

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

F.No.195/203/WZ/2018-RA / 1292

Date of Issue: 02.03.2023

ORDER NO. 99 /2023-CX (WZ)/ASRA/Mumbai DATED 02.03.2023 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 THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s 3i India Private Limited,  
Executive Centre India Pvt Ltd 7,  
The Capital, Plot No. C-70, G Block,  
Bandra Kurla complex, Bandra East,  
Mumbai 400 051

Respondent : Commissioner of Service Tax, Mumbai-I

Subject : Revision Applications filed under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. PVNS/133/APPEALS THANE/ME/2018-19 dated 26.06.2018 [Date of issue: 06.07.2018] passed by Commissioner (Appeals Thane), GST & Central Excise, Mumbai

**ORDER**

This revision application has been filed by M/s 3i India Private Limited, Executive Centre India Pvt Ltd 7, The Capital, Plot No. C-70, G Block, Bandra Kurla Complex, Bandra East, Mumbai 400 051 (hereinafter referred to as 'the applicant') against the Order-in-Appeal No. PVNS/133/APPEALS THANE/ME/2018-19 dated 26.06.2018 [Date of issue: 06.07.2018] passed by Commissioner (Appeals Thane), GST & Central Excise, Mumbai

2. The brief facts of the case are that the applicant had filed a rebate claim of Rs. 93,87,394/-, under Notification 11/2005 dated 19.04.2005. for the period from April 2012 to June 2012, in respect of the service tax paid on services exported by them.

3. The rebate sanctioning authority ie Deputy Commissioner, Division III, Service Tax-I, Mumbai sanctioned an amount of Rs. 92,11,981/- to the Applicant and rejected the cenvat credit amount of Rs. 1,75,413/- availed on General Insurance services, club or association services and event management services holding that the same were inadmissible for want of nexus with the out services provided by the Applicant.

4. Aggrieved by the aforesaid Order-in-Original, the Department preferred an appeal before Commissioner of Service Tax, Appeals Thane, GST & Central Excise, Mumbai who vide Order-in-Appeal No. PVNS/133/APPEALS THANE/ME/2018-19 dated 26.06.2018 [Date of issue: 06.07.2018], allowed the appeal filed by the Department and set aside the impugned Order-in-Original

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

5.1. that the learned Commissioner (A) has erred in holding that for the period April 2012 to June 2012, the point of taxation in respect of services

covered by sub-rule (1) of Rule 3 of the Export Rules is the date on which the payment is received and not of rendering of service.

5.2. That in terms of the Rules, circulars and notifications it is proved beyond doubt that the Applicant was entitled to rebate claim in respect of the services exported during April 2012 to June 2012 even when the consideration in convertible foreign exchange is received in December 2012.

5.3. It is submitted that if the exception was not made in Rule 6(1) of the Rules then export of service would have become taxable till the time consideration is not received in foreign exchange as service provider could not have claimed rebate for the exported service until he has received consideration in foreign exchange

5.4. Instruction bearing DOF No. 334/1/2012 dated 29 June 2012, the CBE&C has clarified that Notification No. 11/2005-S.T. dated 19 April 2005 has not been rescinded and rebate can be granted in respect of exports made till 30 June 2012

5.5. That nowhere in the impugned order has the Appellate Authority stated that the Applicant ought not to have paid service tax on the BOFS provided during April 2012 to June 2012 and that the Applicant has been correctly sanctioned rebate by the adjudicating authority under Notification No. 11/2005-ST dated 19 April 2005 of service tax paid on the BOFS provided during April 2012 to June 2012.

5.6. That the Appellate Authority has failed to appreciate that point of taxation cannot be determined in accordance with Rule 6(1) of the Rules.

5.7. That even assuming without admitting, for the period April 2012 to June 2012, the point of taxation in respect of services covered by sub-rule (1) of Rule 3 of the Export Rules is to be determined under Rule 6(1) of the Rules and not as per the POTR and that a deeming fiction cannot alter the actual date when the export of services is effected and the meaning of the term 'date of export' and that the concepts of relevant

date' and 'point of taxation' invoke a deeming fiction which are restricted in their application to the purpose for which the fiction are introduced. Reliance has been placed on Sant Lal Gupta vs. Modern Co-operative Group Housing Society Ltd [2010(262) E.L.T. 6 (SC)]

5.8. That even assuming without admitting, point of taxation in the present case is the date of receipt of payment i.e. 19 December 2012 and if that be the case, the Applicant ought not to have paid service tax as no service tax is leviable under Section 66B of the Act on the services provided outside the taxable territory.

5.9. That the Applicant is entitled to refund of the service tax paid erroneously on the BOFS provided to 31 UK. The excess service tax paid by the Applicant is in the nature of deposit and there is no requirement to file refund in any particular format. It is submitted that the Applicant has satisfied all the conditions making it entitled for refund

5.10. The Applicant has relied upon the following case laws:

(i) Parijat Construction vs. Commissioner of Central Excise, Nashik [2018 (359) ELT 113 (Bom.)]

(ii) Commissioner vs. SGR Infratech Ltd. - Central Excise Appeal No. 26 of 2014 decided on 28.10.2015

(iii) Hindustan Cocoa Products vs. Union of India [1994 (74) ELT 525 (Bom.)]

(iv) Arochem Industries vs. Union of India [1991 (56) ELT 505 (Bom.)]

(v) Win Medicare Pvt. Ltd. vs. Commissioner of Service Tax, Delhi [2016 (42) S.T.R. 555 (Tri. - Del.)]

6. Personal hearing was scheduled on 09.11.2022 or 22.11.2022 or 13.12.2022 or 10.01.2023. Shri Kevin Gogri, C.A, appeared for the personal hearing on 13.12.2022, on behalf of the Applicant. He reiterated the submissions made in the applications and handed over additional

written submissions in the matter. He contented that the jurisdiction of the Additional Secretary (Revision Application) covers the instant matter.

7. The Applicant, in the written submissions has while quoting the Section 35B (1) and Section 35EE of the Central Excise Act, 1944 has averred that w.e.f 28.05.2012, challenge to cases involving grant of rebate of service tax paid on taxable services exported or service tax paid on input services or inputs, as the case may be, used in providing taxable services shall lie before the Central Government and reiterated portions of the revision application towards the merit of the case.

8. Government has carefully gone through the oral and written submission of the Applicant, relevant records available in case file and also perused the impugned Order-in-Appeal and Order-in-Original.

9. Government observes that that the dispute in the present case is regarding admissibility of rebate of service tax paid on services exported by the applicant. The Appellate Authority has set aside the order of the original adjudicating authority rejecting the claim for rebate of the service tax paid on the services exported.

9.1 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]

9.2 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 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.

10. 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. 99 /2023-CX (WZ) /ASRA/Mumbai DATED 28.02.2023

To,

M/s 3i India Private Limited,  
Executive Centre India Pvt Ltd 7,  
The Capital, Plot No. C-70, G Block,  
Bandra Kurla Complex, Bandra East,  
Mumbai 400 051

Copy to:

- 1) The Commissioner of CGST and Central Excise, Mumbai East, 9<sup>th</sup> Floor, Lotus Infocentre, Parel East, Mumbai 400 012.

2.The Commissioner of Central Goods & Services Tax, Appeals-II, 3<sup>rd</sup> Floor, CGST Bhavan, Plot No C-24, Sector -E , BKC, Bandra (East), Mumbai 400 05.

3. Sr. P.S. to AS (RA), Mumbai.

4. Notice Board.

5. Spare copy.