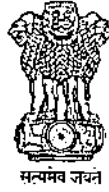


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**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

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

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F NO. 196/13/ST/14-RA/5285

Date of Issue: 08.10.2020

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ORDER NO. 13/2020-CX (SZ) /ASRA/MUMBAI DATED 15.09.2020  
OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL  
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT  
OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Excelpoint Systems(India) Pvt. Ltd.

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

Subject : Revision Application filed, under section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No.273/2014 dated  
26.03.2014 passed by the Commissioner of Central Excise(Appeals-II),  
Bangalore.

**ORDER**

This Revision Application is filed by M/s Excelpoint Systems(India) Pvt. Ltd., 508, 4<sup>th</sup> floor, Oxford Towers, Airport Road, Bangalore – 560 008 (herein after as “the Applicant”) against the Order-in-Appeal No.273/2014 dated 26.03.2014 passed by the Commissioner of Central Excise(Appeals-II), Bangalore.

2. The brief facts of the case are that the Applicant, is having Service Tax registration under the category of ‘Business Auxillary Service (BAS)’ and had filed a rebate claim dated 30.09.2009 for Rs. 8,32,632/- (Rupees Eight Lakhs Thirty Two Thousand Six Hundred and Thirty Two Only) for the period from from October 2008 to March 2009 under Rule 5 of the Export of Service Rules, 2005 read with Notification No. 11/2005-ST dated 19.04.2005.

3. The Assistant Commissioner of Service Tax, Bangalore Commissionerate vide Order-in-Original No. 462/2010 dated 30.08.2010 rejected the refund claim under Section 11B of Central Excise Act, 1944 made applicable to Service Tax as the Applicant had got Service Tax Registration on 16.02.2009, hence the Applicant was not eligible for the claim before the period of getting the registration. Further the service had been rendered during the period from October 2008 to March 2009 and the advance had been received vide FIRC Nos. 157381 dated 04.10.2008, 157708 dated 05.11.2008, 158686 dated 23.11.2008, 159252 dated 23.01.2010 and 160382 dated 21.03.2010 and whereas the invoice was raised on 30.04.2009 which is against the Rule 4A of Service Tax Rules, 1994 and hence the export was not complete.

4. Aggrieved, the Applicant then filed appeal with the Commissioner of Central Excise(Appeals-II), Bangalore, who vide Order-in-Appeal No.273/2014 dated 26.03.2014 rejected their appeal.

5. Aggrieved, the Applicant filed the current Revision Application on the following grounds:

- (i) The impugned order was a non speaking order and had been passed without verifying the facts on records as the impugned order had not provided any

cogent reason as to why an export invoice dated 30.04.2009 does not relate to the rebate for the period from October 2008 to March 2009, whereas the invoice specifically provides that the same was issued for the services provided for the month of March 2009.

- (ii) The impugned order was beyond the parameters of the show cause notice. In the SCN, the adjudicating authority had not asked for any additional documents whereas the Commissioner (Appeal) had rejected the rebate claim primarily on the ground that realization documents had not been provided. The Applicant along with their rebate claim had already submitted all the relevant documents, i.e. the export invoices, FIRC's and the correlation statement between the exports and the FIRC's.
- (iii) The Applicant had fulfilled all the conditions/ documents required for availing the benefit of rebate under Notification No. 11/2005-ST dated 19.04.2005.
- (iv) All the export invoices in relation to which the rebate claim had been filed relates to the period from October 2008 to March 2009. The Applicant follows a monthly billing system wherein the invoices are issued within 30 days of completion of the relevant month. In view of the same, the invoice for the service rendered for the period March 2009 had been issued on 30.04.2009, which is within the period for which the rebate claim had been filed. Thus they places strong reliance on the fact that, the services were rendered by the Applicant to its customers during the rebate period and based on the terms of the Service Agreement dated 01.07.2008, the invoice was raised during the month of April 2009.
- (v) Substantial benefit of rebate cannot be denied on the basis of procedural infractions. In this they relied on CST Delhi Vs M/s Convergys India Pvt. Ltd [2009(16) STR 198 (Tri.-Del)] and few other case laws.
- (vi) The Applicant prayed that the impugned Order-in-Appeal be set aside and their rebate claim be granted along with the appropriate interest.

