

REGISTERED  
SPEED POST



F.No. 196/02/ST/2018-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110066

Date of Issue. 12/11/18.

Order No. 71/2018 --ST dated 10-12-18 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.NOI-EXCUS-001-APP-1613-17-18 dated 12.01.2018, passed by the Commissioner of Customs & Central Excise (Appeals), NOIDA

Applicant : M/s. Adobe Systems India P.Ltd., NOIDA

Respondent : Commissioner of Service Tax, NOIDA-I

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**ORDER**

A revision application No.196/02/ST/18-R.A. dated 03.5.2018 has been filed by M/s. Adobe Systems India P.Ltd., NOIDA (hereinafter referred to as the applicant) against the Order-in-Appeal No.NOI-EXCUS-001-APP-1613-17-18 dated 12.01.2018, passed by the Commissioner of Customs & Central Excise (Appeals), NOIDA, whereby the appeal of the applicant filed against the Order of the jurisdictional Deputy Commissioner has been partially allowed.

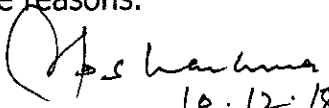
2. The revision application is filed mainly on the ground that the OIA passed by the Commissioner (Appeals) is against law and their refund claim has been wrongly rejected.

3. A personal hearing was offered in this case on 17.9.18. Shri Ashish Vaish, C.A., appeared on behalf of the applicant and reiterated their revision application. He also placed reliance on CESTAT's Orders in the case of CCE Vs. Meghmani Organics, 2016(42) STR 81 and in the case of Adobe Systems India Pvt. Ltd. Vs. CCE, Noida, 2015(38) STR 998.

4. On examination of the revision application and the Commissioner (Appeals)'s Order, it is noticed by the Government that the revision application filed on 03.5.2018 is accompanied by a fee of Rs.200/- only as per challan dated 14.4.18. Whereas as per Section 35EE of the Central Excise Act, 1944, read with Section 83 of Finance Act, 1994, a revision application is to be accompanied by a fee of Rs.1000/- where the amount of rebate of service tax is more than Rs.1.00 lakh. This requirement of payment of fee is mandatory and no relaxation in this regard can be provided under the aforesaid Section or any other provision. Thus if any application is not accompanied by the specified fee, such application cannot be considered as proper revision application. Since in this case the fee of Rs.200/- has only been paid in place of Rs.1000/-, the aforesaid revision application dated 03.5.18 cannot be considered to have been filed properly by the applicant under above stated provision. Moreover, it is evident in the present

proceeding that the dispute is regarding admissibility of refund of Cenvat Credit under Rule 5 of the CCR, 2004. But under Section 86 of the Finance Act, 1994, read with Section 35(EE) of the Central Excise Act, 1944, the revision application can be filed with the Government only if the Commissioner (Appeals)'s Order involves an issue relating to rebate of service tax on exported goods or service. Since no such issue is involved in this case and admissibility of refund of Cenvat Credit under Rule 5 of Cenvat Credit Rules is entirely different from the subject of rebate of service tax on exported goods or service, the Government is of the view that it does not have jurisdiction to deal with the above referred Commissioner (Appeals)'s Order.

5. Accordingly, the revision application is rejected on the above reasons.

  
10.12.18

(R. P. Sharma)

Additional Secretary to the Government of India

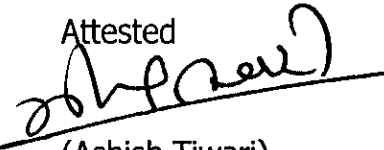
M/s. Adobe Systems India P. Ltd.,  
Plot No.A-05, Sector 132,  
NOIDA

G.O.I. Order No. 71 /18-ST dated 10-12-2018

Copy to:-

1. Commissioner of Service Tax, Noida-1, C-56/42, Sector-62, Noida-201307
2. Commissioner of Customs & Central Excise (Appeals), NOIDA, C-56/42, Renu Tower, Sector-62, Noida-201307
3. The Deputy Commissioner of Service Tax, Division-II, Noida
4. PA to AS(Revision Application)
5. Guard File
6. Spare Copy.

Attested



(Ashish Tiwari)

Assistant Commissioner