

REGISTERED SPEED POST AD



**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**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 196/05/ST/2014-RA / 943

Date of Issue: 07.03.2022

ORDER NO. 14/2022-ST(SZ)/ASRA/MUMBAI DATED 04.03-2022
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 : M/s TNS India Private Ltd.
Shri Prashanti Sai Towers,
Plot No. 68, Nagarjuna Hills,
Hyderabad – 500 082

Respondent : The Commissioner of CGST & Central Tax, Hyderabad

Subject : Revision Application filed under Section 35EE of the Central Excise
Act, 1944 against Order-in-Appeal No. 128/2013(H-II)S.TAX dated
30.09.2013 passed by the Commissioner of Central
Excise(Appeals-II), Hyderabad.

ORDER

The revision application has been filed by M/s TNS India Private Ltd., Shri Prashanti Sai Towers, Plot No. 68, Nagarjuna Hills, Hyderabad - 500 082 (hereinafter referred to as "the applicant") against Order-in-Appeal No. 128/2013(H-II)S.TAX dated 30.09.2013 passed by the Commissioner of Central Excise(Appeals-II), Hyderabad.

2. The applicant is in the business of rendering "Market Research Agency Services" and "Business Auxiliary Services". They had filed a rebate claim under Rule 5 of the Export of Services Rules, 2005 read with Notification No. 11/2005-ST dated 19.04.2005 for an amount of Rs. 1,35,47,108/- vide Form ASTR-1 in respect of Market Research Agency Services provided by them to their clients of foreign origin. The Assistant Commissioner, Service Tax, Hyderabad-II rejected their claim vide OIO No. 65/2013-(Service Tax) dated 20.05.2013. Aggrieved by the OIO, the applicant filed appeal before the Commissioner(Appeals). The Commissioner(Appeals) after following due procedure passed OIA No. 128/2013(H-II)S.Tax dated 30.09.2013 upholding the order of the lower authority and dismissed the appeal filed by the applicant.

3. Being aggrieved by the OIA dated 30.09.2013, the applicant filed revision application on various grounds. The applicant was granted a personal hearing on 20.07.2021. Shri Prasad Paranjape, Advocate and Shri Mohit Raval, Advocate appeared online and reiterated the submissions made by them. They also submitted written submissions dated 20.07.2021. They further stated that post April 2011, the law had changed as their service had been shifted to category (III) from category (II). They requested that their refund claim be allowed.

4. Government has carefully gone through the relevant case records, perused the impugned Order-in-Appeal, the Order-in-Original, the revision application and the submissions filed by the applicant. It is observed that the dispute is regarding admissibility of rebate of service tax paid on "Market Research Agency Services" rendered by the applicant for which they have filed claim under Rule 5 of the Export of Services Rules, 2005 read with Notification No. 11/2005-ST dated 19.04.2005.

5. Government observes that the Notification No. 11/2005-ST dated 19.04.2005 has been issued in exercise of the powers conferred by Rule 5 of the

Export of Services Rules, 2005. The preamble of the notification is reproduced below for a better appreciation of its ambit.

"In exercise of the powers conferred by rule 5 of the Export of Service Rules, 2005 (hereinafter referred to as the said rules), insofar as it relates to export of taxable services to the countries other than Nepal and Bhutan, the Central Government hereby directs that there shall be granted rebate of the whole of the service tax and cess paid on all taxable services exported in terms of rule 3 of the said rules, to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter, -"

It is clear from the text that the service tax and cess paid on the output services exported is rebated in terms of this notification.

6. The powers for revision under the statute are limited to certain matters. The powers of revision in the Central Excise Act, 1944 in Section 35EE of the Act are exercisable in cases where the order is of the nature referred to in the first proviso to sub-section (1) of Section 35B of the CEA, 1944. Amongst other matters which are covered by the powers of revision vested in the Central Government, the part relating to rebate mentioned in the first proviso to sub-section (1) of Section 35B of the CEA, 1944 specified orders relating to "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". Therefore, the two types of rebate cases which were specified for exercise of revisionary powers vested in the Central Government under Section 35EE were rebate of duty paid on exported goods and rebate of duty paid on excisable materials(inputs) used in the manufacture of exported goods. *This proviso clearly does not mention rebate of service tax paid on taxable services which are exported.*

7.1 Revision Applications in service tax matters are filed before the Central Government as per the provisions of Section 35EE of the CEA, 1944(made applicable to service tax matters by Section 83 of FA, 1994) in terms of the first proviso of sub-section (1) of Section 86 of the FA, 1994. The Section 86 specifies the orders which are to be appealed against before the Appellate Tribunal with a proviso for exceptions where revision application is to be preferred. The Section 86 of the FA, 1994 is reproduced below for the sake of lucidity.

