

REGISTERED  
SPEED POST



F.No. 196/13/ST/2015-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue.....

Order No. 24/2018-ST dated 5-3-18 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 Order-in-Appeal No.38/ST/DLH/2015 dated 20.07.2015 passed by Commissioner of Service Tax (Appeals-I), New Delhi

Applicant : M/s. Smart Cube India Pvt. Ltd., New Delhi

Respondent : Commissioner of Service Tax, New Delhi

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**ORDER**

A revision application No.196/13/ST/15-R.A. dated 03.11.2015 is filed by M/s Smart Cube India Pvt. Ltd., New Delhi (hereinafter referred to as the applicant) against the Order-in-Appeal No.38/ST/DLH/2015 dated 20.07.2015 passed by the Commissioner of Service Tax (Appeals-I), New Delhi, whereby the appeal filed by the applicant against the Order of the Assistant Commissioner has been rejected.

2. The revision application is filed mainly on the ground that they had exported services from NOIDA Office due to sealing of their office in New Delhi but issued export invoices from their New Delhi office only and, therefore, the refund of CENVAT under Rule 5 of CENVAT Credit Rules has been erroneously disallowed to them by the Assistant Commissioner and the Commissioner (Appeals).

3. A personal hearing was earlier offered on 24.1.18 in this case and on the request of the applicant it was re-fixed on 27.2.18 which was attended by Shri Rajesh Gupta, C.A., for the applicant who reiterated the ground of revision already pleaded in their application.

4. On examination of the Revision Application and the Commissioner (Appeals)'s order, it is evident that in the present proceeding the dispute is regarding admissibility of refund of Cenvat Credit under rule 5 of the CCR, 2004. But under Section 86 of the Finance Act, 1994, read with Section 35(EE) of the Central Excise Act, 1944, the revision application can be filed with the Government only if the Commissioner (Appeals)'s Order involves an issue relating to rebate of service tax on exported goods or service. Since no such issue is involved in this case and admissibility of refund of Cenvat Credit under rule 5 of Cenvat Credit Rules is entirely different from the subject of rebate of service tax on exported goods or service, the Government is of the view that it does not have jurisdiction to revise the Commissioner (Appeals)'s Order by which the Assistant Commissioner's Order rejecting refund of accumulated Cenvat credit to the applicant has been upheld.

5. Accordingly, the revision application is rejected as not maintainable.

*(R.P. Sharma)*  
5.3.18

(R.P.Sharma)

Additional Secretary to the Government of India

M/s. Smart Cube India Private Limited  
37, Hauz Khas Village  
Hauz Khas  
New Delhi-110016

G.O.I. Order No. 24 /18-ST dated 5-3-2018

Copy to:-

1. Commissioner of Central Excise, 17-B, I.A.E.A. House, Mahatma Gandhi Marg, I.P.Estate, New Delhi-110002
2. Commissioner of Service Tax (Appeals-1), Office of Service Tax Appeal-1, Room No.203, 17B, IAEA Building, M.G.Marg, I.P.Estate, New Delhi
3. The Assistant Commissioner of Service Tax, Division-II, New Delhi
4. PA to AS(Revision Application)
5. Guard File
6. Spare Copy.

Attested

*5.3.2018*

(Debjit Banerjee)  
STO (RA)