

SPEED POST



F. No. 196/11/ST/2021—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 13/1/22

Order No. 04 /22-ST dated 12-01 —2022 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 Order-in-Appeal No. NOI-EXCUS-001-APP-487-21-22 dated 27.07.2021 passed by the Commissioner (Appeals), CGST, Noida.

Applicant : M/s. Adobe Systems India Pvt. Ltd., Noida.

Respondent : The Commissioner of CGST, Noida.

ORDER

A Revision Application No. 196/11/ST/2021-R.A. dated 22.10.2021 has been filed by M/s. Adobe Systems India Pvt. Ltd., Noida (hereinafter referred to as the Applicant) against the Order-in-Appeal No. NOI-EXCUS-001-APP-487-21-22 dated 27.07.2021, passed by the Commissioner (Appeals), CGST, Noida. The Commissioner (Appeals) has, on an appeal filed by the department, set aside the Order-in-Original No. 43/R/AC/CGST/D-I/2020-21 dated 24.07.2020 passed by the Assistant Commissioner, CGST Division-I, Noida.

2. Briefly stated, the Applicants herein were registered with Service Tax, for providing various taxable services to their clients abroad and filed a rebate claim of Rs. 23,95,993/- of Swachh Bharat Cess (SBC) paid on the input services used in providing taxable services exported, during the period April 2017 to June 2017, in terms of notification no. 39/2012-ST dated 20.06.2012. The original authority, vide the aforesaid Order-in-Original dated 24.07.2020, sanctioned the rebate of Rs. 22,16,582/-. Aggrieved by the sanction of rebate, the department filed an appeal before the Commissioner (Appeals), which has been allowed, vide the impugned Order-in-Appeal.

3. The revision application has been filed, mainly, on the grounds that filing of declaration in terms of para 3.1 of the Notification No. 39/2012-ST is only procedural in nature; that substantive benefit cannot be denied for procedural non-compliance; and that the Government in their own cases had earlier allowed the rebate vide the GOI Order No. 34/2018-CX dated 02.04.2018 and Order No. 28/2021-ST dated 04.08.2021.

4. Personal hearing was held, in virtual mode, on 31.12.2021. Sh. Ashish Vaish, CA appeared for the Applicant and reiterated the contents of the RA. After proceeding with the matter for sometime, Sh. Vaish requested for opportunity to make additional submissions by 07.01.2022. Sh. Narsingh Bahadur, AC supported the Order of Commissioner (Appeals). The matter was again heard, in virtual mode, on 12.01.2022. Sh. Ashish Vaish, CA appeared for the Applicants and submitted that

pursuant to the PH held on 31.12.2021, Additional Submissions have been filed on 11.01.2022, which may be taken on record. Sh. Vaish reiterated the submissions made in the RA and the Additional Submissions dated 11.01.2022. Sh. Narsingh Bahadur, AC appeared for the Respondent department and requested that Additional Submissions dated 10.01.2022 filed by the department may be taken on record. He reiterated the contents thereof.

5.1 The Government has carefully examined the matter. The present case relates to rebate of SBC paid on input services used in providing services exported, in terms of rule 6A of Service Tax Rules, 1994 read with notification no. 39/2012-ST dated 20.06.2012. The provisions of the said rule 6A and the notification no. 39/2012-ST, as relevant to the present dispute, are extracted below:

6A. Export of services:

"(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 services and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification."

Notification No. 39/2012-ST:

"3.1 Filing of Declaration.- The provider of service to be exported shall, prior to date of export of service, file a declaration with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, specifying the service intended to be exported with,-

- (a) description, quantity, value, rate of duty and the amount of duty payable on inputs actually required to be used in providing service to be exported;*
- (b) description, value and the amount of service tax and cess payable on input services actually required to be used in providing service to be exported.*

3.2 Verification of declaration.- The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall verify the correctness of the declaration filed prior to such export of service, if necessary, by calling for any relevant information or samples of inputs and if after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is satisfied that there is no likelihood of evasion of duty, or as the case may be, service tax and cess, he may accept the declaration."

