REGISTERED
SPEED POST

F.No. 199/01/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. 22/2018—ST dated 2018 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 Order-in-Appeal No.403-ST/APPL-AGRA/LKO/2015 dated 16/10/2015 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Lucknow.
Applicant	:	Commissioner of Central Excise, Customs & Service Tax, Agra
Respondent	:	M/s R. N. Bajaj Overseas, Agra

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ORDER

A Revision Application No. 199/01/ST/16-R.A. dated 14/01/2016 has been filed by the Deputy Commissioner (Review), Central Excise, Agra (hereinafter referred to as the applicant) against the Order-in-Appeal No. 403-ST/APPL-AGRA/LKO/2015 dated 16/10/2015, passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Lucknow, whereby the departmental appeal has been partly allowed and partly rejected with reference to the order-in-original, issued by the jurisdictional Assistant Commissioner, allowing the rebate of Service Tax to the respondent, M/s R. N. Bajaj Overseas of Agra.

2. The brief facts leading to the present proceeding before the Government are that the respondent filed rebate claims of Service tax under Para 3 of Notification no. 41/2012-ST in respect of the services such as testing and analysis services, transportation of goods, CHA and cargo handling services etc. and the same were sanctioned by the jurisdictional Assistant Commissioner. However, these orders were reviewed by the jurisdictional Commissioner on the ground that the admissibility of the rebate claims was not examined by the Assistant Commissioner by checking the Shipping Bill wise difference of more than 20% between the rebate of Service Tax available under Para 2 and Para 3 of the notification and thereby the excess rebate of Service Tax was granted to the respondent. The Commissioner (Appeals) vide his above mentioned order-in-appeal allowed the departmental appeal to the extent that for determining the difference of more than 20% as specified in Proviso(c) of notification 41/2012, Shipping Bill wise amount is to be considered and not

the cumulative amount of rebate of Service Tax claimed under Para 3 of the notification. However, he allowed the rebate of Service Tax under Para 2 of this notification where claims were not found admissible under Para 3 on account of non-fulfilment of the above stated condition that rebate of Service Tax is maintainable under Para 3 only where the difference between the amount of rebate of Service Tax available under Para 2 and Para 3 is more than 20% of the rebate of Service Tax under Para 2. The present revision application has been filed against the Commissioner (Appeals)'s order mainly on the ground that rebate of Service tax under Para 2 allowed by the Commissioner (Appeals) is not proper and is not technically possible at this point of time as the electronic Shipping Bills have been filed by the respondent and once the electronic Shipping Bills are filed by the respondent without declaration as per Para 2 (d) of the notification 41/2012-ST dated 29/06/2012, the refund under Para 2 cannot be filed or sanctioned.

3. Personal hearing was offered on 09/02/2018 and Sh. Anil Singh Sisodia, Advocate, appeared on behalf of the respondent. He submitted written submissions during the hearing. The gist of his written submissions is that the intention behind the scheme under notification no. 41/2012-ST is quite clear that amount of Service Tax involved on export consignments should be refunded to the exporter; that the eligibility of refund should not be questioned merely on technical grounds where substantive compliance is fulfilled and that when the EDI System had failed to work on time the department should not get advantage by applying Para 2 of the notification to deny the rebate of Service Tax to them. However, no one appeared for the applicant and no request is received from them to grant further

personal hearing and thus the matter is taken up for decision on the basis of the grounds of revision already submitted by the applicant.

4. On examination of the revision application in the light of order-in-appeal, the Government observes that the main issue to be decided in this case is whether the rebate of service tax can be denied to the respondent under Para 3 of notification no. 41/2012-ST when the respondent did not have any option to claim rebate of service tax under Para 2 due to non-functioning of EDI System in the customs formation and when the difference between the amount of rebate of service tax claimed under Para 2 and Para 3 is not more than 20% of the rebate of service tax availed under Para 2. The purport of the order-in-appeal is that the rebate of service tax can be claimed either under Para 2 or Para 3 of the above notification and in case rebate claim is not found maintainable under Para3 the respondent should be allowed the rebate of service tax under Para 2 in the circumstances of this case.

