



F.No. 196/09/ST/2014-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. 05/2018-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. 326/ST/DLH/2012 dated 30.11.2012 passed
by Commissioner of Central Excise (Appeals), Meerut.

APPLICANT : M/s. Terex Equipments India Pvt. Ltd., Greater Noida

RESPONDENT : Commissioner of Service Tax, Delhi.

ORDER

A Revision Application No. 196/09/ST/2014-R.A. dated 21.03.2014 is filed by M/s Terex Equipments India Private Limited, (hereinafter referred to as the applicant) against the Order in Appeal No.326/ST/DLH/2012 dated 30.11.2012, passed by the Commissioner (Appeals), Central Excise & Customs, New Delhi.

2. The brief facts leading to the present proceeding are that the applicant has claimed to have filed rebate claim of Rs.34,20,175/- under Export of Services Rules, 2005 and Notification No. 11/2005-ST (NT) dated 19.04.2005 which was rejected by the jurisdictional Assistant Commissioner. The appeal filed against the Order-In-Original No. 17/ST/SI/Refund/2011/825 dated 24.01.2011 was also rejected by the Commissioner(Appeal) vide above stated Orders—In—Appeal on the ground that one of the ingredients of export of service that the service should be exported outside India is not satisfied by the applicant in this case. The above Revision Application is filed against the said order of Commissioner(Appeal) mainly on the ground that the recipient of services provided by them is located outside India and the benefit of the service has accrued outside India. Thus the services provided by them have been exported and CBEC in its circular No. 111/05/2009-ST dated 24.02.2009 has also clarified that the export of service may take place even when all relevant activities take place in India so long as the benefits of the services accrued outside India. It is further claimed that their case is also supported by CESTAT decision in the cases of Manish Aggarwal versus Commissioner of Service Tax, Ahmedabad (2012(27) STR 155) and Vodafone Essar Cellular Ltd vs. Commissioner of Central Excise, Pune (2013 (31) STR 738) and all these grounds have been erroneously ignored by the Commissioner(Appeal).

3. Personal hearings were offered to the applicant on 17.11.2017, 12.12.2017 and 11.01.2018. In response, the hearing fixed on 17.11.2017 was requested to be adjourned by sending a letter dated 27.11.2017 but when other two hearings were fixed on 12.12.2017 and 11.01.2018 the applicant failed to appear for personal hearing from which it is implied that they are not interested in availing the hearing and hence the Revision Application is taken up for disposal on the basis of available case records.

4. On examination of this matter, it is observed by the government that the rebate of Service Tax has been denied to M/s Terex India Pvt. Ltd., 1709-12, 17th Floor, Naraina Manzil, 23, B.K. Road, New Delhi-110001, vide Order--In--Original dated 24.01.2011 and Order--In--Appeal dated 30.11.2012. Whereas the above referred Revision Application is filled by M/s Terex Equipments India Pvt. Ltd. without having any address and as per Serial No.1 of the Revision Application the address for any communication is given as M/s Terex India pvt. Ltd., Plot No. 22, Udyog Vihar, Greater Noida, G.B. Nagar, Uttar Pradesh. But no Revision Application has been filed by M/s Terex India Pvt. Ltd., New Delhi, to whom the Order-In-Original and Order--In--Appeal are issued and the above Revision Application has been filed by M/s Terex Equipments India Pvt. Ltd. who has not been claimant for the rebate of Service Tax at all before the original authority and the appellate authority in this case. Further it is also nowhere explained in the Revision Application as to how M/s Terex Equipment India Private Ltd., Noida, has acquired any locus standi in the case relating to M/s Terex India Pvt. Ltd., New Delhi which was rejected by the Assistant Commissioner and Commissioner(Appeal), Delhi vide above orders. Since the applicant has never been party to the dispute involved in the above mentioned Order of the Commissioner (Appeal), Delhi in any manner, the above Revision Application is filed by the applicant not maintainable for this reason alone.

