

REGISTERED  
SPEED POST



F.No. 196/25/ST/13—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. 26/2018-ST dated 12-3-2018 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.27/ST/APPL/D-II/2013/3048 dated 03/09/2013, passed by the Commissioner (Appeals), Central Excise and Service Tax, New Delhi.

Applicant : M/s Broadridge Financial Solutions India Private Limited, New Delhi

Respondent : Commissioner of Service Tax, Delhi-III.

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**ORDER**

A Revision Application No. 196/25/ST/13-R.A. dated 17/12/2013 has been filed by M/s Broadridge Financial Solutions India Private Limited, New Delhi (hereinafter referred to as the applicant) against the Order-in-Appeal No. 27/ST/APPL/D-II/2013/3048 dated 03/09/2013, passed by the Commissioner (Appeals), Central Excise and Service Tax, New Delhi, whereby the applicant's appeal has been rejected.

2. The brief facts leading to the present proceeding before the Government are that the above named applicant had filed rebate claims of service tax paid on input services used in export of services which were rejected by the original adjudicating authority on the ground that the applicant did not satisfy the basic condition of filing a declaration under Para 3.1 of Notification No. 12/2005-ST dated 19/04/2005 prior to export of services. The applicant filed an appeal before the Commissioner (Appeals) on the ground that non-filing of the said declaration was merely a procedural and technical infraction and they had filed declaration subsequently along with rebate claims. However, the Commissioner (Appeals) rejected the applicant's appeal holding that filing of this declaration is mandatory and not directory and the purpose behind filing of declaration prior to exports was to facilitate verification by the officers. Aggrieved by this order the applicant has filed this revision application mainly on the ground that non-filing of declaration before export of services as per Para 3.1 of Notification 12/2005-ST cannot be a ground for rejection of rebate claims being a procedural infraction only and it cannot render a rebate claim inadmissible as held in plethora of judgements passed by various courts and tribunals.

3. A personal hearing was offered on 15/02/2018 which was attended by Sh. Ashwani Pahwa, CA, and Purushotam Reddy, CA, who represented the applicant and reiterated the grounds of revision already pleaded in their application. They also relied upon CESTAT's judgements in the cases of Taco Faurcia Design Center Pvt. Ltd. Vs CCE, Pune [2015(38) STR 654 (Tri.-Mumbai)], CST Vs Kaene Worldzen India Pvt. Ltd.[2008(10) STR 471 (Tri-Del.)] and Crest Premedia Solutions Pvt. Ltd. Vs CCE, Pune-III [2015(38) STR 46 (Tri-Mumbai)] to support their case. However, no one appeared for respondent and no request has also been received from them for any other date for personal hearing from which it is implied that the respondent is not interested in availing Personal Hearing.

4. The Government has examined the matter and it is found at the outset that the revision application has been filed on 20/12/2013 against the order-in-appeal dated 03/09/2013 which was received by the applicant on 07/09/2013 as per revision application itself. Whereas, as per Sub Section 2 of Section 35EE of the Central Excise Act, 1944, made applicable to service tax matters by virtue of Section 83 of Finance Act, 1994, the revision application was required to be presented before the government within 3 months from the communication of the order-in-appeal to the applicant. Thus, the revision application was to be filed in this case by 07/12/2013. But it has been filed on 20/12/2013 and thereby its filing has been delayed by 13 days. Further, it is also noticed that the revision application filed on 20/12/2013 was also not accompanied by a fee of Rs. 1000/- as per Sub Section 3 of Section 35EE of Central Excise Act, 1944, and it was paid on 17/01/2014 only. Payment of the said fee along with the revision application is mandatory as per above provision and no relaxation can be provided by any authority in this regard. Consequently,

the application filed by the applicant on 20/12/2013 cannot be considered as proper application and it can be treated to have been filed only on 17/01/2014 when a fee of Rs. 1000/- was paid as per GAR-7 Challan issued by AXIS Bank. Therefore, the revision application is actually delayed by 41 days.

