

REGISTERED
SPEED POST



F.No. 196/04/ST/16-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. 12/2018-ST dated 01-03-2018 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 Applications filed under Section 35EE of the
Central Excise Act,1944, read with section 83 of Finance
Act, 1994, against the Order-in-Appeal No.
NOI/SVTAX/000/APPEALS-I/378/2015-16 and
NOI/SVTAX/000/APPEALS-I/379/2015-16 dated
09.12.2015 and 09.12.2015 respectively, passed by the
Commissioner of Central Excise(Appeals), Meerut.

APPLICANT : M/s. ESGI Garments Pvt. Ltd., Noida

RESPONDENT : Commissioner of Central Excise, Noida.

ORDER

Two Revision Applications No. 196/04/ST/16-RA and 196/05/ST/16-RA dated 11.03.2016 and 11.03.2016 respectively have been filed by M/s ESGI Garments Pvt. Ltd., Noida (hereinafter referred to as the Applicant) against the Order in Appeal No. NOI/SVTAX/000/APPEALS-I/378/2015-16 and NOI/SVTAX/000/APPEALS-I/379/2015-16 dated 09.12.2015 and 09.12.2015 respectively whereby the appeals filed by the department against Assistant Commissioner's Order-In-Original allowing rebate of Service Tax to the applicant has been allowed.

2. The brief facts leading to the filling of the Revision Applications with the Government are that the applicant had filed rebate claims for Service Tax of Rs.4,98,906/- against Service Tax paid on technical inspection and certification agencies services, technical testing and analysis services and custom house agent services used by the applicant for the export of leather garments. However, subsequently, the applicant withdrew the rebate claim of Rs.1,02,673/- due to some discrepancies and the remaining rebate claim of Rs 3,96,233/- was sanctioned by the jurisdictional Assistant Commissioner vide his Order-In-Original dated 25.06.2015. But the Commissioner of Central Excise reviewed the above Order of the Assistant Commissioner and an appeal was filed before the Commissioner(Appeal) which is allowed by the above referred Order—In—Appeal. Being aggrieved with the Order—In—Appeal, the applicant has filed the Revision Application mainly on the ground that all the above mentioned services have been used in export of the goods beyond place of removal/factory from which the exported goods were cleared for export.

3. Personal hearing was held in this case on 15.01.2018 and it was attended by Mrs. Santosh Khandelwal, Consultant, for the applicant who reiterated the grounds of revision already pleaded in their application. The hearing was also availed by Mr. Sheet Srivastava, Inspector, on behalf of the respondent who opposed the Revision Application for the reasons that for export of goods the place of removal is the ICD/CFS/port from where the goods were exported and the services used by the applicant are used before the clearances of the goods from the ICD/port and hence not covered in the category of "Specified Services" for which only the rebate of Service Tax is admissible under Notification No.41/2012 dated 29.06.2012.

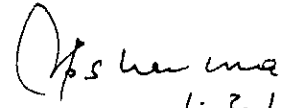
4. On examination of the orders of the lower authorities, it is evident that the use of the above mentioned services by the applicant for export of leather garments has not been disputed and the rebate of Service Tax has been rejected solely on the grounds that the taxable services are not covered in the category of "Specified Services" as defined in Notification No. 41/2012 dated 29.06.2012. The lower authorities have considered the ICD/port as place of removal for exported goods to arrive at this conclusion that all taxable services were used before place of removal and not beyond place of removal. The applicant has challenged the orders of Commissioner(Appeal) mainly on the ground that factory gate is the place of removal for exported goods in their case and all the services used by them for export of goods are specified services as these were used beyond their factory. It is further contended that the term "Specified Services" has been subsequently amended vide Notification No. 1/2016 dated 03.02.2016 as per which taxable services that have been used beyond factory or any other place or premises of

production or manufacture of the exported goods are covered in the category of "Specified Services".

5. While government does not agree with the applicant's first contention that in respect of exported goods their factory was a place of removal, the second contention that after issuing of Notification No. 1/2016 ST the services used by them are covered in the category of "Specified Services" is found to have strong legal force. As per the amended definition all services used beyond a factory for export of goods are covered in the category of "Specified Services" for which rebate of Service Tax is allowed. Thus after amendment in the definition of "Specified Services" by Notification No. 1/2016, the place of removal has become irrelevant and now any service used in connection with export of service beyond a factory or any other place of manufacturing is a "Specified Service". Moreover the definition of "Specified Services" has been amended with effect from 01.07.2012 by giving retrospective effect under Section 160 read with 10th Schedule of the Finance Act, 2016. Whereas the lower authorities passed their Orders in the context of earlier definition of specified services which was in reference to a place of removal, it is settled now that any service used beyond the factory for export of goods is a "Specified Service" irrespective of whether ICD/port is a place of removal or factory is a place of removal for the exported goods. As regards use of the above mentioned 3 services, the above mentioned applicant has claimed that these were used beyond their factory for export of goods and this fact is not denied by the lower authorities in their Orders and even in the letter of the deputy Commissioner, CGST, Division-3, Noida, which was produced during the hearing on 15.01.2018 to oppose the Revision Application filed by the applicant. Hence, the government finds that these

are covered in the definition of specified services as given in amended Notification No.41/2012 ST and accordingly the rebate of Service Tax paid on these 3 services is admissible to the applicant.

6. In view of the above discussions, the order of Commissioner(Appeal) is set aside and the Revision Application filed by M/s ESGI Garments Pvt. Ltd. is allowed.


1-3-18

(R.P.Sharma)

Additional Secretary to the Government of India

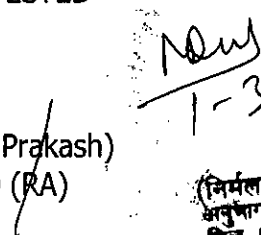
M/s. ESGI Garments Pvt. Ltd.,
F-450, Sector-63, Gautam Budh Nagar,
Noida, Gautam Budh Nagar,
U.P. - 201301

ORDER NO. 12/18-ST dated 1-3-2018

Copy to: -

1. The Commissioner of Central Excise, Noida-I, C-56/42, Renu Tower, Sector-62, Noida - 201307.
2. The Commissioner of Central Excise, Appeals-I Meerut, Opposite CCS University, Mangal Pandey Nagar, Meerut-250005.
3. The Assistant Commissioner of Customs, Central Excise & Service Tax, Division-III, Noida Commissionerate, Noida E-5, Sector-1, Noida, U.P.
4. PA to AS(RA)
- ✓ 5. Guard File
6. Spare copy

ATTESTED


1-3-2018
(Ravi Prakash)
OSD (RA)

(निर्मला देवी / Nirmala Devi)
अनुभाग अधिकारी / Section Officer
वित्त विभाग (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi