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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

F.No. 196/18/WZ/2018-RA / 9127

Date of Issue: 26.09.2022

ORDER NO. 82 / 2022-ST(WZ)/ASRA/Mumbai DATED 23.09.2022 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 Maersk Global Service Centres (India) Pvt Ltd,  
3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Floor, Prudential Building,  
Central Avenue Road, Hiranandani Business Park,  
Powai, Mumbai 400 076

Respondent : The Commissioner of Service Tax, Service Tax-II, Mumbai

Subject : Revision Applications filed under section 35EE of the Central Excise Act, 1944 against the Order in Appeal No. MKK/629/RGD APP/2017-18 dated 19.03.2018 passed by Commissioner, Central Tax, C.Ex and Service Tax (Appeals), Raigad

**ORDER**

This Revision Application has been filed by M/s Maersk Global Service Centres (India) Pvt Ltd, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Floor, Prudential Building, Central Avenue Road, Hiranandani Business Park, Powai, Mumbai-400 076 (hereinafter referred to as 'the applicant') against the Order in Appeal No. MKK/629/RGD APP/2017-18 dated 19.03.2018 passed by Commissioner, Central Tax, C.Ex and Service Tax (Appeals), Raigad.

2. The brief facts of the case are that the applicant had filed a rebate claim for Rs. 1,31,46,521/- (Rupees One Crore Thirty Fourty Thousand Five Hundred and Twenty One Only) under Rule 5 of the Export of Service Rules 2005 read with Notification No 11/2005-ST dated 19.04.2005 as amended, for tax paid on export of output services under the category of "Business Support Services" in the month of April 2012 to their client in Denmark.

3. The Deputy Commissioner of Service Tax, Division-VI, Service Tax, Mumbai-II vide Order-in-Original No.170-R/SPP/2013-14 dated 22.10.2013 sanctioned the rebate claim amounting to Rs. 1,27,54,321/- and denied CENVAT credit of Rs. 3,92,200/- on the grounds that certain services did not have nexus with the output service and were not a valid input service as per Rule 2(l) of the Cenvat Credit Rules, 2004 and also directed the applicant to pay interest of Rs. 1,62,080/-.

4. Aggrieved by the aforesaid Order-in-Original, the applicant preferred an appeal before Commissioner of Central Tax, Central Excise and Service Tax (Appeals), Raigad who vide Order-in-Appeal No. MKK/629/RGD APP/2017-18 dated 19.03.2018, partially allowed the appeal and disallowed the cenvat credit availed by the applicant on Air Travel Agent Services, Healthcare and Fitness service and Interior Design service.

5. On being aggrieved by the said Order-in-Appeal, the applicant has preferred the present Revision Application with extensive submissions mainly on the following grounds:

5.1 That all the input services availed by the applicant had been duly used for the purpose of provision of output services which were exported and the applicant was eligible to claim rebate of the service tax paid on export of services;

5.2 That Air Travel agent services and Health and Fitness Services were eligible input services as per Rule 2(I) of CCR, 2004 and Cenvat Credit of the same should be allowed to the Applicant;

5.3 That the documentary evidence submitted by the applicant had not been considered by the Appellate Authority;

5.4 That Interior Design services had been availed for the registered unit at Mumbai and therefore the credit should be allowed;

5.5 That principle of natural justice had been violated since SCN should have been issued for denial of rebate and in the claim of rebate, department could raise a different issue of disallowance of Cenvat credit;

5.6 That Proviso to Rule 6(1) applicable from 01.04.2012 states that the due date of payment of tax is not applicable in case of export of services;

5.7 That interest cannot be demanded without issuance of a Show Cause Notice.

5.8 The applicant relied upon the following case laws in support of their contentions

- (i) Integra Software Services Pvt. Ltd. Vs. C.C.E., PUDUCHERRY [2017 (48) S.T.R. 137 (Tri. Chennai)]
- (ii) Source Hov India P. Ltd. Vs CST, Chennai-1 [2016 (46) S.T.R. 36 (Tri. - Chennai)]