5. As per first proviso to Sub Section 2 of Section 35EE of Central Excise Act, 1944, the government is empowered to condone the delay of 3 months if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within initial 3 months period from the receipt of the order-in-appeal. The applicant has submitted their application dated 20/12/2013, 24/01/2014 and 26/06/2014 for condonation of different periods of delay by mentioning different dates of filing of revision application. For example; in their application dated 20/12/2013 the date of filing of revision application is stated to be 11/12/2013 and the delay in filing of revision application is mentioned just 2 days which is manifestly absurd as they have actually filed revision application on 20/12/2013 only as against the order-in-appeal received on 07/09/2013. In the same application dated 20/12/2013 it is also mentioned that a copy of Challan for payment of a fee of Rs. 1000/- is enclosed even when the said Challan was issued by AXIS Bank on 17/01/2014. Thus, the above application is misleading in terms of counting delay in filing revision application as well as with regard to the payment of the fee of Rs. 1000/-. In their third application for condonation of delay dated 26/06/2014 two dates 11/12/2013 and 20/12/2013 are mentioned as dates of filing revision application and in their second condonation of delay application dated 24/01/2014, the filing date of the revision application is referred to as 20/12/2013 which is correct as per the record of this office. Thus, the

applicant is not clear with regard to the date of filing of revision application itself and the delay in filing the revision application.

6. Further, in their above discussed three applications, even the reasons for delay are divergent and contradictory. While in their first application dated 20/12/2013 the applicant has attempted to justify the delay in filing of revision application on the ground that they had earlier endeavoured to file an appeal before the CESTAT, but their appeal was not entertained by the CESTAT on the ground that the jurisdiction for the revision application lies with the central government, a totally contradictory claim is made in their third application for condonation of delay dated 26/06/2014 (in Para 3) that they had filed appeal before CESTAT and it was returned to them on 24/01/2014. Further a totally different version is given in their second condonation of delay application that they had filed revision application before the government on 11/12/2013 it was transferred from government to CESTAT as per their understanding and, CESTAT subsequently returned their application on 26/12/2013. Thus, three different contradictory claims with regard to filing of application before CESTAT and resultant delay have been made. The first is that they endeavoured to file an application but could file appeal because it was not entertained by the CESTAT, second they had filed an appeal before the CESTAT but it was returned by the registry of the CESTAT and the third that they had initially filed revision application before the government which was transferred to the CESTAT and the same was subsequently returned to them by the CESTAT. Above all, none of the above claims is supported by any letter or order or any other document issued by CESTAT or the government with regard to filing of appeal before CESTAT and its rejection or return by the CESTAT. Considering these vague and

contradictory facts, the government is convinced that the delay of 41 days in filing the revision application in this case is not properly explained by the applicant in their three applications and no sufficient cause is shown which might have prevented the applicant in filing the revision application in time. Hence, the government does not find this case fit for condonation of the above stated delay of 41 days in filing the revision application and accordingly the revision application is time-barred in terms of Section 35EE(2) of the Central Excise Act, 1944.

7. In view of the above discussion, the revision application is rejected as time-barred without examining the merit of the case.

*(R. P. Sharma)*  
12-3-18

(R. P. Sharma)

Additional Secretary to the Government of India

M/s Boadridge Financial Solutions India Pvt. Ltd.,  
Unit No. S2 & S3, Genesis Building,  
A-32, Mohan Industrial Estate,  
Mathura Road, New Delhi-110 044.

G.O.I. Order No. 26/18-Cx dated 12-3-2018

Copy to:-

1. The Commissioner of Service Tax, 17-B, IAEA House, IP Estate, Mahatma Gandhi Marg, New Delhi.
2. Commissioner (Appeals), Central Excise and Service Tax, New Delhi.
3. PA to AS(Revision Application)
- ✓ 4. Guard File
5. Spare Copy

*(Nirmala Devi)*  
12/3/18

NIRMALA DEVI  
(Section officer)  
(Revision Application unit)