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F.No. 199/03/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. 30/2018-ST dated 2-4-2018 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.43/ST/APPL./NOIDA/13 dated 28/02/2013, passed by the Commissioner of Central Excise (Appeals), NOIDA.

Applicant : Commissioner of Customs & Central Excise, NOIDA

Respondent : M/s Innodata India Private Limited, NOIDA

ORDER

A Revision Application No. 199/03/ST/13-R.A. dated 25/07/2013 has been filed by the Commissioner, Customs & Central Excise, NOIDA (hereinafter referred to as the applicant) against the Order-in-Appeal No. 43/ST/APPL./NOIDA/13 dated 28/02/2013, passed by the Commissioner of Central Excise (Appeals), NOIDA, whereby the order-in-original passed by the Assistant Commissioner, Central Excise, has been set aside and respondent's appeal has been allowed.

2. The brief facts leading to the present proceeding before the Government are that the above named respondent 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 file a declaration under Para 3.1 of Notification No. 12/2005-ST dated 19/04/2005 prior to export of services. Being aggrieved, the respondent filed an appeal before the Commissioner (Appeals) on the ground that non-filing of the said declaration was merely a procedural infraction, they had filed declarations earlier also post exports and the rebate of tax has been granted in all earlier such cases without any objection and they had filed declaration in this case subsequently along with rebate claims. The Commissioner (Appeals) allowed the respondent's appeal holding that rebate claims cannot be refused in this case only because of non-filing of declaration prior to export of service. 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 is a mandatory requirement, its non-filing has deprived the jurisdictional sanctioning authority of the opportunity to verify the correctness of the declaration and the order-in-appeal should be revised.

3. A personal hearing was offered on 28/02/2018 which was attended by Sh. Naresh Kumar Tiwari, Assistant Commissioner, representing the applicant, and Ms. Lalitha Krishnamurthy, C.A., representing the respondent. Shri Tiwari produced additional submissions repeating the above stated grounds only and Ms. Krishnamurthy adduced the copy of earlier orders sanctioning rebate of service tax and other relevant judgements. She also pleaded that the order of the Commissioner (Appeals) is just and proper in this case.

4. On examination of the revision application, the order-in-appeal and other relevant records of the case, the Government observes that the main issue to be decided in this case is whether the rebate of service tax can be denied to the applicant for non-filing of declaration with the jurisdictional Assistant/Deputy Commissioner prior to export of taxable service. It is not in dispute that the respondent did not file prior declaration. But at the same time it is not in doubt that the taxable service has been exported and various tax paid input services were used in the exported services. It is also noted by the Commissioner (Appeals) in her order that the jurisdictional authorities were fully aware of the export activities of the respondent, the input services used in the exported goods had been verified earlier in reference to rebate claims filed in past and the same were sanctioned despite the declarations had been filed similarly after effecting export of services. Further, when the jurisdictional authorities advised the applicant to file declaration prior to export on estimated basis on 04/04/2011, the respondent has regularly filed declarations prior to export of services. Thus, from the above facts it is evident that earlier the jurisdictional authorities themselves did not consider prior filing of the declaration as mandatory and by sanctioning all earlier claims the

respondent was given a belief that the declaration could be filed even subsequently. Therefore, for non-filing the declaration prior to export of service, the respondent cannot be blamed entirely. Moreover, the objective of notification 12/2005-ST and overall government policy of granting various export incentives is to grant rebate of taxes and not to deny the same on technical and procedural reasons such as non-filing of declaration prior to export of service. The notification 12/2005-ST has been divided into two parts whereby the conditions and limitations, which are essentially to be fulfilled, are stipulated in Para 2 and the procedural part relating to operation of the notification is covered under Para 3 of the said notification. While the fundamental conditions such as export of taxable services, payment of duty and tax on the inputs and the input services and non-availment of CENVAT credit in respect of input and input services are specified in Para 2 under the heading "Conditions and Limitations", filing of declaration has been specified under the heading "Procedure" under Para 3. Thus filing of declaration prior to date of export of taxable service is treated part of procedure under the notification itself and its obvious purpose is that while declaration should facilitate the departmental authorities for smooth implementation of the above notification, it should not be equated with the essential conditions and limitations specified in Para 2 for denial of rebate of tax. Even otherwise also it is rightly observed by Commissioner (Appeals) that it is not always possible for the exporters to give advance information such as quantity and value of the inputs and input services etc. which are to be provided in the declaration by the exporter prior to the date of export of the service and it can be given on estimated basis only prior to export of service which is not of much use. Moreover, the declaration along with all required details has been furnished

by the respondent subsequently with the rebate claims under consideration and no fault has been pointed out with regard to the declared inputs, inputs, service tax, value thereof and rate of duty/tax etc. Above all, the respondent had filed several declarations along with rebate claims in past and the same were sanctioned by the same authority from which it is implied that the use of inputs/input services, their value and rate of tax etc. were already approved. Since the respondent's rebate claim involved in the present proceeding was also filed in respect of the same inputs/input services and the jurisdictional authorities have not pointed out any irregularity with regard to maintainability of the rebate claim, the revenue does not have any legitimate basis for denying the rebate claim merely on the basis of non-filing of declaration prior to export. Considering all these facts and overall structure of the notification, the government does not find any fault in the order of the Commissioner (Appeals).

5. In view of the above discussion, the revision application is rejected.

R. P. Sharma
2-4-18
(R. P. Sharma)

Additional Secretary to the Government of India

The Commissioner of Customs & Central Excise, NOIDA,
C-56/42, Sector-62, NOIDA, Renu Tower, Pin-201307
G.O.I. Order No. 30/18-ST dated 2-4-2018

Copy to:-

1. M/s Innodata India Private Limited, 7th and 8th Floor, C-25, Stellar IT Park, Sector 62, NOIDA-201 309
2. The Commissioner(Appeals) of Customs & Central Excise, NOIDA, C-56/42, Sector-62, NOIDA, Renu Tower, Pin-201307
3. The Assistant Commissioner, Central Excise, Division Noida
4. PA to AS(Revision Application)

✓ 5. Guard File 6. Spare copy.

Nirmala Devi
2/4/18
NIRMALA DEVI(Section officer)
(Revision Application unit)