2008 and that the registration had been obtained only on 24.11.2008 and did not cover the claim period of October 2007 to September 2008. The Respondent submitted that they are engaged in providing Consulting Engineering Services in the form of technical assistance in designing and drawings to their customers. They received the specific request

for the design of various engineering activities. By using the computer technology, they develop the engineering drawing and provide the same to their customers through internet. They were registered with Service Tax Department on 03.01.2005 for the services as mentioned in Para 7(xii) above. The service exported in the month of December 2008 was Engineering Service which falls under the category 'Consulting Engineer Service' and for the said service they had already taken registration w.e.f. 03.01.2005. Thereafter their registration certificate had been amended for various services and when the Information Technology Software Service was introduced, the certificate was amended on 22.11.2009.

15.2 Government finds that the Respondent had taken Service Tax Registration w.e.f. 03.01.2005 for many services which included Consulting Engineer Service. The Export Invoice No. 022/08-09 dated 18.12.2008 shows the "Description- Engineering Services (CAD support)", "SERVICE TAX PAID ON EXPORT OF "ENGINEERING SERVICE" AS PER NOTIFICATION NO. 11/2005-ST DATED 19.04.2005". Government is in agreement with the findings of the Commissioner(Appeals) that

> *"4.2 Secondly.....The observation of the original authority that the appellant has export service which are in the nature of software development is without basis. The adjudicating authority has not cited any reason as to why he feels it so, nor has he mentioned as to what documents he has relied upon to arrive at such a conclusion. Therefore, I find it difficult to agree with the adjudicating authority on this matter. Even if one was to go by the observation of the original authority that the services are in the nature of information technology service, the appellant is still eligible for the said rebate by virtue of the fact the he had exported the service only in the month of December 2008 and not prior to the Information Technology Software Service being made taxable."*

15.3 On the current said issue Government relying on the case laws of BPO Solutions Vs CCST Delhi [2012 (25) (STR) 371 (Tri. Delhi)], wherein it has held that it is more of a procedural lapse and rebate claim should not be rejected just because the assessee did not have Service Tax Registration. Hence

Government finds that the Respondent is entitled to the rebate claim paid on export service.

16. Issue raised- Rebate claim was for the period of October 2007 to September 2008 and the export had taken place vide Export Invoice No. 22/08-09 dated 18.12.2008 and thus no export had taken place during the claim period.

16.1 Government observes that the Applicant submitted that the Rebate claim was for the period of October 2007 to September 2008 and the export had taken place vide Export Invoice No. 22/08-09 dated 18.12.2008 and thus no export had taken place during the claim period. The Respondent vide their letter dated 26.06.2009 to the Show Cause Notice had submitted that *"Since we have used out input service tax credit for the payment of service tax, the question of payment of service tax by cash does not arise. Against this, we have already enclosed the copy of ST-3 and the statement of input credit for your kind reference."*

16.2 The Government finds that during October 2007 to September 2008, the Respondent had accumulated input service tax credit/Cenvat credit and on export that had taken place vide Export Invoice No. 22/08-09 dated 18.12.2008 they paid the Service Tax by debiting in their Cenvat credit. Hence Government finds that the export had taken vide Export Invoice No. 22/08-09 dated 18.12.2008 and not during the period October 2007 to September 2008 and the Respondent had filed rebate claim on the Export Invoice No. 22/08-09 dated 18.12.2008 for Rs. 12,84,362/- and they are entitled for the rebate claimed.

17. Issue raised: The Respondent had claimed rebate on the accumulated Cenvat credit lying in their book of accounts in discharging the Service Tax on their export service. They are supposed to avail the credit of input/input services that have gone into the export of the output services. From this is concludes that the Respondent had availed the credit on the input/input services which have got no nexus between the input/input services and the services exported.

Hence the tax paid on the output services is irregular and rebate on such irregular payment is improper and cannot be sanctioned

17.1 Government finds that the Respondent had taken Service Tax Registration w.e.f. 03.01.2005 for 'Consulting Engineer Service' and the description of the Export Invoice No. 022/08-09 dated 18.12.2008 also 'Engineering Services (CAD support)'. On export that had taken place vide Export Invoice No. 22/08-09 dated 18.12.2008, the Respondent had paid the Service Tax through their Cenvat credit account. Government finds that there is nexus between the input/input services and the services exported and the Respondent is entitled to the rebate claim

18. In view of the above position, Government finds no infirmity in the Order-in-Appeal No. 431/2011 dated 24.11.2011 passed by the Commissioner of Central Excise(Appeals-II), Bangalore and, therefore, upholds the same and dismisses the Revision Application filed by the Department being devoid of merits.

Shrawan 7/6/21

(SHRAWAN KUMAR)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 10 /2021-ST (SZ) /ASRA/Mumbai Dated 07.06.2021

To,
The Commissioner of Central Goods & Service Tax,
Bangalore(North West),
BMTC Bus Stand Complex,
Shivaji Nagar,
Bengaluru – 560 051

Copy to:

1. M/s John Crane Sealing System India Pvt. Ltd., No. 11, 1st Phase, Peenya Indl. Area, Bangalore – 560 058.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.