

SPEED POST



F. Nos. 196/06/ST/2021—R.A.
196/07/ST/2021—R.A.
196/08/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 25/1/22

Order No. 06-08/22-ST dated 25-01-2022 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 Orders-in-Appeal, bearing nos. APPL./PKL/COMMR/39/2020-21 dated 18.09.2020, APPL./PKL/COMMR/40/2020-21 dated 18.09.2020 & APPL./PKL/COMMR/41/2020-21 dated 18.09.2020 passed by the Commissioner (Appeals), CGST, Panchkula.

Applicant : M/s. Abhitex International, Panipat.

Respondent : The Commissioner of CGST, Panchkula.

ORDER

Three revision applications, bearing nos. 196/06/ST/2021—R.A. dated 04.05.2021, 196/07/ST/2021—R.A. dated 04.05.2021 & 196/08/ST/2021—R.A. dated 10.05.2021 have been filed by M/s. Abhitex International, Panipat (hereinafter referred to as the Applicant) against the Orders-in-Appeal Nos. APPL./PKL/COMMR/39/2020-21, APPL./PKL/COMMR/40/2020-21 & APPL./PKL/COMMR/41/2020-21, all dated 18.09.2020, passed by the Commissioner (Appeals), CGST, Panchkula.

2. Briefly stated, the Applicants were registered under Service Tax as service provider under the category of renting of immovable property services. They filed a rebate claim of Service Tax before the Assistant Commissioner, Panipat Division in terms of Notification No. 41/2012-ST dated 29.06.2012. The claims filed for the quarters 01.10.2016-31.12.2016, 01.01.2017-31.03.2017 & 01.04.2017-30.06.2017 were decided by the Assistant Commissioner, CGST, Panipat Division, vide separate Orders dated 02.01.2018, 23.04.2018 & 10.05.2018, respectively, vide which the respective rebate claims were only partially allowed. On the appeals filed by the Applicant herein, the Commissioner (Appeals), vide separate Orders dated 13.09.2018, remanded the matter to the original authority for disposal afresh by way of speaking order after hearing the party. In the de-novo proceedings, the bulk of the originally rejected claims were once again rejected. The details are as under:

SI. No	RA No.	Rebate Originally Claimed	Rebate Originally sanctioned		Rebate claimed at de-novo stage (Rs.)	Rebate allowed at de-novo stage		OIA No. & Date
			Amount (Rs.)	OIO No. & Date		Amount Rs.	OIO No. & Date	
1.	196/06/ST/2021-R.A.	27,56,700/- (01.01.2017-31.03.2017)	21,42,484/-	06-R/AC/CGST/PNPT/2018-19 dated 23.04.2018	6,14,216/-	16,075/-	12-R/AC/CGST/ST/PNP/2020-21 dated 04.05.2020	APPL./PKL/COMMR/39/2020-21 dated 18.09.2020
2.	196/07/ST/2021-R.A.	21,97,724/- (01.04.2017-30.06.2017)	17,50,030/-	22-R/AC/CGST/PNPT/2017-18 dated 10.05.2018	4,47,694/-	4,597/-	13-R/AC/CGST/ST/PNP/2020-21 dated 04.05.2020	APPL./PKL/COMMR/40/2020-21 dated 18.09.2020
3.	196/08/ST/2021-R.A.	21,77,582/- (01.10.2016-31.12.2016)	16,79,732/-	228-R/AC/CGST/PNPT/2017-18 dated 02.01.2018	54,253/-	54,253/-	14-R/AC/CGST/ST/PNP/2020-21 dated 05.05.2020	APPL./PKL/COMMR/41/2020-21 dated 18.09.2020

3. The revision applications have been filed, mainly, on the grounds that denial of rebate claims is beyond the legal parameter; that the conditions of the exemption

notification have been incorrectly interpreted; that there is a discrimination between similarly placed assesseees; that broad linkage has been established between the service tax invoice and the export documents; and, therefore, rebate is admissible.