5. On analyzing the text of notification no.41/2012-ST, the government finds that a manufacturer-exporter has been provided an option to claim rebate of service tax either on the basis of rates specified in the schedule annexed to the notification as per the procedure specified in Para 2 or on the basis of documents as per the procedure specified in Para 3. However, despite these two options, the option to claim rebate of service tax under Para 3 is restricted to the extent that rebate of service tax under Para 3 on the basis of documents can be claimed only when the difference between the amount of rebate under Para 2 and Para 3 is more than 20% of the rebate available under the Para 2. The Government has thus found that while the main intention of the government is to grant the rebate of service tax, claiming of rebate under Para 2 is encouraged and the rebate of

service tax under Para 3 is allowed only when amount of rebate filed under Para 3 on the basis of actual payment of service tax is higher by 20% as compared to the amount of rebate under Para 2. But when the option to file rebate of service tax along with Shipping Bills under Para 2 at the time of export itself was not available, the above condition stipulated in Proviso(c) to claim rebate of service tax under Para 3 could not be complied by the respondent. Thus, while the rebate of service tax under Para 3 is normally rejectable for non-compliance of the condition stipulated in Proviso(c) of notification 41/2012-ST when the exporter is in a position to exercise either of the two options freely and effectively, the government is of the considered view that the said condition in Proviso(c) is not meant for rejection of the rebate claim of the exporter when they were not having the option to file rebate under Para 2 at all for no fault on their part. The Commissioner (Appeals) in his order has clearly recorded that the EDI facility in the customs formation was not functional and it has not been denied anywhere in the revision application also. In the written submission furnished by the respondent also during the personal hearing on 09/02/2018 it has been specifically contended that the department cannot take advantage of applying the above condition in Proviso(c) when the EDI was not working in the customs formation and they were not in a position to file rebate claim under Para 2 at all. In the face of this stark fact, it cannot be overlooked that the respondent did not have any option to claim rebate of service tax under Para 2 and consequently they were left with one option of filing claim under Para 3 only. Even otherwise also the main purpose of the rebate of service tax is to refund the actual service tax paid on the services used in the export of the goods or services and by claiming actual refund of service tax under Para 3 no policy of the government is

breached. Thus, considering the above discussed peculiar circumstances of this case, no fault can be found in the order of the Commissioner (Appeals) wherein rebate of service tax is held to be admissible under Para 2 as per fixed rates. The revenue's contention that rebate under Para 2 is not feasible at this stage as electronic shipping bills have been filed long back by the respondent is not found compatible with the respondent's claim and Commissioner (Appeals)'s observation that EDI System was not functional during the relevant time. Further in case disbursement of rebate of service tax under Para 2 is not technically feasible at this juncture as claimed by the applicant, the rebate of service tax may be given under Para 3 on the basis of actual service tax paid by the respondent for which the applicant cannot have any technical difficulty at present. But it is not fair at all to hold a view in this case that the rebate of service tax will not be granted under both the Paras of the notification even when the respondent has undeniably exported the goods by using taxable input services for export of the goods.

6. The revision application is disposed of in the light of the above discussions.

5.3.18

(R. P. Sharma)
Additional Secretary to the Government of India

The Commissioner,
Customs, Central Excise & Service Tax,
113/4, Sanjay Place,
Agra-282 002

G.O.I. Order No. 22/18-ST dated 5-3-2018

Copy to:-

1. M/s R. N. Bajaj Overseas, 589-A, Artoni, Agra-Mathura Road, Agra, UP
2. Commissioner(Appeals), Central Excise & Service Tax, Hall No. 2, eight floor, Central Building, Sector – H, Aliganj, Lucknow
3. Assistant Commissioner, Cental Excise & Service Tax Division, Agra
4. PA to AS(Revision Application)
5. Guard File
6. Spare Copy

5/3/18

NIRMALA DEVI
(Section officer)
(Revision Application unit)