

REGISTERED
SPEED POST



F.No. 199/05/ST/2013-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... 15/3/18

Order No. 2872018-ST dated 14-3-2018 of the Government of India passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under section 35EE of the Act read with Section 83 of Finance Act, 1994.

Subject : Revision Application filed, under section 35EE of the Act read with Section 83 of Finance Act, 1994 against the Order-in-Appeal No. 135/ST/D-II/2013 dated 06.06.2013 passed by the Commissioner of Central Excise (Appeals), Delhi-II.

Applicant : Commissioner of Service Tax

Respondent : M/s FIAT Partecipazioni India Pvt. Ltd.

ORDER

A Revision Application No. 199/05/ST/2013-R.A. dated 06.11.2013 is filed by the Assistant Commissioner of Service Tax, Division-II, New Delhi (hereinafter referred to as the applicant) against the Order-in-Appeal No. 135/ST/D-II/2013 dated 06.06.2013, passed by the Commissioner of Central Excise (Appeals), Delhi-II, whereby the case has been remanded back to the original authority to re-examine the matter and thus the appeal filed by M/s FIAT Partecipazioni India Pvt. Ltd. 301-304, plot No. 9, Copia Corporate Suites, Jasola District Centre, Jasola Badarpur, New Delhi, has been allowed.

2. The brief facts in the present case are that M/s FIAT Partecipazioni India Pvt. Ltd. (respondent) had filed a refund claim of Rs.9,41,424/- under Notification No. 11/2005-ST dated 19.04.2005 against Service Tax paid on Business Auxiliary and Business Support Services used for export of goods. The claim was rejected by the Assistant Commissioner of the Division on the ground that the rebate claim was time barred since the same was filed on 30.03.2012 i.e. after one year from the date of payment of Service Tax. However, the Commissioner (Appeal) has allowed the respondent's appeal by holding that they had filed rebate claim within year of realization of service value and thereby it was not time barred. Being aggrieved, revenue has filed the present Revision Application mainly on the grounds that the relevant date for rebate of duty as per section 11AB of the Central Excise Act, 1944, applicable to service tax matters by virtue of Section 83 of the finance Act, 1994, is payment of duty/tax and not the realization of foreign exchange. Accordingly, the rebate claim should have been filed on or before 03.03.2012 and the claim filed on 30.03.2012 is time barred.

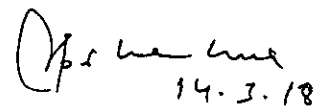
3. Personal hearing was fixed for 26.02.2018 in this case. But neither applicant nor the respondent appeared for the personal hearing. Moreover, no request for any other date of hearing is also received from which it is implied that the applicant and the respondents are not interested in personal hearing. Hence the Revision Application is taken up for disposal on the basis of case records already available with the Government.

4. On examination of the Revision Application, it is observed by the Government at the outset that the Revision Application is not filed with the Government within three months of the receipt of the order in appeal which was received on 11.06.2013. The Revision Application was required to be presented by 12.09.2013 as per sub section (2) of section 35EE of the Central Excise Act, but it has been filed on 06.11.2013 involving delay of 57 days. The Government is empowered to condone the delay upto three months under proviso to above referred sub section (2) if the applicant was prevented by sufficient cause from presenting the application within initial three months. But in the instant case it is observed that the order of the Commissioner(Appeal) itself was reviewed on 18.09.2013 by the committee of the Commissioners which is seven days after the expiry of three months from the receipt of the Commissioner (Appeals)'s order. Thus, review order itself is delayed for more than three months and no explanation, not to speak of sufficient cause, has been given in the application for condonation of delay or in the Revision Application which might have prevented the applicant in reviewing the O-I-A. Hence, the delay in filing the Revision Application in this case is not only because of the filing of appeal before the CESTAT earlier as is claimed by the applicant but is also on account of delayed reviewing of the O-I-A for which no one else can be blamed and by no yardstick it can be termed as sufficient cause for condonation of delay. Therefore, the Government finds that the present case does not deserve condonation of delay in this case and accordingly the Revision Application is time barred.

5. Beside above, revenue's view in this matter is that the relevant date for the purpose of rebate of Service Tax is also payment of Service Tax as per section 11B of the Central Excise Act which is made applicable by the Finance Act 1994. However, it is not found acceptable by the Commissioner (Appeal) on the ground that the relevant date under section 11B is only in respect of goods and not in respect of the service. In absence of any definition of relevant date of export of service in the Finance Act or the Notification 11/2005 ST, the Commissioner (Appeal) has held the receipt of payment for exported service as relevant date in the light of Rule 3(2) of the Export Rules, the Trade Facility issued by the Chief Commissioner of Central Excise, Pune and the CESTAT's decision in the case of CCE, Pune-1 Vs. Eaton

Industries, 2011(22) STR 223(TRI-MUM.). But this view of the Commissioner (Appeal), duly supported by above discussed legal provision, case law and the official clarification, has not been rebutted by the applicant in the Revision Application by providing any convincing reason and instead the same argument has been repeated that as per section 11B of the Central Excise Act the relevant date is the payment of duty which is not found backed by any legal provision under the Finance Act 1994. Thus on merit also, no fault is found in the O-I-A.

6. In view of the above discussion, the Revision Application is rejected.


14.3.18

(R.P.Sharma)

Additional Secretary to the Government of India

The Commissioner of Service Tax,
17-B, IAEA House, I.P. Estate,
M.G. Marg, New Delhi-110 002.

Order No. 28/2018-ST dated 14-3-2018

Copy to:

1. M/s FIAT Partecipazioni India Pvt. Ltd., 301- 304, Plot No. 9, Copia Corporate Suites, Jasola Distt. Centre, Jasola, Badarpur, New Delhi -110 044.
2. The Commissioner of Central Excise (Appeals), Delhi-II, Room No. 136, C.R. Building, I.P. Estate, New Delhi 110002.
3. Assistant Commissioner of Service Tax Division-II, 7th Floor, Block No. 11, CGO Complex, Lodhi Road, New Delhi-110003.
4. PA to AS(RA)
5. Guard File.

ATTESTED

(Debjit Banerjee)
STO (REVISION APPLICATION)