5. Besides above, the government has also noticed that the Commissioner(Appeal)'s order was issued on 30.11.2012 and it was sent immediately by dispatch No. 5495 dated 30.11.2012 by registered AD on 30.11.2012 itself as per Orders--In--Appeal. But the Revision Application has been filed on 21.03.2014 even when the same was required to be filed within 3 months from the receipt of the Orders--In--Appeal as per Section 35EE(2) of Central Excise Act, made applicable to the Service Tax matters by virtue of the Section 83 of the Finance Act, 1994. Thus filling of the above Revision Application against the Orders--In--Appeal is enormously delayed which cannot be condoned by the government as the delay is of more than 3 months. The applicant has claimed that they received the Orders--In--Appeal on 23.09.2013 only which is almost after 10 months of the Order--In--Appeal and to support this claim they have submitted a copy of letter No. C.No. ST-20/Div-I/Refund/Misc./2013/17520 dated 17.09.2013 issued by Superintendent (Refund) in the Service Tax, Division-I, Nehru Place, New Delhi, to M/s Terex India Pvt. Ltd. in

reference to their letter dated 12.09.2013. As per this letter a certified copy of the Commissioner(Appeal) is received by Shri Ritesh Jindal on 23.09.2013 and apparently on the basis of this receipt the date of communication of the OIA is considered by the applicant as 23.09.2013, instead of a date soon after 30.11.2012. However, the applicant's claim that they had received the OIA on 23.09.2013 does not sound to be genuine firstly because the order dated 30.11.2012 of the Commissioner(Appeal) was dispatched by the office of Commissioner(Appeal) on 30.11.2012 itself by registered AD and no evidence has been produced by M/s Terex India Pvt. Ltd., New Delhi that they did not receive the said order soon after its dispatch by the Commissioner(Appeal)'s office. Secondly, the Superintendent(Refund) in the office of Service Tax Division was not a relevant authority for dispatching the order of Commissioner(Appeal) and the copy of the Order--In--Appeal was given by him to M/s Terex India Pvt. Ltd., New Delhi on their request only in reference to their letter dated 12.09.2013. The copy of the said letter dated 12.09.2013 from M/s Terex India Pvt. Ltd. is not enclosed along with the Revision Application. But it is evident from the subject of the letter of the Superintendent dated 17.09.2013 that M/s Terex India Pvt. Ltd, New Delhi had requested for a certified copy of the Order--In--Appeal and the same was given by the Superintendent as per request of M/s Terex India Pvt. Ltd. from which it is obvious that they had earlier received the order of Commissioner(Appeal) and thereafter they requested the Assistant Commissioner/Superintendent of the Service Tax Division to provide them a certified copy of Commissioner(Appeal)'s order. But from this letter alone it is not established that they had not received the order of the Commissioner(Appeal) soon after it was dispatched from Commissioner(Appeal)'s office on 30.11.2012 by registered AD. Hence, it can not be accepted that the Order of the Commissioner(Appeal) issued on 30.11.2012 was communicated to the applicant on 23.09.2013 only and thus revision application was not filed in this case within 3 months of the Commissioner(Appeal)'s order. The delay in filling the Revision Application before the government was further aggravated by the applicant by filling an appeal before the CESTAT, New Delhi, and the present Revision Application has been filled only when their appeal was returned by the Registry of CESTAT vide its letter dated 28.01.2014. Even after their appeal was returned, they consumed a period of more than 1 month and 20 days in filling the Revision

Application which further demonstrates the applicant's indifferent attitude in filing the Revision Application in time. Above all there is no explanation either in the Revision Application or in their application for condonation of delay for not filing the revision application earlier during the period from 30.11.2012 to 22.09.2013 and thereafter from 28.01.2014 onwards when their appeal had been returned by the CESTAT vide its letter dated 28.01.2014. Considering these facts, it is evident that even if the applicant has any locus standi in this matter, the above Revision Application is not filed in time in this case.

6. In view of the above discussions, the Revision Application is not found maintainable and hence it is rejected.

R.P. Sharma
6-2-18

(R.P.Sharma)

Additional Secretary to the Government of India

M/s. Terex India Pvt. Ltd.,
Plot No. 22, Udyog Vihar,
Greater Noida, G.B.Nagar,
(U.P.)

ORDER NO. 05/2018-ST dated 6-2-2018

Copy to: -

1. Commissioner of Service Tax, 3rd Floor, EIL Annexe Building, Bhikaji Kama Place, New Delhi-110066.
2. Commissioner (Appeals), Service Tax & Central Excise, Delhi-I, Room No.134, C.R. Building, I.P.Estate, New Delhi.
3. The Assistant Commissioner of Service Tax, 3rd Floor, EIL Annexe Building, Bhikaji Kama Place, New Delhi-110066.
4. H R Jindal & Co (Advocates), 18 Advocates Chamber, Opposite ICICI Bank, RDC Raj Nagar Ghaziabad-201002, U.P.
5. PA to AS(RA)
- ✓ 6. Guard File
7. Spare copy

ATTESTED

Attested

(Ravi Prakash)
OSD (RA)

MD
6/2/18

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(निर्मल सिंह)
अनुपम सिंह
दिल्ली मंत्रालय
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/Now Delhi