

SPEED POST



F. No. 196/03/ST/2019—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. 01/07/2021

Order No. 23/2021-ST dated 01-07-2021 of the Government of India, passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under Section 83 of Finance Act, 1994 read with Section 35 EE of the Central Excise Act, 1944.

Subject: Revision Application filed under Section 83 of Finance Act, 1994 read with Section 35 EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. 251-253(CRM)/ST/JDR/2019 dated 18.03.2019 passed by Commissioner (Appeals), CGST, Jodhpur.

Applicant: M/s. Cross Country, Jodhpur.

Respondent: Commissioner of CGST, Jodhpur.

ORDER

A Revision Application No. 196/03/ST/2019-R.A. dated 20.06.2019 has been filed by M/s. Cross Country, Jodhpur (hereinafter referred to as the Applicants) against Order-in-Appeal No. 251-253(CRM)/ST/JDR/2019 dated 18.03.2019, passed by Commissioner (Appeals), Central Excise and CGST, Jodhpur, wherein the appeals filed by the Applicants have been rejected.

2. The brief facts leading to the present proceedings are that the Applicants had filed rebate claims, amounting to Rs. 2,65,963/-, Rs. 3,52,076/- and Rs. 3,06,279/-, of service tax paid on the services received and used for export of goods, under Notification no. 41/2012-ST dated 29.06.2012. The original authority rejected the rebate claims of the Applicants on the ground of limitation as the claims were filed after the expiry of one year from the date of export in violation of Para 3(g) of notification no. 41/2012-ST, vide Orders-in-Original nos. 103/2018-R(ST-EXP), 104/2018-R(ST-EXP) and 105/2018-R(ST-EXP), all dated 27.04.2018. Aggrieved, the Applicants filed appeals before the Commissioner (Appeals), which were rejected.

3. The revision application has been filed on the grounds that rejection of rebate on the ground of limitation is not tenable as the period of limitation should be computed from the date of realization of the export proceeds.

3. Personal hearing was held on 30.06.2021, in virtual mode. Sh. O.P. Agarwal, CA, appeared for the Applicants and re-iterated the contents of the revision application. No one appeared for the respondents and no request for adjournment has also been received. Hence, the matter is taken up for decision on the basis of facts available on record.

4.1 The Government has examined the matter. The rebate claims have been filed by the Applicants under the provisions of notification no. 41/2012-ST dated 29.06.2012. Para 3(g) of the said notification specifies that :

“the claim of rebate of service tax paid on the specified services used for export of goods shall be filed within one year from the date of export of the said goods.”

4.2 Explanation to the aforesaid Para 3(g) specifies the date of export as:

“the date on which the proper officer of Customs makes an order

permitting clearance and loading of the said goods for exportation under Section 51 of the Customs Act, 1962”

4.3 Thus, on a plain reading, it is clear that the claim of rebate of service tax paid has to be filed within one year from the date of Let Export Order, i.e., the order permitting the clearance under Section 51 of the Customs Act, 1962.

4.4.1 On the other hand, it is the contention of the Applicants that *“The refund under notification no. 41/2012-ST is subject to realisation of export proceeds, therefore, refund accrues only on realisation of export proceeds and therefore, cause of action or relevant date is the date of realisation of export proceeds and not the date of export.”*

4.4.2 The Government finds that the aforesaid contention of the Applicants is not acceptable for the following reasons:

- (i) As brought out hereinabove, the notification specifically provides for *“date of export”* as the relevant date for counting the period of limitation. If the Applicants’ contention were to be accepted, it would tantamount to substituting the words *“date of export”* used in Para 3(g) by the words *“date of realisation of export proceeds”*. It would also render the

Explanation to Para 3(g) as infructuous. Hon'ble Supreme Court has, in the case of Saraswati Sugar Mills Vs. Commissioner of Central Excise, Delhi-III, held that "*When the wordings of notification is clear, then the plain language of the notification must be given effect to. By way of an interpretation or construction, the court cannot add or substitute any word while construing notification either to grant or deny exemption.*"

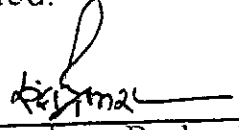
- (ii) As per para (4) of the subject notification, "*(4) Where any rebate of service tax paid on the specified services has been allowed to an exporter on export of goods but the sale proceeds in respect of said goods are not received by or on behalf of the exporter, in India, within the period allowed by the Reserve Bank of India under section 8 of the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such rebate shall be deemed never to have been allowed and may be recovered under the provisions of the said Act and the rules made thereunder.*"

Thus, the para (4) enables recovery of rebate already granted if the exporter is unable to realize the sale proceeds within the time specified under FEMA, 1999. As such, the contention that cause of action for rebate arises on the date of realisation of export proceeds is misconceived. In fact, para (4) defines the cause of action for recovery of rebate already granted and not that for grant of rebate.

- (iii) In respect of Para 2(e) of the Notification No. 41/2007-ST, which specified the limitation period to file a refund claim, the Hon'ble Delhi High Court has held that the said Para 2(e) must be applied strictly [M/s Kultar Exports Vs. Commissioner of Central Excise, Delhi-I {2020 (36) GSTL 208 (Del.)}]. It is further held that such notifications have to be interpreted *stricto sensu*.

4.5 The Government has already rejected the earlier revision application filed by the same Applicants, involving, interalia, the same issue, vide GOI Order no. 03-06/2021-ST dated 23.03.2021.

5. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

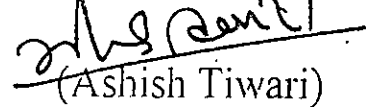
M/s. Cross Country,
Khasra No. 1087/740,
MIA, Basni Phase-II, Jodhpur,
Rajasthan.

G.O.I. Order No. 23 /21-Cx dated 01-07-2021

Copy to:-

1. The Commissioner of CGST, Jodhpur.
2. The Commissioner (Appeals), Central Excise & CGST, Jodhpur.
3. PA to AS (Revision Application)
4. ~~Spare Copy~~
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ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)