

SPEED POST



F. No. 196/05/SZ/2022-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.. 23/01/23

Order No. 02/23-ST dated 23-01-2023 of the Government of India, passed by Shri 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 Orders-in-Appeal Nos. 143-145/2022 dated 12.04.2022, passed by the Commissioner Central Tax (Appeals-I), Bengaluru.

Applicant : M/s ExxonMobil Services & Technology Pvt. Ltd., Bengaluru.

Respondent : The Pr. Commissioner of CGST & Central Excise, Bengaluru East, Bengaluru.

ORDER

A Revision Application No. 194/05/SZ/2022-RA dated 08.07.2022 has been filed by M/s ExxonMobil Services & Technology Pvt. Ltd., Bengaluru (hereinafter referred to as the Applicant) against the Orders-in-Appeal Nos. 143-145/2022 dated 12.04.2022, passed by the Commissioner of Central Tax (Appeals-I), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected appeals filed by the Applicants herein, inter-alia, against the Order-in-Original No. 75-77/2020 (Refund) dated 31.01.2020, passed by the Assistant Commissioner of Central Tax Division-3, Bengaluru East.

2. Brief facts of the case are that, during the Service Tax regime, the Applicants herein were holders of Centralized Service Tax registration for providing taxable services, namely, Business Support Services (BSS), which they are said to have been exporting. The Applicants filed 03 rebate claims for the period April 2016 - June 2016, October 2016 - December 2016 and January 2017 - March 2017, in terms of Rules 6A of the Service Tax Rules, 1994 read with Notification No. 39/2012-ST dated 20.06.2012. The rebate claims, totally amounting to Rs. 51,26,417/-, were rejected by the original authority on the grounds that the Applicants herein were actually providing 'Intermediary Services' and as, in such a case, the place of provision is the location of the service provider, there were no exports. Certain documents, required to substantiate the claims, are also said to have not been presented. The appeals filed by the Applicants herein, against the said Order-in-Original Nos. 75-77/2020 (Refund) dated 30.01.2020, were clubbed by the Commissioner (Appeals) with the appeals filed, by the Applicants herein, against the Order-in-Original No. 197/2020 (Refund) dated 18.05.2020 and Order-in-Original No. 72-74/2020 (Refund) dated 31.01.2020, passed by the original authority whereby refund claims filed by the Applicants herein in terms of Rues 5 of the CENVAT credit Rules, 2004 read with Notification No. 27/2012-CE(NT) dated 18.06.2012 were rejected. The Commissioner (Appeals) has, by a common order dated 12.04.2022, rejected all the appeals

including, inter-alia, in respect of the rebate claims rejected by the original authority vide Order-in-Original No. 75-77/2020 (Refund) dated 31.01.2020.

3. The revision application has been filed, mainly, on the grounds that the impugned order is issued without jurisdiction as it was not open for the department to seek re-classification of the activities performed by the Applicants, during the processing of their rebate applications; that the impugned order has rejected the rebate claim without show cause notice thereby violating principles of natural justice; that impugned rejection is against the principles of consistency and earlier opinion of the department; that the impugned order is pre-meditated and passed without appreciation of applicable case laws; that the department has not appreciated the scope of work performed by the Applicants, which is that of sub-contractors and not that of intermediary; that the Applicants do not qualify the definition of the term 'Intermediary', as per clarification issued by the Board vide Circular No. 159/15/2021-GST dated 20.09.2021; that the Applicants had duly submitted all required documents; and that the substantive right cannot be denied for procedural lapses.

4. Personal hearing, in virtual mode, was held on 23.01.2023. Sh. Vinayak Mathur, Advocate appeared for the Applicants and requested that the compilation emailed on 20.01.2023 may be taken on record. He reiterated the contents of the RA with the assistance of case laws cited in the compilation. Sh. Mathur highlighted that:

- (i) The show cause notice was issued on the grounds that requisite documents were not submitted. However, the original authority has in excess of notice proceeded to decide the issue of 'intermediary' in respect whereof notice was issued. Hence, the proceedings cannot be sustained for violation of principles of natural justice.
- (ii) The Applicant provides services as a sub-contractor and is not an intermediary, as per clarification issued by the Board vide Circular No. 159/15/2021-GST dated 20.09.2021 (Para 3.5, Illustration 4).

No one attended the hearing on behalf of the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the Respondent department has nothing to add in the matter.

5.1 The Government has carefully examined the matter. The Commissioner (Appeals) has rejected the appeals filed by the Applicants herein on following three grounds:

- (i) The appellants i.e., Applicants herein have simultaneously filed claims for rebate under Rule 6A Service Tax Rules, 1994 and refund under Rule 5 of the CENVAT credit Rules, 2004, for the same period, which is not admissible;
- (ii) The services provided by the Applicants herein are in the nature of 'Intermediary Services'.
- (iii) The Applicants herein had not produced essential documents such as Bank Statement, the copies of challans/ST-3 returns etc. to substantiate their claims.

