

REGISTERED
SPEED POST



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.196/29-A/ST/16-RA/26

Date of Issue: ~~31.12.2021~~

05.01.2022

ORDER NO.26-27/2021-ST (WZ)/ASRA/MUMBAI DATED 31.12.2021 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 : M/s. Eaton Industries Private Ltd.

Respondent: Commissioner of Central Excise, Pune-I.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. PUN-EXCUS-001-APP-0013-16-17 & PUN-EXCUS-001-APP-0014-16-17 dated 15.04.2016 passed by the Commissioner (Appeals-I), Central Excise, Pune.

ORDER

This Revision Application is filed by the M/s. Eaton Industries Private Ltd., situated at 145, Off Mumbai-Pune Road, Pimpri, Masulkar Colony Road, Pune - 411 018. (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. PUN-EXCUS-001-APP-0013-16-17 & PUN-EXCUS-001-APP-0014-16-17 dated 15.04.2016 passed by the Commissioner (Appeals-I), Central Excise, Pune.

2. Brief facts of the case are that the Applicant is engaged in rendering of taxable services under the categories of 'Consulting Engineer's service' and 'Management, maintenance or repair service'. They had filed two separate rebate claims under Rule 6A of the Service Tax Rules, 1994 read with Notification No. 39/2012-ST dated 20.6.2012 with Deputy Commissioner, Central Excise, Service Tax Cell, Pune-I Commissionerate. The Rebate sanctioning authority rejected part of the rebate claim on the grounds that the input services such as 'Clearing and forwarding agent's services', 'Management, maintenance or repair service', 'Management or Business Consultant's Services' are not used in relation to the export of output service and also in some cases the input service invoices are in the name of M/s. Eaton Industries Pvt. Ltd., Bangalore and not in the name of the Applicant. The summary of Orders passed is as under:

OIO No./date	Period	Amount of rebate claimed	Amount sanctioned	Amount rejected
PI/STC/Gr.III/R/79/14-15 dated 23.07.14	Apr-Jun 2013	Rs.18,19,465/-	Rs.16,32,038/-	Rs.2,61,527/-
PI/STC/Gr.III/R/87/14-15 dated 05.09.14	Jul-Sep 2013	Rs.16,48,920/-	Rs.11,79,902/-	Rs.4,69,018/-

Aggrieved, the Applicant filed an appeal for the amount of rebate rejected. The Commissioner (Appeals) vide Order-in-Appeal No. PUN-EXCUS-001-APP-0013-16-17 & PUN-EXCUS-001-APP-0014-16-17 dated 15.04.2016

partly allowed the appeal and rejected rebate totally amounting to Rs.3,68,424/-.

3. Hence, the Applicant filed the impugned Revision Application. The Applicant has provided service-wise reasoning for applicability with output service which is reproduced hereunder:

Statement showing how the input services are used in providing the output export service	
Nature of Service /Classification of Service	Description of how input services are used for providing the output service
Management Maintenance and Repairs	Saitech are engaged in maintenance of hydraulic pump, fire alarm system etc. The Appellants are engaged in export of software services and the Computer Systems and Parapherals are to be maintained in controlled atmosphere and Air Conditioners and controls re installed. These equipments are run on electricity. The HT wire and cables are installed all over the area from where service is provided. As such a fire alarming system is essential and legal requirement also. The service is therefore used indirectly in relation to export of service
Cleaning Services	Service provided by Dusters cleaning Services. Appellants are engaged in Software Exports and the exports are made basically using computer and computer peripherals. It needs dust free, hygienic and insert free atmosphere. The service provided by Dusters is maintain area as required and it is essential to keep area dust and inserts free. The Service is clearly and directly related to export of services
Business support Services	Eaton Fluid Power Limited had provided various facilities such as common security, telephone, manpower, fax and telex facilities, etc. These services are clearly related to export of software as these services are essential in nature for service providers and also Board has clearly issued clarifications in this regards
Short Term accommodation	The Service Provided by Natures is short term accommodation service for employees training program. Training to employees is a ongoing process by which employees get upgraded and are in line with required skills and knowledge to provide export of services. The Service is clearly related to export of services
Event Management Services & Conference	Appellants had conducted a training program for employees

Arrangement	at Lavasa International convention Centre. Pegasis charged for making arrangements for such training program. The training program is related to authorised operations and the activities carried out by Pegasus for making arrangements are clearly related to such training and related to authorised operations
-------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

The Applicant also relied upon Board's Circular No. 12/01/2010 dated 19.01.2010. The Applicant also stressed on the point that one of the basic pre-conditions of claiming the rebate is that Cenvat Credit has not been availed on the input service. Hence disallowing the rebate claim based on the concept of personal use and enumerated under the definition of "Input Service" under the Cenvat Credit Rules is in total disregard of the provisions made and notifications issued for the rebate of Input Service.

