

REGISTERED
SPEED POST



F.No. 196/06/ST/14-R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHICAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue.....

ORDER NO. 02/2018-ST dated 6-2-2018 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI R.P.SHARMA, PRINCIPAL COMMISSIONER & ADDITIONAL
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 83 of the Finance
Act, 1994 read with Section 35EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed under section 83 of Finance Act,
1994 read with Section 35EE of the against the Order-in-
Appeal No. 69-72/S.Tax/D-II-13 dated 19.08.2013
passed by Commissioner (Appeals), Central Excise,
New Delhi.

APPLICANT : M/s. NT Back Office Services Pvt. Ltd., New Delhi

RESPONDENT : Commissioner of Service Tax, Delhi

ORDER

A Revision Application No. 196/06/ST/14-RA dated 20.02.2014 has been filed by M/s. NT Back Office Services Pvt. Ltd., New Delhi (hereinafter referred to as the applicant) against the Order in Appeal No. 69-72/S.Tax/D-II-13 dated 19.08.2013, passed by the Commissioner (Appeals), Central Excise, New Delhi, whereby the appeal of the applicant is rejected as time barred.

2. The Revision Application is filed mainly on the ground that they had not received the order of the Assistant Commissioner in time due to change in their address and the Commissioner (Appeal) has erroneously rejected their appeal as time barred without considering the fact of change in their address.

3. A personal hearing was offered on 12.01.2018. However, no one appeared for the applicant or even for the respondent. Moreover, no request for any other date of hearing is also received from them from which it is implied that the applicant as well as respondent are not interested in availing the personal hearing in this matter. Hence, the Revision Application is taken up for consideration on the basis of available records.

4. On examination of the Order—In—Appeal, the government observes that Commissioner (Appeal) has discussed in detail as to how the order issued by the Assistant Commissioner was delivered by hand on 19.05.2010 and how the appeal has been filed before him on 22.05.2013 i.e. after a period of more than three years. On the other hand, the applicant has not produced any evidence to counter the facts narrated in the Order—In—Appeal. Hence, no doubt is left in this case that the appeal before the first appellate authority was filed after enormous delay of more than 3 years which could not be condoned by the Commissioner (Appeal) and it cannot be relaxed even by the government.

5. Besides the above, it is also noticed that a Revision Application has been filed in this case after delay of 79 days from the receipt of

Commissioner(Appeal)'s order and its condonation is requested on the ground that they had filed an appeal before the CESTAT wrongly. However, it is further noticed that even this delayed Revision Application was not accompanied by a fee of Rs. 1,000/- and it has been paid on 21.04.2014 only as per GAR-7 form submitted by the applicant.

6. As per Section 83 of Finance Act, 1944, read with Section 35EE of the Central Excise Act, 1944, a Revision Application is to be accompanied by a fee of Rs.1000/- where the amount of Service Tax levied by any officer is more than Rs.1.00 lakh. This requirement of payment of fee before or at the time of filing the application is mandatory and no relaxation in this regard is provided under the aforesaid provision or any other Section. Thus if any application is not accompanied by the specified fee, such application cannot be considered as proper Revision Application by virtue of the above mentioned provision. Since in this case the fee of Rs.1000/- has been paid only on 21.04.2014, the proper Revision Application in this case can be considered to have been filed only on 21.04.2014 by which this application is time barred as the Revision Application can be filed only within 3 months from the date of communication of the Commissioner(Appeal)'s Order as per Sub Section 2 of Section 35EE of Central Excise Act, 1944 which was received in this case on 05.09.2013.

7. Above all, it is also evident from the Revision application and orders of lower authorities that the issue involved in the present case is regarding refund of accumulated Cenvat credit under Rule 5 of Cenvat Credit Rules, 2005, read with Notification No. 12/2005 dated 19.04.2005, for which the Government does not have revisionary power under Section 86 of the Finance Act, 1994, read with section 35 EE of Central Excise Act. Under the said section 86 of the F.A, 1994, the Government has been vested with the revisionary power for the order of the Commissioner(Appeal) involving the issue regarding the rebate of service tax against the exported services only.

Thus, the above stated revision application has been filed wrongly before the Government.

In view of the above discussion, the Revision Application is rejected as time barred and not maintainable before the Government.

R.P. Sharma
6.2.18

(R.P.Sharma)

Additional Secretary to the Government of India

M/s. NT Back Office Services Pvt. Ltd.,
C-511, Chittranjan Park,
New Delhi-110019

ORDER NO. 02/2018-ST dated 6-2-2018

Copy to: -

1. The Commissioner of Service Tax, 17-B, IAEA House, I.P. Estate, Mahatma Gandhi Marg, New Delhi-110002.
2. Commissioner of Central Excise (Appeals), Room No. 136, C.R. Building, I.P. Estate, New Delhi.
3. The Assistant Commissioner of Service Tax, Division-II, 7th Floor, XI Block, CGO Complex, New Delhi-110003.
4. Mr. Rajesh Gupta, RAA & Co., Chartered Accountant, C-50, Gulmohar Complex, Sector-15, Noida 201301.
5. PA to AS(RA)
- ✓ 6. Guard File
7. Spare copy

ATTESTED

(Ravi Prakash)
OSD (RA)

Attested
MDW
6/2/18

(निर्मला देवी. NIRMALA DEVI)
अनु. प्र. अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi