

**SPEED POST**



**F. No. 196/01-02/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. 02/07/2021

Order No. 24-25/2021-ST dated 02-07-2021 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 Applications 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. 171CRM)/ST/JDR/2019 and 172CRM)/ST/JDR/2019, both dated 21.02.2019 passed by Commissioner (Appeals), Central Excise & CGST, Jodhpur.

Applicant: M/s. Krishna International Exim, Jodhpur.

Respondent: Commissioner of CGST, Jodhpur.

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**ORDER**

Two Revision Applications, bearing nos. 196/01-02/ST/2019-R.A. both dated 30.04.2019, have been filed by M/s. Krishna International Exim, Jodhpur (hereinafter referred to as the Applicants) against Orders-in-Appeal Nos. 171(CRM)/ST/JDR/2019 and 172(CRM)/ST/JDR/2019, both dated 21.02.2019, passed by Commissioner (Appeals), Central Excise & 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. 2,22,066/- and Rs. 1,70,885 in respect of service tax paid on the services 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, vide Orders-in-Original nos. 173/2017-R (ST-EXP) and 174/2017-R (ST-EXP), both dated 22.12.2017. Aggrieved, the Applicants filed appeals before Commissioner (Appeals), who rejected the appeals.

3. The revision applications have 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.

4. Personal hearing was held on 30.06.2021, in virtual mode. Sh. O.P. Agarwal, CA, appeared for the Applicants and re-iterated the submissions made in the instant revision applications. 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.

5.1 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 reads as under:

*“(g) 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.”*

5.2 As per Explanation to the said Para 3(g), the date of export shall be:  
*“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”*

5.3 Thus, on a plain reading, it is clear that a 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.

5.4.1 On the other hand, it is the contention of the Applicants that "*as per notification no. 41/2012-ST, refund is subject to realisation of export proceeds, therefore, the cause of action arises when export proceeds are realized and not prior to that date. Further, date of export cannot be prior to date when goods leave territorial waters of India as per Section 11B of the Central Excise Act, 1944, therefore, date of let export cannot be treated as date of export.*"

5.4.2 The Government finds that the aforesaid contention of the Applicants to treat the date of realisation of export proceeds as the relevant date for counting limitation 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* [2011(270) ELT 465 (SC)], 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.*"

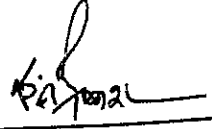
- (ii) As per para (4) of the subject notification, "*(4) Where any rebate of service tax paid on the specified services has been allowed to an exporter on export of goods but the sale proceeds in respect of said goods are not received by or on behalf of the exporter, in India, within the period allowed 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*. The Hon'ble High Court has further held that the parties cannot selectively seek relief of such notifications.

5.5 The Government has taken a similar view in the cases of M/s Cross Country, Jodhpur, involving the same issue, vide GOI Orders Nos. 03-06/2021-ST dated 23.03.2021 and Order No. 23/2021-ST dated 01.07.2021.

6. In view of the above, the revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

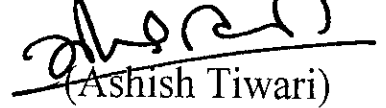
M/s. Krishna International Exim,  
G-576-577, Gali No. 10, MIA, Basni, Phase-II, Jodhpur,  
Rajasthan-342 005.

G.O.I. Order No. 24-25/21-ST dated 2-7-2021

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
5. Guard File

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)