4. Personal hearing in the matter was held on 12.01.2022, in virtual mode. Sh. Sagar Verma, Advocate made submissions for the Applicants and requested that Written Submissions dated 11.01.2022 may be taken on record. Sh. Maninder Kumar, DC requested that a copy of these Written Submissions may be shared with the department for them to effectively counter the submissions made. Applicant was, accordingly, directed to share the Written Submissions dated 11.01.2022 on email with the department. The matter was again heard, in virtual mode, on 24.01.2022. Sh. Sagar Verma, Advocate appeared for the Applicant and reiterated the contents of the RA as well as the additional submissions dated 11.01.2022. Sh. Maninder Kumar, DC appeared for the Respondent department and requested that the submissions made in letter dated 21.01.2022 may be taken on record. He also supported the impugned OIA.

5. In the Additional Submissions dated 11.01.2022 filed by the Applicant, it has been stated that the principles of natural justice have been violated as no show cause notice was issued neither the personal hearing was granted by the original authority; and that the order had been passed without giving any details of the Shipping Bills/Bill of Exports against which the rebate claims were rejected. In the Written Submissions filed by the department, vide letter dated 21.01.2022, it has been stated that the Applicants were offered personal hearing, vide letters dated 04.03.2019 and 10.05.2019, but they did not avail of the opportunities. Therefore, there was no violation of the principles of natural justice.

6. The revision applications have been filed with a delay as the Applicants had originally approached CESTAT in appeal against the Orders-in-Appeal impugned herein. However, the CESTAT, Chandigarh, vide Final Order Nos. 60805-60807/2021 dated 07.04.2021, has found the appeals to be non-maintainable. Delay caused due to pursuing remedy in a wrong forum is condoned.

7. The Government has carefully examined the matter. The Applicants have raised the preliminary issue of contravention of principles of natural justice by the original authority as neither a show cause notice was issued nor personal hearing was granted before rejecting the claims. It is observed from the Orders of the original authority that the Applicants had apparently vide separate letters dated 04.05.2020 admitted rejection of the amounts (which were finally rejected by the original authority) and had also waived the personal hearing. However, the Applicants have in Written Submissions dated 11.01.2022 denied having addressed

any letters dated 04.05.2020 to the original authority. In its response dated 21.01.2022, the department has also not placed on record the copies of these letters dated 04.05.2020 and only the copies of letters dated 04.03.2019 and 10.05.2019 have been placed on record wherein the department has sought to ascertain from the Applicants herein whether they wished to be heard in person. No reply of the Applicants waiving the personal hearing has been placed on record. Therefore, it is apparent that the original authority has proceeded to decide the case de-novo without hearing the party thereby contravening the principles of natural justice as well as the express directions of the Commissioner (Appeals) to this effect. As regards the rejection of claims without issue of show cause notice, the Government observes that the reasons for rejection were brought out in the first set of orders issued by the original authority. Further, even in the remand proceedings, deficiency memos were issued. Thus, the Applicants were well aware of the grounds on which the department was objecting to their claims. In this view of the matter, there was no need to issue show cause notices in the remand proceedings. It would also be relevant to notice here that in the first round of proceedings, the matter was remanded by the Commissioner (Appeals) to the original authority as the rebate claims had been decided without issue of speaking order. Therefore, it is really unfortunate that in the second round of proceedings also the original authority proceeded to decide the cases without hearing the party, that too in the face of specific directions of the Commissioner (Appeals) to do so.

8. In view of the above, the revisions applications are allowed by way of remand to the original authority with a direction to decide the cases afresh after following the principles of natural justice.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Abhitex International,
Plot No. 3 & 4, Sector – 29,
HUDA, Part-II, Panipat – 132103.

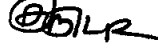
G.O.I. Order No. 06-08/22-ST dated 15-01-2022

Copy to:-

1. The Commissioner of CGST, Panchkula, S.C.O. No. 407-408, Sector – 8, Panchkula (Haryana) – 134109.
2. The Commissioner (Appeals), CGST, S.C.O. No. 407-408, Sector – 8, Panchkula (Haryana) – 134109.

3. Sh. Sagar Verma, Advocate, 895, Sector – 12, HUDA, Near Mother Teresa, Panipat (Haryana) – 132103.
4. PA to AS (Revision Application).
5. Spare Copy.
6. Guard File.

ATTESTED



(लक्ष्मी राघवन)
(Lakshmi Raghavan)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
New Delhi