Thus, in terms of rule 6A, the rebate of service tax, paid on providing services that are exported shall be allowed subject to such "safeguards, conditions and limitations", as may be specified. Further, on a plain reading, the provisions of para-3.1 of the notification no. 39/2012-ST requiring filing of a prior declaration, i.e., a declaration prior to the date of export of service, read with para- 3.2, are in the nature of safeguards in as much as filing of the prior declaration enables the department to cause necessary verification, so as to satisfy itself that there is no likelihood of evasion of duty, service tax and cess, as the case may be. In the present case, therefore, by not filing the prior declaration, the Applicants have circumvented the safeguards subject to which the rebate is to be allowed in terms of rule 6A. As the sanction of rebate is subject to observance of the safeguards in para 3.1 and as, in the present case, these safeguards have not been observed, the rebate is not admissible.

5.2 To put it differently, the provisions of para 3.1, read with those of para 3.2, are not merely in the nature of 'procedure' but these are in the substantive nature of 'safeguards'. Merely because, these 'safeguards' have been listed under head note 'procedure', cannot impart them the tenor of procedure simpliciter. Hence, the contention of the Applicant herein that the subject case is only a case of procedural infraction is also not tenable.

5.3 The Government further observes that a Constitution Bench of Hon'ble Supreme Court has, in the case of *Commissioner of Customs (Import), Mumbai vs. Dilip Kumar & Company* {2018 (361) ELT 577 (SC)}, held that:

"52. . . . (1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

In the present case, the Applicants are clearly in default of the safeguards specified under notification no. 39/2012-ST and have, therefore, failed to discharge the burden of proving applicability of the said notification to their case, as required in terms of *Dilip Kumar & Company*. It is also to be observed that the contention that

the subject safeguards at para 3.1 (and consequently at para 3.2) are incapable of compliance does not hold water for the reason that the burden of proving applicability consequent to the compliance with the requirements of notification is on the Applicant herein.

5.4 The Applicants have relied upon Government's earlier Orders dated 02.04.2018 and dated 04.08.2021 in their own case in support of their present case. The Government, however, observes that the aforesaid Orders have been passed in the cases relating to rebate, under rule 5 of the Export of Services Rules, 2005 read with notification no. 12/2005-ST dated 19.04.2005. The rule 5 ibid reads as under:

"5. Rebate of service tax - Where any taxable service is exported, the Central Government may, by notification, grant rebate of service tax paid on such taxable service or service tax or duty paid on input services or inputs, as the case may be, used in providing such taxable service and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification."

It is to be observed that as against rule 6A of the Service Tax Rules, 1994, where the grant of rebate is subject to "safeguards, conditions and limitations", as may be specified, the rule 5 of the Export of Service Rules, 2005 made the rebate subject to only "conditions or limitations". In other words, the difference between the provisions of rule 5 of the Export of Services Rules and those of rule 6A of Service Tax Rules, is that in terms of rule 6A, the rebate, in addition to 'conditions' and 'limitations', is also subject to the 'safeguards'.

5.5 Reliance has also been placed on the judgment of Hon'ble Delhi High Court in the case of *Wipro Ltd. vs. Union of India* {2013 (29) STR 545}. The Government observes that the said judgment has also been rendered by the Hon'ble High Court in respect of rebate, under rule 5 of the Export of Services Rules, 2005 read with notification no. 12/2005-ST dated 19.04.2005. Other case laws relied upon are not applicable in the facts of the present case and in view of the discussions above.

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


(Sandeep Prakash)

Additional Secretary to the Government of India


M/s Adobe Systems Pvt. Ltd., Noida,
Plot No. A-5, Sector-132, Noida-201304.

G.O.I. Order No. OL/22-ST dated 12-1-2022

Copy to:-

1. The Commissioner, CGST, Noida, C-56/42, Sector-62, Noida – 201301.
2. The Commissioner (Appeals), CGST, Noida, 4th Floor, C-56/42, Renu Tower, Sector-62, Noida – 201301.
3. Sh. Ashish Vaish, Chartered Accountant, 146, 4th Floor, Tower-A, The Corenthum, Sector-62, Noida – 201301.
4. PA to AS (Revision Application).
5. Spare Copy.
6. Guard File.

ATTESTED


अशिश तिवारी / ASHISH TIWARI
सहायक आयुक्त / Assistant Commissioner
केन्द्रीय ~~वस्तु~~ एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क
CGST, Central Exci. & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
नई दिल्ली / New Delhi