

REGISTERED
SPEED POST



F.No. 196/09/ST/2016-RA
196/10/ST/2016-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110066

Date of Issue.....

Order No. 20-21/2018-ST dated 01-3-18 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & 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 Orders-in-Appeal No. JAL-EXCUS-000-APP-03-15-16 dated 15.04.2015 and JAL-EXCUS-000-APP-174-15-16 dated 21.07.2015 passed by the Commissioner of Central Excise (Appeals), Chandigarh-II

Applicant : M/s. IDS Infotech Limited, Mohali

Respondent : Commissioner of Central Excise & Customs, Chandigarh

ORDER

Two Revision Applications No.196/09/ST/2016-RA dated 23.04.2015 and 196/10/ST/2016-RA dated 27.7.15 are filed by M/s. IDS Infotech Limited, Mohali (hereinafter referred to as the applicant) against the Orders-in-Appeal No.JAL-EXCUS-000-APP-03-15-16 dated 15.04.2015 and JAL-EXCUS-000-APP-174-15-16 dated 21.07.2015, passed by the Commissioner of Central Excise (Appeals-II), Chandigarh, whereby the rebate claim of the applicant in respect of the service tax paid on legal fees is rejected.

2. The revision applications are filed by the applicant mainly on the ground that even though the bill regarding legal fees was addressed to Mr. P.K.Aggarwal, Managing Director of the applicant, yet the services by the legal firms had been provided to the applicant in connection with the export of services and hence the rebate services in respect of the legal fees paid by them is admissible to them.

3. A personal hearing was held in these cases on 22.1.18 and it was attended by Shri Vineet Aggarwal, Chartered Accountant, for the applicant and Shri Kannav Sharma, Assistant Commissioner, Mohali-I Division, for the respondent. While Shri Vineet Aggarwal reiterated the above grounds for revision in the order of the Principal Commissioner (Appeals), Shri Kannav Sharma opposed the revision applications for the reasons already discussed in the OIO & OIA.

4. On examination of all relevant case records, the Government observes at the outset that the revision application No.196/09/ST/2016-RA dated 23.04.2015 has been filed after the gap of almost 14 months from the receipt of the Commissioner (Appeals)'s order on 23.4.15 and the revision application No.196/10/ST/2016-RA dated 27.7.15 has been filed after the delay of almost 11 months on 24.6.16. Whereas the applicant was required to file the revision applications within 3 months from the receipt of the Commissioner (Appeals)'s order as per sub-section 2 of Section 35EE of the Central Excise Act 1944, made applicable to the service tax matters by virtue of Section 83 of the Finance Act 1994. The enormous delay in filing revision applications is

admitted by the applicant also but its condonation is requested vide their letter submitted along with revision applications on the ground that they had earlier wrongly filed appeal before the CESTAT against the Commissioner (Appeals)'s order and the same was dismissed by the CESTAT due to not having jurisdiction vide order dated 24.2.16. However, even if this reason for delay is accepted, it is noticed that despite of rejection of their appeal on 24.2.16 the applicant has filed the above mentioned two revision applications after the gap of 4 months from the order of the CESTAT on 24.6.16. The applicant has not explained any reason for taking 4 months time in filing the revision applications even after dismissal of their appeal on 24.2.16 and despite of already humongous delay from the actual receipt of Commissioner (Appeals)'s orders on 23.4.15 and 27.7.15. Thus both the revision applications are filed not only beyond the period of 3 months from the receipt of Commissioner (Appeals)'s order but are also filed even beyond 3 months from the CESTAT's Order. Consequently, both the revision applications are time barred as per Section 35EE(2) of the Central Excise Act.

~~5. Besides above, it is also observed by the Government that while the lower~~
authorities have rejected the rebate claims of the applicant relating to the service tax paid on the legal services on the ground that bills were issued by the legal firm "the Law Point" to the Managing Director of the applicant for the legal services received by him in his individual capacity, the applicant has claimed that the legal services were received by the applicant company in relation to its export of services and not by the Managing Director in his individual capacity. But no detail has been provided by the applicant in the revision applications as to what type of legal services were provided by the law firm and how the legal services are related to the export of services. On the other hand, a reference has been made in the Order In Appeal that the legal services were provided in connection with a criminal case against Shri P.K. Aggarwal, the MD of the applicant, which was investigated by CBI from which it is apparent that the services were provided to Shri P.K. Aggarwal only. This fact sounds to be true as a criminal case is under CBI investigation generally against an individual and legal advices relating to criminal case against an individual or even against a corporate person cannot be

considered as input service for the services exported by the applicant. Therefore, the Government is in agreement with the views of lower authorities that the legal services received by Shri P.K.Aggarwal does not have any nexus with export services and, therefore, the rebate of service tax are not admissible in these two cases.

6. In view of the above discussions, the revision applications are not found maintainable both on time limitation as well as on merit.

R.P. Sharma
1.3.18

(R.P.Sharma)

Additional Secretary to the Government of India

M/s. IDS Infotech Ltd.
C-138, Phase-VIII
Industrial Area, Mohali

G.O.I. Order No. 20-2//18-ST dated 1-3-2018

Copy to:-

1. Commissioner of Central Excise, Chandigarh-II, C.R.Building, Plot No.19, Sector 17-C, Chandigarh-160017
2. Principal Commissioner of Central Excise (Appeals), Chandigarh-II, Central Revenue Building, Plot No.19, Sector 17-C, Chandigarh
3. The Deputy Commissioner Service Tax Division, Chandigarh, C.R.Building, Plot No.19A, Sector 17-C, Chandigarh-160017
4. PA to AS(Revision Application)
- ✓ 5. Guard File
6. Spare Copy.

Attested

1.3.2018

(Debjit Banerjee)
STO (RA)