

SPEED POST



**F. No. 196/10/ST/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... 10/5/21

Order No. 09/21-ST dated 10-05-21 of the Government of India, passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994.

Subject: Revision Application filed under Section 35 EE of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994 against the Order-in-Appeal No. 88/ST/DLH/2018/2018 dated 24.04.2018 passed by the Commissioner (Appeal-I), CGST, New Delhi.

Applicant : M/s. Travel Security Services India Pvt. Ltd., New Delhi.

Respondent: The Commissioner of CGST, Delhi (East), New Delhi.

ORDER

A Revision Application No. 196/10/ST/2018-R.A. dated 26.07.2018 has been filed by M/s Travel Security Services India Pvt. Ltd., New Delhi (hereinafter referred to as the applicant) against the Order-in-Appeal No. 88/ST/DLH/2018/2018 dated 24.04.2018 passed by the Commissioner (Appeals-I), CGST, New Delhi. The Commissioner(Appeals) has rejected the appeal filed by the applicant herein against the Orders-in-Original Nos. 36-39/ST/Div-X/Refund/DCV/2016 dated 30.03.2017 passed by the Assistant Commissioner of erstwhile Service Tax, Division-X, Nehru Place, New Delhi vide which four claims for refund of the CENVAT credit availed on input services used in export of services were rejected.

2. Briefly stated, the applicant was registered with the department under the category of 'Business Support Services'. They filed four refund claims under notification no. 27/2012-CE(NT) dated 18.06.2012, issued under Rule 5 of the Cenvat Credit Rules, 2005. The details of the refund claims are as under:

S.No.	Period of Refund Claims	Date of Filing	Amount Claimed (in Rs.)
1	April 2015 to June 2015	19.04.2016	10,45,140
2	July 2015 to September 2015	19.04.2016	14,09,750
3	October 2015 to December 2015	19.04.2016	5,03,409
4	January 2016 to March 2016	20.01.2017	5,29,085

Upon scrutiny, the department issued show cause notices and the original authority rejected the refund claims on the following two grounds:

- (i) As per clause (e), paragraph 2 of the notification no. 27/2012-CE(NT) dated 18.06.2012, as amended by notification no. 14/2016-CE (NT) dated 01.03.2016, the refund was not admissible in respect of invoices for which payment was not received in the relevant quarter.

- (ii) As per the agreement between the applicant and their customer- "The Services will be rendered within the territory of India". As such, there was no export of services.

In appeal, the Commissioner(Appeals) decided the issue (ii) in favour of the applicant but rejected the appeal upholding the department's contention as per (i) above.

3. The revision application has been filed, mainly, on the grounds that on account of bonafide error, the export turnover for each of the four quarters was computed on accrual basis, instead of receipt basis, and consequently refund of CENVAT credit was claimed against the invoices raised in the respective quarters. This being a bonafide error the substantive right of refund of CENVAT Credit cannot be denied. Accordingly, it has been prayed that the claims for refund be remanded to the original authority for decision on merits.

4. Personal hearing was granted on 23.02.2021 & 06.05.2021. Shri Varenym Shastri, Advocate appeared on 06.05.2021 and made the submissions on behalf of the applicant. He reiterated the contents of the RA and highlighted that the applicant had made claims for rebate by accounting on accrual basis instead of receipt basis, which is a bonafide error. It was pointed out to Sh. Shastri that this ground was not taken up before the lower authorities. He fairly admitted the same and submitted that it may be permitted to be urged at the revisionary stage, as there is no malafide and the rebate is otherwise admissible. No one appeared for the department nor any request for adjournment has been received. Therefore, the matter is being taken up for disposal on the basis of records.

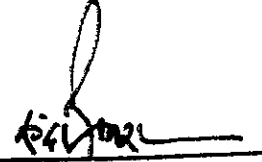
5.1 The Government has examined the matter. It is observed that, at this stage, only contention of the applicant is that they had claimed the refund for a particular quarter on the accrual basis as due to a bonafide error, the export turnover was computed on accrual basis instead of on receipt basis. The Government observes

that this contention of bonafide error in computation of accounts has been taken up for the first time at the revision stage. All through the proceedings before the lower authorities, it was the contention of the applicant that the notification no. 27/2012-CE (NT) did not require them to claim the refund on receipt basis. Were it to be merely a bonafide error in computing of accounts, the applicant would have been alerted to the same and would have made amends when the issue was first raised by the original authority. Therefore, this contention of bonafide error appears to be an afterthought.

5.2 The related contention that the requirement of para 2(e) of the notification no. 27/2012-CE (NT) which, read with Clause (D) of the Rule 5 (1) of the CENVAT Credit Rules, prescribes that for the purposes of computation of total turnover, the value of export services shall be determined on receipt basis, is only procedural in nature and that therefore the substantive benefit of refund should not be denied is also not acceptable. It is observed that the para 2 of the notification prescribes 'Safeguards, conditions and limitations' whereas para 3 prescribes the 'Procedure' for grant of refund. As such, the provisions contained in para 2 have to be interpreted strictly and are mandatory in nature. The Hon'ble Bombay High Court has, in a case relating to the grant of rebate of excise duty paid, under rule 18 of the Central Excise Rules, 2002, held that the 'limitations and conditions', prescribed in para 2 of the relevant notification no. 19/2002-CE (NT), are mandatory in nature whereas the 'Procedure' prescribed in para 3 is only directory in nature [U.M. Cables Ltd. vs. UOI {2013 (293) ELT 641 (Bom.)}]. Further, the Hon'ble Delhi High Court has, in a case relating to grant of rebate of service tax paid, under notification no.41/2007-ST, held that such notifications have to be interpreted *stricto sensu* [M/s Kultar Exports vs. Commissioner of Central Excise, Delhi-I {2020 (36) GSTL 208 (Del.)}].

5.3 Thus, the Government finds no merit in the contentions advanced by the applicant in the instant revision application.

6. In view of the above, the Revision Application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

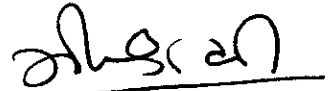
M/s. Travel Security Services India Pvt. Ltd.,
Suite No. 603-604, 6th Floor, Copia Corporate Suite,
Plot No. 9, Jasola District Centre, New Delhi- 110 025.

G.O.I. Order No. 09 /21-ST dated 10-5-2021

Copy to: -

1. The Commissioner of CGST, Delhi (East), New Delhi.
2. The Commissioner (Appeal-I), CGST, New Delhi
3. M/s Vaish Associates Advocates, 106, Peninsula Centre, (Behind Piramal Chambers-
Income Tax Office), Dr.S.S. Rao Road, Parel, Mumbai- 400 012.
4. PA to AS (Revision Application)
5. Spare Copy
6. Guard File

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)