6. A Personal hearing in this case was fixed on 22.01.2020. The hearing was attended by Shri Jay Chheda, Consultant, on behalf of the Applicant and Shri Harvinder Singh Sandhu, Superintendent, Division-2, GST East Commissionerate, Bangalore on behalf of the Respondent. The Applicant submitted that the object was never regarding documents. First objection was regarding applicability of Service eligible for rebate which was satisfied. The Order-in-Appeal had gone beyond objections and i.e. Invoice dated 30.08.2009 was beyond the 6 months period and they relied on few case laws. The Respondent stated that the rebate was rejected for non submission of documents which was crucial for passing the claim.

7. 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.

8. The issue in this case is whether the rebate claim for the period October 2008 to March 2009 should be allowed or not, when the Applicant's Service Tax Registration was dated 16.02.2009 and further, the export invoice was raised on 30.04.2009 i.e. after 14 days from the date of completion of the taxable service.

9. On perusal of the records, Government observes that that Applicant had applied for Centralized Service Tax Registration on 27.01.2009 and received the registration certificate on 16.02.2009. The Applicant vide their letter dated 25.09.2009 (received by the department on 30.09.2009) filed a rebate claim for the period from October 2008 to March 2009. Government finds that during the period for service rendered from 1.10.2008 to 15.02.2009 the Applicant did not have Service Registration.

7. Government finds that on the current issue relying on the case laws of BPO Solutions Vs CCST Delhi [2012 (25) (STR) 371 (Tri. Delhi)], the Commissioner (Appeal) in the findings has held that it is more of a procedural lapse and rebate claim should not be rejected just because the Applicant did not have Service Tax Registration. Here Government is in agreement with the findings of the

Commissioner (Appeal) and hence the delay in getting the service tax registration is condoned as procedural lapse and the rebate claim cannot be rejected on this ground.

8. As per Rule 4A of Service Tax Rules, 1994

*"Every person providing taxable service shall not later than fourteen days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier issue an invoice, a bill or, as the case may be, a Challan."*

Here Government observes that the Applicant for the period October 2008 to March 2009, the invoice No. EPIRDN09000002 dated 30.04.2009 was not raised within 14 days from the date of completion of the taxable service. The Applicant submitted that *"the Applicant follows a monthly billing system wherein the invoices are issued within 30 days of completion of the relevant month. In view of the same, the invoice for the service rendered for the period March 2009 had been issued on 30.04.2009"*.

9. In this issue Government places reliance on the judgment of the Hon'ble Madras High Court in the case of Commr. of C.Ex. Salame Vs JSW Steels Ltd [2018(8) G.S.T.L. 153 (Mad)].

*"Cenvat credit of Service Tax – Delay in claiming credit – Obligation to issue invoice, bill or challan not later than fourteen days from the date of provisioning of taxable service essentially rests on service provider – Period provided appears to be directory and not mandatory – No consequence, in case delay in issuance of invoice, bill or challan adverted – Delay broadly explained by assessee – In one case, assessee could not claim Cenvat credit till such time it was serviced with invoice, while in other case it claim credit only after it had paid Service Tax on basis of reverse charge – Delay involved cannot be categorized as an inordinate period of delay, as was sought to be conveyed by Revenue – Rule 4A of Service Tax Rules, 1994 [paras 15.5, 15.6, 15.7]*

Government finds that the delay of 16 days cannot be categorized as an inordinate period of delay. Hence considering the circumstances of this case, the delay of 16 days of issuance of invoice is condoned.

10. There are catena of judgments on the said issue laying down that substantive benefits cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is payment of duty on manufactured product and its subsequent export. As long as this requirement is met, other procedural deviations can be condoned

11. Hence, Government remands the matter back to the original authority for the limited purpose of verification and to sanction the rebate claims of Rs. 8,32,632/-. The adjudicating authority shall reconsider the claims for rebate on the basis of the documents submitted by the Applicant after satisfying itself in regard to the authenticity of those documents

12. In view of above, Government sets aside the impugned Order-in-Appeal No.273/2014 dated 26.03.2014 passed by the Commissioner of Central Excise(Appeals-II), Bangalore

13. The revision application is allowed in terms of above.

13. So, ordered.

(SEEMA ARORA)

Principal Commissioner & ex-Officio  
Additional Secretary to Government of India

ORDER No. \3/2020-CX (SZ) /ASRA/Mumbai Dated 15.09.2020

To,  
M/s Excelpoint Systems(India) Pvt. Ltd.,  
508, 4<sup>th</sup> floor, Oxford Towers,  
Airport Road,  
Bangalore - 560 008

Copy to:

1. The Commissioner of Central Goods & Service Tax, Bangalore(East),TTMC, BMTC Bus Stand Complex, HAL Airport Road, Domluru, Bengaluru - 560 071
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.