

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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

**F. No. 195/222/WZ/2018-RA / 1915**

**Date of Issue: 31.03.2023**

ORDER NO. 186 /2023-CX (WZ) /ASRA/MUMBAI DATED 24.03.2023 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 CENTRAL EXCISE ACT, 1944.

**Applicant :** M/s Apttus Software Private Limited .  
Commerce House 5, 6<sup>th</sup> Floor, Corporate Road,  
Makarba, Vodafone Office,  
Ahmedabad 380 051

**Respondent :** Commissioner of Service Tax, Ahmedabad

**Subject :** Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against OIA No. AHM-EXCUS-001-APP-148-17-18 dated 12.12.2017 passed by the Commissioner(Appeals), Central Excise, Ahmedabad.

**ORDER**

The Revision Application has been filed by M/s Apttus Software Private Limited Commerce House 5, 6<sup>th</sup> Floor, Corporate Road, Makarba, Vodafone Office, Ahmedabad 380 051 (hereinafter referred to as "Applicant") against Order-in-Appeal No. AHM-EXCUS-001-APP-148-17-18 dated 12.12.2017 passed by the Commissioner(Appeals), Central Excise, Ahmedabad.

2. The Applicant is registered under the service category of "Information Technology Software Service" and is engaged in developing software for its overseas clients as well as clients situated in India. The Applicant had filed refund claim for Rs. 13,01,831/- for the quarter July 2015 to September 2015, under Notification No 27/2012-CE(NT) dated 18.06.2012 read with Rule 5 of the Cenvat Credit Rules, 2004. The said claim was rejected by the Assistant Commissioner, Service Tax, Div-III, Ahmedabad vide Order-in-Original No. STC/Ref/113/Apttus/K.M.Mohadikar/AC/Div-III dated 15.11.2016 on the grounds that the service rendered to the overseas client does not qualify as 'export of service' under Rule 6A of the Service Tax Rules, 1994. Aggrieved by the said order, the Applicant filed appeal before the Appellate Authority i.e Commissioner(Appeals), Central Excise, Ahmedabad who vide Order-in-Appeal No. AHM-EXCUS-001-APP-148-17-18 dated 12.12.2017 rejected the appeal.

3. Aggrieved by the said Order-in-Appeal, the Applicant has filed the Revision Application on the following grounds: .

3.1. That the claim has been rejected without proper understanding of the legal background, merely on the ground that the Applicant is a branch office of its holding company and hence service provided by the Applicant to its holding company cannot be construed as export of service;

3.2. That in the instant case, the foreign company is having 100% shareholding in the total share capital of the Applicant and hence the Applicant is a subsidiary company of foreign company so the foreign company would be the holding company of the Applicant as per section 2(46) of the Companies Act and are thus separate legal entities registered under the law of respective countries;

3.3. That adjudication of any subject cannot be completed on the basis of probability rather significance of any decision shall be based on any legal provision or it should be on factual basis which was not so in the OIO;

3.4. That the same point was raised by Service Tax Audit and no para was issued after a detailed reply was given to the said point;

3.5. That the turnover of service to domestic parties is not linked to the business operations with Apttus Corporation, the holding company;

3.6. That the CENVAT Credit Rules, 2004 and refund Notification No. 27/2012-CE(NT) dated 18.06.2012 does not make any restrictions on the assessee for issuing export invoice and hence the export invoice issued on cost plus markup basis is valid.

Under the circumstances, the Applicant prayed for setting aside the impugned order.

4. Personal hearing in the case was scheduled for 09.11.2022 or 22.11.2022, 08.12.2022 or 22.12.2022, 13.01.2023 or 24.01.2023. Shri Punit Singhvi, Chartered Accountant appeared for the hearing on 25.01.2023 on behalf of the Applicant. He submitted that the matter relates to Refund under Rule 5 of the Cenvat Credit Rules. On being informed that jurisdiction of the Revisionary Authority does not include the said matter, he requested for ten days' time to study the matter and submit additional submissions.

No further submissions have been received from the Applicant or his representative.

5. Government observes that the case involved in these proceedings does not fall under any of the category of cases specified under the proviso to Section 35B(1) of the Central Excise Act, 1944. The issue involved hereunder is the refund of accumulated CENVAT credit under Rule 5 of the CENVAT Credit Rules, 2004 which is not within the revisionary powers vested in the Central Government under Section 35EE of the Central Excise Act, 1944. The Applicant is at liberty to file appeal before the appropriate authority to seek relief. The Revision Application filed by the Applicant is dismissed as not maintainable.

6. The Revision Application is dismissed.

*Shrawan*  
*24/3/23*  
(SHRAWAN KUMAR)

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

ORDER NO. 186 /2023-CX (WZ) /ASRA/MUMBAI DATED 24.03.2023

To,

M/s Apttus Software Private Limited,  
Commerce House 5, 6<sup>th</sup> Floor, Corporate Road,  
Makarba, Vodafone Office,  
Ahmedabad 380 051

Copy to:

1. The Commissioner of Central Goods & Service Tax, Ahmedabad South, 7<sup>th</sup> Floor, CGST Bhavan, Rajasva Marg, Ambawadi, Ahmedabad 380 015

2. The Commissioner of CGST, Appeals Commissionerate, Ahmedabad, 5<sup>th</sup> Floor, CGST Bhavan, Revenue Marg, opp. Polytechnic, Ambawadi, Ahmedabad 380 015
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare copy.