5.2 The present revision application is restricted to the rejection of rebate claims filed under Rule 6A of the Service Tax Rules, 1994 read with Notification No. 39/2012-ST dated 20.06.2012. Therefore, the Government confines itself to examining the impugned Order-in-Appeal with reference to the rejection of the rebate claims only. At the outset, it is observed that while Commissioner (Appeals) has rejected the appeal filed by the Applicants herein on three grounds as brought out hereinabove, the revision application is silent about ground (i) of rejection i.e., rebate claims under Rule 6A of the Service Tax Rules, 1994 and refund claims under Rule 5 of the CENVAT credit Rules, 2004 cannot be filed for the same period.

5.3. Rules 5 of the CENVAT credit Rules is reproduced hereunder:

"5. Refund of CENVAT credit.- Where any input or input services is used in the final products which is cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate produces cleared for export, or used in providing output service which is exported,

the CENVAT credit in respect of the input or input service so used shall be allowed to be utilized by the manufacturer or provider of output service towards payment of,

- (i) duty of excise on any final products cleared for home consumption or for export on payment of duty; or
- (ii) service tax on output service,

And where for any reason such adjustment is not possible, the manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification:

Provided that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995, or claims a rebate of duty under the Central Excise Rules, 2002, in respect of such duty.

Explanation: For the purpose of this rule, the words 'output service which are exported' means any output service in respect of which payment is received in India in convertible foreign exchange and the same is not repatriated from, or sent outside, India."

Thus, as per Rule 5 *ibid*, an exporter is eligible to claim refund of CENVAT credit availed in respect of service tax or duty paid on any input services used in the final products, which are cleared for export under bond/LUT.

5.3 The Rules 6A of the Service Tax Rules, 1994 reads as under:

"6A. **Export of services.**- (1) The provision of any service provided or agreed to be provided shall be treated as export of service when,-

- (a) the provider of service is located in the taxable territory,
- (b) the recipient of service located outside India,
- (c) the service is not a service specified in the section 66D of the Act,
- (d) the place of provision of the service is outside India,
- (e) the payment for such service has been received by the provider of service in convertible foreign exchange, and

- (f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of Section 65B of the Act
- (2) Where any service is exported, the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may specified, by the Central Government, by notification."

5.3.2 It is to be observed that as per sub-rule (2) of Rules 6A *ibid*, rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing the services which are exported may be granted, subject to such safeguards, conditions and limitations, as may be specified by the Central Government by notification. The Notification No. 39/2012-ST has been issued in pursuance of said sub-rule (2). Para 2 of the said notification contains the 'conditions and limitations' for grant of rebate. As per clause (e) of the said para 2, one of the conditions for grant of rebate is that "no CENVAT credit has been availed of on inputs and input services on which rebate has been claimed". Thus, it is the condition for grant of rebate under Rule 6A *ibid* that the CENVAT credit should not have been availed on inputs and inputs services in respect of which rebate is claimed.

5.4 In the present case, as brought out hereinabove, the Applicants have also applied for refund of CENVAT credit availed in respect of service tax/duty paid on inputs or input services used in the final products which are cleared for export. Thus, it is evident that the Applicants herein have availed CENVAT credit of the tax/duty paid in respect of inputs/input services used in export of services exported, while simultaneously claiming rebate of the same tax/duty paid. Accordingly, as per condition 2 (e) of the notification no. 39/2012-ST, the rebate could not have been granted.

5.5 As already brought out hereinabove, the revision application is conspicuously silent on this issue and the findings of Commissioner (Appeals) have not been

factually and/or legally controverted. Therefore, the Government finds that the impugned Order-in-Appeal in so far as it relates to rejection of rebate claims availed under Rule 6A of the Service Tax Rules, 1994 has to be upheld on this ground itself without traversing the merits of the other grounds mentioned by the Commissioner (Appeals).

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



(Sandeep Prakash)

Additional Secretary to the Government of India

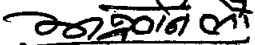
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G.O.I. Order No. 02/23-ST dated 23-01-2023

Copy to: -

1. The Pr. Commissioner of CGST & Central Excise, Bengaluru East, TTMC/BMTC Bus Stand Complex, Hall Airport Road, Domlur, Bengaluru-560071.
2. The Commissioner of Central Tax (Appeals-I), Traffic & Transit Management, BMTC Building, No. 9 4th Floor, Above BMTC Bus Stand, Domlur, Bengaluru-560071.
3. M/s Lumiere Law Partners, 3rd Floor, Tower-2, India Glycols Building, Plot No. 2B, Sector-126, Gautam Budh Naragar, Noida, UP-201304.
4. PA to AS (Revision Application).
5. Spare Copy.
6. Guard File.
7. Notice Board.

ATTESTED


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