

SPEED POST



F.No. 199/01-03/ST/2020-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...31/01/22...

Order No. 15-17/2021-ST dated 31-01-2021 of the Government of India, passed by **Sh. 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. CHD-EXCUS-001-APP-182-184-2019-20 dated 27.11.2019 passed by the Commissioner (Appeals), CGST, Chandigarh.

Applicants : Pr. Commissioner of CGST, Chandigarh.

Respondent : M/s Winshuttle Software (India) Pvt. Ltd, Chandigarh.

ORDER

Three revision applications bearing nos. 196/01-03/ST/2020-R.A., all dated 06.03.2020, have been filed by the Pr. Commissioner of CGST, Chandigarh (hereinafter referred to as the Applicant) against the Order-in-Appeal nos. CHD-EXCUS-001-APP-182-184-2019-20 dated 27.11.2019 passed by the Commissioner (Appeals), CGST, Chandigarh, wherein the appeals filed by M/s Winshuttle Software (India) Pvt. Ltd, Chandigarh (hereinafter referred to as the Respondents) against Orders-in-Original nos. 19/AC/R/ST/CHD/18, 20/AC/R/ST/CHD/18 and 21/AC/R/ST/CHD/18, all dated 12.10.2018, passed by Assistant Commissioner, CGST, Chandigarh, have been allowed.

2. Brief facts of the case are that the Respondents were engaged in providing 'Information Technology Software Services' and had exported services to USA for which they were availing credit of input services of Telecom, Outdoor Catering, Management, Maintenance or Repair, Rent-a-Cab, Renting of Immovable Property, Manpower Recruitment, Management Consultant, Courier, Chartered Accountant and IT etc. They filed rebate claims of service tax paid on input services used for export of services exported by them under Rule 6A of the Service Tax Rules, 1994 read with Notification no. 39/2012-ST dated 20.06.2012 and Section 11B of the Central Excise Act, 1944 (as made applicable to service tax matters vide Section 83 of the Finance Act, 1994). The rebate claims pertaining to service tax credit on the services relating to invoices issued in the name of their employees for their personal use, Outdoor Catering etc. were rejected by the original authority, vide the OsIO dated 12.10.2018, on the following grounds:

- (i) Mobile connections were in the personal names of the employees and not in the name of the company.
- (ii) Outdoor catering had no relation with output services.

(iii) An invoice did not pertain to the period for which refund was claimed.

Aggrieved, the Respondents filed appeals against the said Orders-in-Original, which were allowed vide the impugned Order-in-Appeal dated 27.11.2019.

3. Instant revision applications have been filed on the ground that personal use of mobile phones by the employees of the Respondents cannot be ruled out; that CBIC Circular No. 120/01/2010-ST dated 19.01.2011, relied upon by the Commissioner (Appeals), has been issued with respect to BPOs/Call centres running 24X7 whereas the services in dispute are 'Information Technology Software Services'; and that reliance on the CESTAT's Final Order No. A/1670-1671/2011-WZBIAHD in the case of Muscat Polymers Pvt. Ltd. Vs Commissioner of CE, Rajkot was not right as the matter pertained to rebate and was not in the jurisdiction of CESTAT. Hence, the OIA should be set aside. A written reply dated 05.08.2020 has been filed by the Respondent.

4. Personal hearing was held on 31.01.2022, in virtual mode. Sh. Mankiran Singh, DC, appeared for the Applicant department and reiterated the contents of the RA. Sh. Sumit Jindal, Chartered Accountant, appeared for the Applicants and reiterated the contents of the Written Reply dated 05.08.2020. Upon being asked, Sh. Jindal stated that the GOI order No. 14/2021-CX dated 07.06.2021, in their own case, has not been challenged by them.

5.1 The Government has carefully examined the matter. It is observed that two issues involved herein, i.e., in respect of mobile connections and the outdoor catering services have been decided

earlier, in the Respondents' own case, vide GOI Order No. 14/2021-CX dated 07.06.2021, in the following terms:

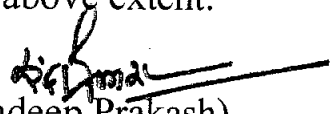
"6.4 As regards the invoices issued in the name of the employees by the telecom companies, it is not shown by the Applicant that the services so availed were used exclusively for the ITS services exported by them. Therefore, input credit in such cases also cannot be claimed as rebate by them.

6.6 The Applicants have cited CBIC Circular no. 120/01/2010-ST dated 19.01.2011 which states that outdoor catering services are eligible for being input services in the cases of BPOs/Call Centres to support their claim in respect of rebate of tax paid on outdoor catering services. The Applicants are not a BPO or Call Centre. Hence, in this case also, no cause for revision is established."

It is admitted that the GOI's Order dated 07.06.2021 has not been challenged by the Respondents. No other grounds are also made out to depart from the view already taken. Hence, the impugned Orders-in-Appeal cannot be sustained to this extent.

5.2 The allowance of rebate claim in respect of Invoice No. G&M/0081/17-18 dated 13.04.2017, in appeal, has not been challenged by the department in the subject revision applications.

6. In view of the foregoing, the revision applications are allowed. The impugned Orders-in-Appeal are modified to the above extent.


(Sandeep Prakash)

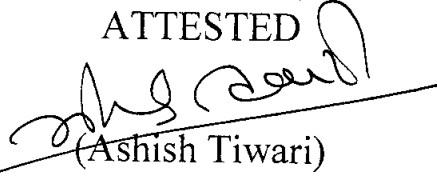
Additional Secretary to the Government of India
The Principal Commissioner, CGST,
Plot No. 19, Central Revenue Building,
Sector-17C, Chandigarh.

G.O.I. Order No. 15-17/22-ST dated 31-01-2022

Copy to: -

1. M/s Winshuttle Software (India) Pvt. Ltd., 1st Floor, Tower F, DLF Building, Technology Park, Chandigarh.
2. Commissioner (Appeals), CGST, Chandigarh.
3. ~~P.S.~~ to A.S. (Revision Application).
4. Guard File.

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (RA)