

SPEED POST



F.No. 198/09/2021-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-110 066

Date of Issue. 28/12/21

Order No. 290/21-Cx dated 28-12-2021 of the Government of India passed by Sh. Sandeep Prakash, Principal Commissioner & Additional Secretary to the Government of India, under Section 35EE of the Central Excise Act, 1944.

- Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 48/KOL-SOUTH/2021 dated 25.02.2021, passed by the Commissioner of CGST & Central Excise, Appeals-I, Kolkata.
- Applicant : The Commissioner of CGST & Central Excise, Kolkata South Commissionerate, Kolkata.
- Respondent : M/s. D. P. Ahuja & Co., Kolkata.

**ORDER**

A Revision Application No. 198/09/2021-RA dated 29.06.2021 has been filed by the Commissioner of CGST & Central Excise, Kolkata South Commissionerate, Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 48/KOL-SOUTH/2021 dated 25.02.2021, passed by the Commissioner (Appeals-I), CGST & Central Excise, Kolkata. The Commissioner (Appeals) has rejected the appeal filed by the department against the Order-in-Original No. R/09/CGST/KOL-SOUTH/BLG/2019-20 dated 10.02.2020, passed by the Assistant Commissioner, CGST & Central Excise, Ballygunge Division, Kolkata, whereby refund amounting to Rs. 14,58,256/- was granted to M/s. D.P Ahuja & Co., Kolkata (hereinafter referred to as the Respondent), in terms of notification no. 27/2012-CE(NT) dated 18.06.2012, as amended.

2. Briefly stated, the respondents are providers of legal services as Patent and Trade Mark Attorneys. They were registered under Service Tax and provided legal services to Indian as well as foreign clients. They filed a refund claim of Rs. 15,40,772/-, on 31.12.2015, to seek refund of unutilized CENVAT Credit availed on input services used in export of output services, which had been accumulated, during quarter October, 2014 to December, 2014, in terms of Rule-5 of the CENVAT Credit Rules, 2004 read with the notification no. 27/2012-CE (NT) dated 18.06.2012. The refund claim, amounting to Rs. 14,58,256/-, was sanctioned by the original authority, vide the aforesaid Order-in-Original dated 10.02.2020. The appeal filed by the department was rejected by the Commissioner (Appeals).

3. The revision application has been filed, mainly, on the grounds that the refund application was not filed within the limitation period of 01 year, as provided under Section 11B of Central Excise Act, 1944; that the time limit of 01 year is a statutory obligation and not merely a procedural infraction; and that, therefore, the Order of Commissioner (Appeals) merits revision. The respondents have filed Written Reply on 20.07.2021, inter-alia, challenging the maintainability of the instant revision application.

4. Personal hearing, in virtual mode, was held on 27.12.2021. Sh. Sujan Shome, Supdt. appeared for the Applicant department and reiterated the contents of the RA. Sh. Shubham Khaitan, CA appeared for the Respondent and reiterated the contents of Written Reply dated 20.07.2021. He highlighted that the case is not covered by the proviso to Section 35B (1) of the Central Excise Act, 1944 read with S. 86 of the Finance Act, 1944. Hence the instant application is not maintainable. A written submission has been received from the Applicant, on 27.12.2021, after the hearing.

5 The Government has carefully examined the matter. The case relates to refund of accumulated CENVAT Credit in terms of Rule-5 of CENVAT Credit Rules, 2004 read with notification no. 27/2012-CE (NT). The department has, in the written submissions dated 27.12.2021, drawn attention to the first proviso to sub-section (1) of Section 86 of the Finance Act, 1994 which reads as *"where an order relating to a service which is exported, has been passed under section 85 and the matter relates to grant of rebate of service tax on input services, or rebate of duty paid on inputs, used in providing such service, such order shall be dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944 (1 of 1944)"* to contend that the instant revision application is maintainable. The Government observes that section 93A of the Finance Act, 1994 is relevant in this regard. Section 93A provides that *"Where any goods or services are exported, the Central Government may grant rebate of service tax paid on taxable services which are used as input services for manufacturing or processing or removal or export of such goods or for providing any taxable services and such rebate shall be subject to such extent and manner as may be prescribed or specified by notification in the Official Gazette."* It is further observed that the rebate of service tax paid on taxable services that are exported is governed by the notification no. 41/2012-ST dated 29.06.2012, issued under 93A ibid whereas the rebate of duty paid on excisable inputs and the service tax and cess paid on input services used in providing services exported is governed by the notification no. 39/2012-ST dated 20.06.2012, issued under rule 6A of the Service Tax Rules, 1994. The subject case, on the other hand, relates to refund of accumulated CENVAT credit, in terms of notification no. 27/2012-CE(NT) issued

under rule 5 of the CENVAT Credit Rules, 2004. Therefore, the instant application is not maintainable under Section 35EE of the Central Excise Act, 1944.

6. In view of the above, the revision application is dismissed as not maintainable with liberty to the Applicant department to approach the appropriate forum, as per law.

  
(Sandeep Prakash)

Additional Secretary to the Government of India

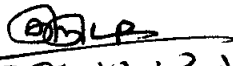
The Commissioner of CGST & Cx,  
Kolkata South Commissionerate,  
GST Bhawan, 3<sup>rd</sup> Floor, 180, Shanti Pally,  
R.B. Connector, Kolkata- 700107.

Order No. 290/21-Cx dated 28-12-2021

Copy to:

1. M/s D.P Ahuja & Co., 14/2, Palam Avenue, Kolkata- 700019.
2. The Commissioner, CX. Kolkata Appeal-I Commissionerate GST Bhawan, 180, Shanti pally, Rajdanga main Road, Kolkata- 700107.
3. PA to AS(RA).
4. Guard File.
5. Spare Copy.

ATTESTED

  
28.12.21  
(लक्ष्मी राघवन)  
(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi