



F. No. 196/05/2018-R.A.
196/06-07/2018-R.A.
196/16/2018-R.A.

SPEED POST

F. No. 196/05/2018—R.A.,
196/06-07/2018—R.A.,
196/16/2018—R.A.
**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

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

Date of Issue.....

Order No. 03-06 /2021-ST dated 23-3-2021 of the Government of India, passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under Section 83 of Finance Act, 1994 read with Section 35 EE of the Central Excise Act, 1944.

Subject: Revision Application filed under Section 83 of Finance Act, 1994 read with Section 35 EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. 113(SRM)/ST/JDR/2018 dated 31.01.2018, 99-100/SRM/ST/JDR/2018 dated 25.01.2018 and 958/CRM/ST/JDR/2018 dated 04.09.2018 passed by Commissioner (Appeals), CGST, Jodhpur.

Applicant: M/s. Cross Country, Jodhpur.

Respondent: Commissioner of CGST, Jodhpur.

ORDER

Four Revision Applications Nos. 196/05/2018-R.A. dated 01.05.2018, 196/06-07/2018-R.A. dated 01.05.2018 and 196/16/2018-R.A. dated 29.11.2018 are filed by M/s. Cross Country, Jodhpur (hereinafter referred to as applicant) against Orders-in-Appeal Nos. 113(SRM)/ST/JDR/2018 dated 31.01.2018, 99-100/SRM/ST/JDR/2018 dated 25.01.2018 and 958/CRM/ST/JDR/2018 dated 04.09.2018 passed by Commissioner (Appeals), Central Excise and CGST, Jodhpur, wherein the appeals filed by the applicant have been rejected.

2. The brief facts leading to the present proceedings are that the applicant had filed rebate claims of service tax paid on the services received and used for export of goods under Notification no. 41/2012-ST dated 29.06.2012. The original authority rejected the rebate claims of the applicant on the following grounds:

- (i) Non-submission of Bank Realization Certificates/documents.
- (ii) Non-submission of original invoices.
- (iii) Limitation.

Aggrieved, the applicant filed appeals before the Commissioner (Appeals) who rejected their appeals. The present revision applications have been filed on the grounds that:

- (i) They have submitted certified copies of the invoices downloaded from the websites of the service providers which should be accepted as valid documents for grant of rebate.
- (ii) Bank Realization Certificates/export documents would be submitted at the time of hearing.
- (iii) Rejection of rebate on the ground of limitation is not tenable as the period of limitation should be computed from the date of realization of the export proceeds.

3. Personal hearing was held on 18.03.2021, in virtual mode. Sh. O.P. Agarwal, Advocate, appeared for the applicant and made the submissions. He highlighted/contended the following in respect of the issues involved in the subject revision applications:

- (i) Original Invoices: In the course of normal commercial transaction, the copies of invoices are uploaded online which they have downloaded and submitted certified copies to the department. Since the department

does not dispute the copies submitted in any material particulars, they should be granted rebate.

(ii) Limitation: Period of limitation should be counted as 3 months from the date of realization of export proceeds.

(iii) Non-submission of BRCs and export documents: these documents are not available with them due to fire at their premises. Hence they are foregoing their claim on this count.

Sh. Narendra Aseri, Deputy Commissioner, attended the hearing for the respondent and supported the orders of the lower authorities.

4. The Government has examined the matter. The issues to be decided in these revision applications are:

(i) Whether certified copies of the invoices can be considered in place of original invoices for granting rebate?

(ii) Whether period of limitation should be counted from the date of realization of export proceeds or date of export?

5.1 CBIC has, in respect of refund under Notification No. 41/2007-ST dated 06.10.2007, clarified, vide Circular No. 112/06/2009-ST dated 12.03.2009, that normally certified copies of documents should be accepted. Only in cases of in-depth enquiry, original documents can be

verified. It is observed that in the present case, the department has not contended that an in-depth inquiry is required.

5.2 The Government further observes that the requirement of production of documents, in original, is stipulated in Para 3(h) of the Notification No. 41/2012-ST. This requirement is procedural in nature. In a case of rebate under Notification No. 19/2004-CE(NT), the Hon'ble Bombay High Court has held that for grant of rebate, the matters of procedure are directory in nature [M/s UM Cables Ltd. Vs. Union of India {2013(293)ELT 641 (Bombay)}]. In the case of M/s Zandu Chemicals Ltd. Vs. Union of India [2015(315)ELT 520 (Bom)], the Hon'ble Bombay High Court has followed the judgment in the case of UM Cables Ltd(supra) and held that "The procedural provisions are capable of substantial compliance. There is no requirement of insisting on strict compliance therewith."

5.3 In the present case, the certified copies of the invoices have been produced. Material particulars thereof are not disputed. No in-depth inquiry is also said to be required. As such, the Government finds that the certified copies of the invoices can be accepted for grant of rebate.

6.1 The rebate claims have been filed by the applicant under the provisions of Notification No. 41/2012-ST dated 29.06.2012. Para 3(g) of the said notification specifies that :

“the claim of rebate of service tax paid on the specified services used for export of goods shall be filed within one year from the date of export of the said goods.”

6.2 Explanation to Para 3 of the said notification specifies the date of export as: *“the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under Section 51 of the Customs Act, 1962”*

6.3 The Government observes that in respect of Para 2(e) of the Notification No. 41/2007-ST, which specified the limitation period to file a refund claim, the Hon'ble Delhi High Court has held that the said clause 2(e) must be applied strictly [M/s Kultar Exports Vs. Commissioner of Central Excise, Delhi-I {2020 (36) GSTL 208 (Del.)}]. It is further held that such notifications have to be interpreted *stricto sensu*.

6.4 Thus, Government finds that there is no merit in the contention of the applicant on this count.

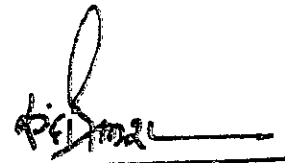
7. As regards the non-submission of the export documents like Bank Realization Certificates, the applicant has admitted that these documents are not available with them and have foregone their claims on this count.

8. In view of the above, the Government passes the following order:

(i) The revision applications nos. 196/06-07/ST/2018-RA filed against Order-in-Appeal No. 99-100(SRM)/ST/JDR/2018 dated 25.01.2018 are rejected.

(ii) The revision application no. 196/05/ST/2018-RA filed against Order-in-Appeal No. 113(SRM)/ST/JDR/2018 dated 31.01.2018 is partially allowed to the extent of rebate amounting to Rs. 1,38,016/-, which was rejected on the grounds of non-submission of original invoices.

(iii) The revision application no. 196/16/ST/2018-RA filed against Order-in-Appeal No. 958(CRM)/ST/JDR/2018 dated 04.09.2018 is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

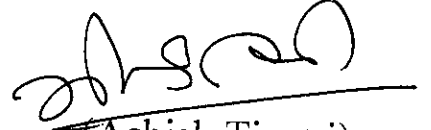
M/s. Cross Country,
Khasra No. 1087/740,
MIA, Basni Phase-II, Jodhpur,
Rajasthan.

G.O.I. Order No. 03-06 /21-Cx dated 23-3-2021

Copy to:-

1. Commissioner of CGST, Jodhpur.
2. Commissioner (Appeals), Central Excise & CGST, Jodhpur.
3. PA to AS (Revision Application)
- ✓ 4. Spare Copy
5. Guard File

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)