In the light of the above submissions, the applicant prayed to set aside the impugned order-in-appeal.

4. Personal hearing in the case was fixed for 07.09.2021. Shri Narendra Vaidya, Lead Analyst (Indirect Taxes) attended the online hearing and he reiterated the earlier submissions. He submitted that services on which rebate has been claimed are used in relation to export of their services, therefore their claim should be allowed.

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

6. Government observes that the issue to be decided is eligibility of certain input services under Cenvat Credit Rules, 2004.

7. Government observes that Rule 6A (2) of the Service Tax Rules, 1994 reads as under:

6A. Export of services -

(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.

8. Government observes that the impugned Notification No.39/2012-ST dated 20.06.2012, which is issued under the Service Tax Rules,1994, stipulates following conditions and limitations:-

2. Conditions and limitations:-

- (a) *that the service has been exported in terms of rule 6A of the said rules;*
- (b) *that the duty on the inputs, rebate of which has been claimed, has been paid to the supplier;*
- (c) *that the service tax and cess, rebate of which has been claimed, have been paid on the input services to the provider of service;*
Provided if the person is himself is liable to pay for any input services; he should have paid the service tax and cess to the Central Government.
- (d) *the total amount of rebate of duty, service tax and cess admissible is not less than one thousand rupees;*
- (e) *no CENVAT credit has been availed of on inputs and input services on which rebate has been claimed; and*
- (f) *that in case,-*
 - (i) *the duty or, as the case may be, service tax and cess, rebate of which has been claimed, has not been paid; or*
 - (ii) *the service, rebate for which has been claimed, has not been exported; or*
 - (iii) *CENVAT credit has been availed on inputs and input services on which rebate has been claimed,*

the rebate paid, if any, shall be recoverable with interest in accordance with the provisions of section 73 and section 75 of the Finance Act, 1994 (32 of 1994)

3. Procedure.

3.1 Filing of Declaration.- *The provider of service to be exported shall, prior to date of export of service, file a declaration with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, specifying the service intended to be exported with,-*

- (a) *description, quantity, value, rate of duty and the amount of duty payable on inputs actually required to be used in providing service to be exported;*
- (b) *description, value and the amount of service tax and cess payable on input services actually required to be used in providing service to be*

exported.

3.2 Verification of declaration.- *The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall verify the correctness of the declaration filed prior to such export of service, if necessary, by calling for any relevant information or samples of inputs and if after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is satisfied that there is no likelihood of evasion of duty, or as the case may be, service tax and cess, he may accept the declaration.*

7.1 Government observes that the impugned Orders-in-Original do not mention about violation of any of the stipulated conditions or limitations. Further as per subsequent para 3.1 of said Notification No.39/2012-ST dated 20.06.2012, the applicant had to file a declaration prior to date of export specifying the inputs /input services to be used in the service intended to be exported with jurisdictional authorities. As per para 3.2 of said Notification, the jurisdictional authority had to conduct verification of the said pre-export declaration and satisfy regarding no likelihood of evasion of duty/service tax and thereafter accept the same. Government observes that as per impugned Orders-in-Original the pre-export declarations were filed on 28.03.2013 for the period Apr-Jun'13 and on 10.06.2013 for the period Jul-Sep'13.

7.2 Government observes that during the impugned period viz. Apr-Sep'13, the applicant had not taken any Cenvat credit on input services on which rebate had been claimed. Government observes that in consonance with Notification No.39/2012-ST dated 20.06.2012, any objection regarding eligibility of input services should have been raised at the time of verification of pre-export declaration. As no Cenvat credit has been availed by the applicant, to apply provisions of Cenvat Credit Rules,2004 at the time of sanctioning rebate would be inappropriate.

8. In view of the findings recorded above, Government sets aside the impugned Order-in-Appeal No. PUN-EXCUS-001-APP-0013-16-17 & PUN-EXCUS-001-APP-0014-16-17 dated 15.04.2016 passed by the

Commissioner (Appeals-I), Central Excise, Pune and allows the Revision Application filed by the applicant.

9. The Revision Application is disposed of on the above terms.


31/12/21
(SHRAWAN KUMAR)

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

ORDER No. 26-27/2021-ST (WZ)/ASRA/Mumbai dated 31.12.2021

To,
M/s. Eaton Industries Pvt. Ltd.,
145, Off Mumbai-Pune Road,
Pimpri, Masulkar Colony Road,
Pune - 411 018.

Copy to:

1. Commissioner of Central GST & Customs,
Pune-I Commissionerate,
GST Bhavan, ICE House,
41/A, Sassoon Road, Pune - 411 001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.