- (iii) Xilinx India Technology Services (P) LTD. Vs. C.C.E. & S.T., Hyderabad-IV 2016 (44) S.T.R. 129 (Tri. - Hyd.)]
- (iv) Robert Bosch Engg. & Business Solutions vs. CCE. Bangalore [2017 (51) S.T.R. 329 (Tri. - Bang.)]
- (v) Heartland Bangalore Transcription Ser. (P) Ltd. vs. C.S.T., Bangalore [2 (21) S.T.R. 430 (Tri. - Bang.)]
- (vi) Dell International Services India (P.) Ltd. v. Commissioner of Central Excise (Appeals), Bangalore [2009 (6) TMI 447]
- (vii) Emcon Technologies India Pvt. Ltd. vs. CCE., Bangalore [2013 (31) S.T. đặt (Tri - Đang
- (viii) Affinity Express India Pvt. Ltd. vs. CCE [2015 (37) S.T.R. 321 (Tri. Mumbai)]
- (ix) Megma Design Automation (1) PVT.LTD. Vs. CST Bangalore [2015 (40) S.T.R. 800 (Tri-Bang.)]
- (x) Goodluck Steel Tubes Ltd. Vs CCE; Noida [2013(32) S.T.R 123 (Tri-Del.)]
- (xi) State of Orissa v. Binapani Devi [AIR 1967 SC 1269]
- (xii) A.K. Kraipak v. Union of India, [AIR 1970 SC 150; (1969) 2 SCC 262,
- (xiii) Thompson Corpn. (International) P Ltd v CCE [2011 [21] STR 450 (Tri.-Bang)]
- (xiv) New Empire Textile Processors P. Ltd. v. Commissioner of C. Ex. Thane [2017 (52) S.T.R. 52 (Tri.-Mumbai)]
- (xv) Tuticorin Alkali Chemicals & Fertilisers Ltd. v. C.C.E. Tirunelveli [2009 (15) S.T.R. 645 (Tri.-Chennai)]
- (xvi) Dutron Plastics Ltd. v. Commissioner of Central Excise, Ahmedabad (2005 (184) E.L.T. 86 (Tri-Mumbai)]
- (xvii) Tata Iron and Steel Company Ltd. v. Union of India [2000 (125) E.L.T. 221 (Pat):
- (xviii) Sadhana Nitro Chem Ltd. v. Collector of Central Excise [1991 (56) E.L.T. 484 (Tribunal)]
- (xix) Diamond Cables Ltd. v. Commissioner of Central Excise, Vadodara [2006 (3) S.T.R. 258 (Tri.-Mumbai)]
- (xx) Allied Instruments Pvt. Ltd. v. Commissioner of Cus. & C. Ex., Vadodara [2003 (153) E.L.t. 676 (Tri.-Mumbai)]

6. Personal hearing was scheduled on 07.12.2021, 14.12.2021, 06.01.2022 and 20.01.2022. However, no one appeared for personal hearing on any of the dates fixed for hearing. Since sufficient opportunity for personal hearing has been given in the matter, the case is taken up for decision on the basis of the available records.

7. Government has carefully gone through the relevant records available in case file and also perused the impugned Order-in-Appeal.

8. Government observes that that the dispute in the present case is regarding admissibility of cenvat credit used for the purpose of provision of output services on which rebate of tax paid on services exported by the applicant. The Appellate Authority has partially upheld the order of the original adjudicating authority and held that cenvat credit on air travel agent services, health and fitness services and interior design services were not eligible and rejected the claim for rebate of the service tax paid on the services exported to the extent of the cenvat credit availed on the said ineligible services.

8.1 Government observes that the basic issue is whether the applicant is eligible for rebate on the tax paid on the services exported by them during the particular period.

8.2 Government finds that at this juncture it is pertinent to examine Section 86 of the Finance Act, 1994 which deals with appeals to the Hon'ble Tribunal; the same is reproduced below:-

*"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)."*

*[Emphasis supplied]*

8.3 A plain reading of Section 86 of the Finance Act, 1994 indicates that the power for Revision of Orders of the Commissioner (Appeals) by the Central Government, as provided for by Section 35EE of the Central Excise Act, 1944, is limited to those matters which relate to *grant of rebate of service tax or duty paid on input services which were used in providing a service which was exported*. As discussed above, the instant case the basic issue pertains to rebate of service tax paid on the services exported and not on inputs/input services used for providing the same and hence Government notes that in terms of Section 86 of the Finance Act, 1994, it does not have jurisdiction over any matter relating to the same.

9. In view of the above, Government dismisses the subject Revision Application as the same is non-maintainable due to lack of jurisdiction.

  
(SHRAWAN KUMAR)

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

ORDER No. 2- /2022-ST(WZ) /ASRA/Mumbai DATED 23.09.2022

To,

M/s Maersk Global Service Centres (India) Pvt Ltd,  
3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Floor, Prudential Building,  
Central Avenue Road, Hiranandani Business Park,  
Powai, Mumbai 400 076.

Copy to:

- 1) The Commissioner of Goods & Services Tax, Navi Mumbai Commissionerate, 16<sup>th</sup> Floor, Sec-19D, Palm Beach Road, Vashi, Navi Mumbai 400 705.
2. The Commissioner of Central Goods & Services Tax, (Appeals) Raigad, 5<sup>th</sup> Floor, C.G.O. Complex, CBD Belapur, Navi Mumbai 400 614
3. Sr. P.S. to AS (RA), Mumbai
4. Notice Board
5. Spare copy.