

SPEED POST



F.No. 199/02/ST/2018-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.....05/08/21..

Order No. 28/2021-ST dated 04-08-2021 of the Government of India, passed by Sh. Sandeep Prakash, 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. 121-ST/APPL/NOIDA/12 dated 27.04.2012 passed by the Commissioner, (Appeals), NOIDA.

Applicants : Pr. Commissioner CGST, NOIDA.

Respondent : M/s Adobe Systems India Pvt. Ltd, NOIDA.

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## ORDER

A revision application no. 199/02/ST/2018-R.A. dated 31.08.2018 has been filed by Principal Commissioner, CGST, NOIDA (hereinafter referred to as the Applicant) against the Order-in-Appeal no. 121-ST/APPL/NOIDA/12 dated 27.04.2012 passed by the Commissioner (Appeals), NOIDA, vide which the Commissioner (Appeals) has partially allowed the appeal of the Respondents, M/s Adobe Systems India Pvt. Ltd, NOIDA, filed against Order-in-Original No. 287/R/N-III/2011-12 dated 31.01.2012 vide which the rebate claim of the Respondents was rejected.

2. The Applicants had initially filed an appeal against the impugned Order-in-Appeal before CESTAT, which was dismissed vide Final Order No. ST/A/70309/2018-CU[DB] dated 17.01.2018, as non-maintainable, for want of jurisdiction. The Applicant filed the revision application after a delay of 77 days which has been attributed to administrative reasons. Delay is condoned.

2. Brief facts of the case are that the Respondents were registered as an exporter of services for providing 'Information Technology Software Services' and 'Business Auxilliary Services' to their overseas clients. They filed a rebate claim of Rs. 2,92,63,305/- for the period October 2010 to March, 2011, which was rejected on the following grounds-

- (a) they had not filed declaration prior to the export as prescribed under Notification No. 12/2005-ST dated 19.04.2005.
- (b) the export of services had been made during the period Oct., 2010 to March, 2011 whereas the Respondents had shown the receipt of input services under invoices dated July, 2010 onwards. Thus, the services of the said invoices were not used in export of services.

- (c) The Service Tax, pertaining to the invoices of Outdoor Catering Services, involving an amount of Rs.5,10,678 was inadmissible to the Respondents.
- (d) The credit of Service Tax paid on General Insurance of the employees amounting to Rs. 35,35,491/- was not admissible to the Respondents as the said service was not covered under Rule 6(5) of the CENVAT Credit Rules, 2004.
- (e) The credit of Service Tax pertaining to invoices at Serial Nos. 905 and 1084 of the claim, in respect of Real Estate for the premises at Sector 132, NOIDA, involving amount of Service Tax of Rs. 2,37,699/-, was not admissible to the Respondents as the said premises was not registered premises of the Respondents.
- (f) The credit of Service Tax, pertaining to invoices at Sr. Nos. 1028 and 1029 of the claim in respect of security services of the premises at Sector-132, NOIDA, was inadmissible to the Respondents as the said premises were not registered premises of the Respondents.
- (g) The credit of service tax of Rs. 7,210/- in respect of invoices at Sr. No. 1058 and 1059 of the claim, pertaining to services of Health Club and Fitness Services, was not admissible to the Respondents.
- (h) The credit of Rs. 1567/- was not admissible to the Respondents as the invoices against this amount were not proper.
- (i) The Service Tax amount was not mentioned against invoices at Sr. No. 57, 630, 720 and 806. Hence, rebate amounting to Rs. 98,991/- was not admissible on this count.

Aggrieved, the Respondents approached the Commissioner (Appeals) with an appeal, which was partially allowed vide the impugned Order-in-Appeal in the following terms-

(a) The appeal was allowed in respect of the issue of late filing of requisite declaration as prescribed under Notification No. 12/2005-ST dated 19.04.2005. Appeal was also allowed regarding the issue of rebate of services received during the period July, 2010 to September, 2010 (ref. point 2(b) above) as payments were made by the Respondents, subsequently.

(b) The appeal was allowed in respect of the services of 'Health Insurance of the Employees' and 'Catering Services'.

3. The Applicants have filed this revision application on the grounds that the Commissioner (Appeals) erred in allowing the appeal of the Respondents on the aforesaid issues due to the following reasons-

(i) Filing of Declaration is a mandatory requirement under Notification No. 12/2005-ST dated 19.04.2005 and its non-filing cannot be passed off as mere procedural infraction.

(ii) 'Health Insurance of the Employees' and 'Catering Services' are services which are not related to the services exported and as per definition of input services as provided in Rule 2(1) of CENVAT Credit Rules, 2004, the service tax paid on these services cannot be rebated in the instant case.

4. Personal hearing was held on 28.07.2021, in virtual mode. Sh. Anjani Kumar Singh, AC, and Sh. Deepak Sharma, Superintendent, appeared for the Applicant. Sh Deepak Sharma made the submissions on behalf of the Applicant and reiterated the contents of the revision application. Sh. Kapil Vaish and Sh. Ashish Vaish, Chartered Accountants, appeared for the Respondents. Sh. Kapil Vaish made submissions on behalf of the Respondents and reiterated the contents of the written submissions dated 26.07.2021.

5. The Government has carefully examined the matter. There is no dispute that the services were exported. Hence, it is observed that non-filing of declaration, which is a procedural requirement as per Notification No. 12/2005-ST dated 19.04.2005, cannot be held as a ground for rejection of rebate. The Government has taken a similar view in the case of CCE, NOIDA vs M/s Innodata India Pvt. Ltd. [2018(364) ELT 1168 (GOI)]. The Commissioner (Appeals) has succinctly discussed, citing various judicial pronouncements, the issue of nexus between 'Health Insurance of the Employees' and 'Catering Services' with the exported services. Since both the services are employee related who are instrumental in supply of the exported services, these services are indirectly related to the output services provided by the Respondents. As such, the Government finds that these are covered as 'Input Services', as per Rule 2(1) of CENVAT Credit Rules, 2004. CESTAT has taken an identical view in respect of health insurance of the employees, in the Applicants' own case vide Final Order No. 70320/2017 dated 24.05.2017.

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

  
 (Sandeep Prakash)

Additional Secretary to the Government of India

The Pr. Commissioner of CGST, NOIDA  
 C-56/42, Sector- 62, Noida – 201 307.

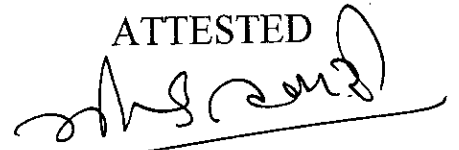
G.O.I. Order No. 28/21-ST dated 4-8-2021

Copy to: -

1. M/s Adobe Systems India P. Ltd., Plot No. 1-1A, City Centre, Sector-25A, Noida- 201 301.
2. The Commissioner (Appeals), Customs & CGST, Noida, C-56/42, Sector- 62, Noida – 201 307.

3. Sh. Ashish Vaish, Chartered Accountant, 146, 4<sup>th</sup> Floor,  
Tower-A, The Corenthum, Sector- 62, Noida- 201 301.
4. P.S. to A.S. (Revision Application).
5. Guard File.
6. ~~Spare Copy.~~

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)