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SPEED POST



F.No. 199/04/ST/2015-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...4/4/18

Order No. 35/2018-ST dated 4-4-2018 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 Central Act, 1944 read with Section 83 of Finance Act, 1994.

Subject : Revision Application filed, under section 35EE of the Central Act, 1944 read with Section 83 of Finance Act, 1994 against the Order-in-Appeal No. 119/ST/ALLD/2015 dated 22.07.2015, passed by the Commissioner of Service Tax, Kanpur.

Applicant : Commissioner of Service Tax, Kanpur

Respondent : M/s Rotomac Global Pvt. Ltd.

ORDER

A Revision Application No. 199/04/ST/2015-R.A. dated 09.11.2015 is filed by the Commissioner, Customs and Central Excise, Kanpur (hereinafter referred to as the applicant) against the Order-in-Appeal No. 119/ST/ALLD/2015 dated 22.07.2015, passed by the Commissioner (Appeals), Customs and Central Excise, Allahabad, whereby the revenue's appeal has been rejected.

2. The brief facts leading to the present proceeding are that the respondent M/s Rotomac Global Pvt. Ltd., Kanpur, filed a rebate claim of Rs. 36,49,196/- under notification no. 41/2012-ST dated 29.06.2012 for duty paid in respect of taxable services used in the export of goods. Out of the total amount of claim, the original adjudicating authority rejected the claim of Rs. 10,49,504/- for the following reasons.

- i) An amount of Rs. 88,189/- was not admissible as per letter no. 341/15/2007-TRU dated 17.04.2008 as the amount charged by the service provider was not bifurcated including other charges.
- ii) Service Tax of Rs. 2,96,640/- claimed on debit note without Service Tax registration no. was not admissible.
- iii) Amounts of Rs. 6,31,750/- and Rs. 32,915/- were not admissible as the difference between the amount of rebate available under the procedure in para 2 and para 3 of notification 41/12-ST was less than 20% of rebate available under the procedure specified in para 2.

Being aggrieved by the above order, the applicant and the respondent filed appeal with Commissioner (Appeals). However, while the respondent's appeal was allowed, the revenue's appeal was rejected vide the above referred Order. The revenue has filed this Revision Application against the O-I-A with regard to the rebate of Rs. 52,839/- and Rs. 8,81,99.49/- claimed by the respondent under para 3 of

Notification No. 41/2012 Service Tax on the ground that para 1(C) of notification no. 41/2012-ST dated 26.02.2012 provides that rebate cannot be claimed in terms of procedure under para 3 of the notification wherever the difference between the rebate amount under para 2 and para 3 is less than 20% of rebate available under para 2.

3. Personal hearings were offered on 25.01.2018 and 19.03.2018. But no one appeared for the personal hearing for the applicant and the respondent. Further no request for any other date of hearing is also received from which it is implied that they are not interested in availing personal hearing. Hence the case is taken up for decision on the basis of available case records.

4. On examination of the Revision Application it is observed by the Government that the Revision Application relate to the rebate claim of Rs. 1,41,038.49/- and its approval by the Commissioner (Appeals) is questioned by the applicant on the ground that the difference between the amount of rebate available under the procedure under para 2 and para 3 of notification 41/12-ST is less than 20% of the rebate available under the procedure specified in para 2. This ground had been agitated before the Commissioner (Appeals) also, but he overruled it for the reason that for computing the difference the Department has only considered the amount of rebate available in terms of para 2 only and not para 3. Now in the Revision Application under the heading "Grounds of Application" it has been claimed that the respondent had claimed aggregate rebate of Rs. 1,41,038.49/- under para 3, not the zero amount as stated in the order in appeal and rebate of Rs. 5,12,239/- was admissible under para 2 of the notification 41/2012 Service Tax. Further it is claimed by the applicant that the Commissioner (Appeals) has missed this figure and has merely considered the illustrative chart forming part of the departmental appeal. The Government has found that these facts and the figures of the above mentioned rebate amounts have not been controverted by the applicant also by filing a written reply or during the personal hearing. Therefore, considering the above amounts of the rebate claims it is evident that the rebate of Service Tax claimed under para 3 is

far less than the amount of the rebate claim admissible under para 2 and thus the essential condition that the difference between the rebate claim under para 3 and under para 2 should be more than 20% of the rebate amount admissible under para 2 is not fulfilled in this case at all. As a result the rebate claim of Rs. 1,41,038.49/- is not admissible to the respondent under para 3 of the notification 41/2012 and the Commissioner(Appeals) has committed an error by not considering the above essential condition.

5. Accordingly, the Order-in-Appeal is modified and the Revision Application is allowed to the above extent.

(R. P. Sharma)
4.4.2018

(R. P. Sharma)

Additional Secretary to the Government of India

The Commissioner of Customs,
Central Excise & Service Tax,
117/7, Sarvodaya Nagar,
Kanpur-208005

Order No. 35/2018-ST dated 4-4-2018

Copy to:

1. M/s Rotomac Global Pvt. Ltd., 201, City Centre, 63/2, The Mall, Kanpur.
2. The Commissioner (Appeals), Customs, Central Excise & Service Tax, 38. Mahatma Gandhi Marg, Civil Lines, Allahabad-211 001.
3. Assistant Commissioner, Central Excise Division-III, 117/ Sarvodaya Nagar, Kanpur-208005.
4. PA to AS(RA)
5. Guard File.

ATTESTED

(Debjit Banerjee)
4.4.2018

(Debjit Banerjee)

Sr. Technical Officer (R. A. Unit)