"Section 86. Appeals to Appellate Tribunal. –

(1) Save as otherwise provided herein an assessee aggrieved by an order passed by a Principal Commissioner of Central Excise or Commissioner of Central Excise under section 73 or section 83A by a Commissioner of Central Excise (Appeals) under section 85, may appeal to the Appellate Tribunal against such order within three months of the date of receipt of the order.

Provided that where an order, relating to a service which is exported, has been passed under section 85 and the matter relates to grant of rebate of service tax on input services, or rebate of duty paid on inputs, used in providing such service, such order shall be dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944(1 of 1944).

Provided further that all appeals filed before the Appellate Tribunal in respect of matters covered under the first proviso, after the coming into force of the Finance Act, 2012(23 of 2012), and pending before it up to the date on which the Finance Bill, 2015 receives the assent of the President, shall be transferred and dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944(1 of 1944)."

7.2 Sub-section (1) of Section 86 of the FA, 1994 stipulates that appeals against orders of Commissioner(Appeals) are to be filed before the Appellate Tribunal. However, a specific category has been carved out of these orders in the first proviso to sub-section (1) of Section 86; viz. orders relating to grant of rebate of service tax on input services and rebate of duty paid on inputs where services have been exported are directed to be dealt with in accordance with the provisions of Section 35EE of the CEA, 1944. Unmistakeably, the category of rebate of service tax paid on taxable service exported does not fall in the exception category and therefore the assessee aggrieved by these orders cannot obtain relief by filing revision applications under Section 35EE.

7.3 The Notification No. 11/2005-ST dated 19.04.2005 has been issued specifically for grant of rebate of service tax paid on taxable services which have been exported. Therefore, the remedy for an assessee who is aggrieved by an order passed by Commissioner(Appeals) involving Notification No. 11/2005-ST dated 19.04.2005 would lie before the Appellate Tribunal; i.e. the Hon'ble CESTAT. It is observed that this issue has been discussed by the Hon'ble CESTAT in Vodafone Mobile Services Ltd. vs. Commissioner of Service Tax, Pune[2016(45)STR 301(Tri-Mum)].

"5. I find that though as per the provision

From the above Section 86 there is explicit provision by which the order relating to grant of rebate of service tax on input, service tax or rebate of duty paid on input have been carved out for appeal before this Tribunal and in such cases the assessee is

required to file revisionary application under Section 35EE. However, in the said provision, the rebate of service tax paid on output service has not been carved out therefore present appeal on the issue of rebate of service tax paid on output service exported out of India is maintainable before this Tribunal. As regard the contention of the ld. AR that Section 35EE is applicable in the service tax matters by virtue of Section 83, I am of the view that though Section 35EE is applicable but only for the cases related to rebate of service tax paid on input service or duty paid on inputs which were used in the export of services. Since there is independent provision under Section 86 in such cases Section 35B need not to be resorted. Therefore, the present appeals are maintainable....."

8. Government concludes that since the present case involves rebate of service tax paid on taxable services which have been exported, the matter is beyond the scope of the revisionary powers vested in the Central Government under Section 35EE of the CEA, 1944 read with the proviso to sub-section (1) of Section 86 of the FA, 1994. In the result, the revision application filed by the applicant is not maintainable under Section 35EE of the CEA, 1944.

9. The revision application filed by the applicant is dismissed as non-maintainable for lack of jurisdiction.

Shrawan
4/3/22
(SHRAWAN KUMAR)

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

ORDER No. 14/2022-ST (SZ) /ASRA/Mumbai DATED 04.03.2022

To,
M/s TNS India Private Ltd.,
Shri Prashanti Sai Towers,
Plot No. 68, Nagarjuna Hills,
Hyderabad – 500 082

Copy to:

- 1) The Commissioner of CGST & CX, Hyderabad
- 2) The Commissioner (Appeals-I), CGST & CX, Hyderabad
- 3) Sr. P.S. to AS (RA), Mumbai
- 4) Guard file