

SPEED POST



F. No. 199/05/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...24/12/21

Order No. 34/21 — ST dated 24-12-21 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. 228/ST/CGST-APPEAL-GURUGRAM/SG/2019-20 dated 19.03.2020 passed by the Commissioner (Appeals), CGST & Central Excise, Gurugram.

Applicant : The Commissioner of CGST & Central Excise, Gurugram.

Respondent : M/s Xchanging Technology Services India Pvt. Ltd., Gurugram.

ORDER

A Revision Application No. 199/05/ST/2020-R.A. dated 26.06.2020 has been filed by the Commissioner of CGST & Central Excise, Gurugram (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 228/ST/CGST-APPEAL-GURUGRAM/SG/2019-20 dated 19.03.2020, passed by the Commissioner (Appeals), CGST & Central Excise, Gurugram. The Commissioner (Appeals) has, on an appeal filed by M/s Xchanging Technology Services India Pvt. Ltd., Gurugram (hereinafter referred to as the Respondent), set aside the Order-in-Original No. 26/Refund/CGST/Div-East-I/2019-20 dated 22.10.2019, passed by the Deputy Commissioner, Division East-1, CGST, Gurugram and remanded the matter.

2. Briefly stated, the Respondent herein filed five refund claims under Notification No. 27/2012-CE (NT) dated 18.06.2012 and two rebate claims in respect of Central Excise duty/Service Tax paid on the inputs used in providing services exported, under Notification No. 39/2012-ST dated 20.06.2012. The rebate claims, under notification dated 20.06.2012, pertaining to period January to March, 2017 & April to June, 2017 for amounts of Rs. 13,46,363/- and Rs. 11,34,421/-, were filed on 29.12.2017 and 28.03.2018, respectively. These two rebate claims along with five refund claims came to be rejected by the original authority, vide the aforesaid Order-in-Original dated 22.10.2019, on the grounds of being barred by limitation and for the reason that the Respondents had only acted as 'intermediary'. The Commissioner (Appeals), vide the impugned Order-in-Appeal, held that there is no legal provision that merely non-submission of some documents/BRC makes the refund claim time barred and refund/rebate claim is hit by the time limitation only if the same is filed beyond the time limit. Accordingly, the Commissioner (Appeals) decided the issue of limitation in favour of the Respondent herein and remanded the matter to the original authority.

3. The revision application has been filed on the grounds that the time period of filing the rebate claim along with requisite documents, prescribed under Section 11B of the Central Excise Act, 1944, is applicable to the claims made under Notification

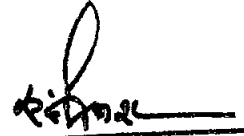
No. 39/2012-ST dated 20.06.2012, since Section 11B had been made applicable in Service Tax matters, vide Section 83 of the Finance Act, 1944. It has also been submitted that Commissioner (Appeals) has failed to decide the second issue, i.e., rejection of refund/rebate claims on the basis of 'Intermediary' and several submissions have been made on merits to claim that the Respondent herein had acted as an 'Intermediary' in the present case and rebate claims is not admissible. A written reply has been submitted by the Respondents, on 10.03.2021.

4. Personal hearing in the matter was held, on 24.12.2021, in virtual mode. Sh. R.K. Mishra, AC appeared for the Applicant department and Ms. Purvi Asati, Advocate appeared for the Respondent. It was observed that out of the two issues involved i.e. (i) limitation & (ii) nature of services, the Commissioner (Appeals) had only addressed the issue of limitation and remanded the matter. Therefore, with the consent of the parties, the submissions were kept limited to the limitation issue. Sh. R.K. Mishra, AC drew attention to para 8 of the OIO and highlighted the nature of documents not submitted. Upon being pointed out that para 8 is not specifying the discrepancies in respect of compliance with the provisions of Notification No. 39/2012-ST, Sh. Mishra submitted that the OIO disposes of five refund claims under Notification No. 27/2012-CE (NT) and two rebate claims under Notification No. 39/2012-ST. Therefore, the discrepancies have been listed at one place. He reiterated the contents of RA. Ms. Purvi Asati, Advocate reiterated the contents of reply filed on 10.03.2021.

5. The Government has carefully examined the matter. It is, at the outset, observed that the impugned Order-in-Appeal also decides five refund claims filed under Notification No. 27/2012-CE (NT) dated 18.06.2012 and the Applicant department has submitted that appeals in these cases are being filed before CESTAT. Therefore, the present consideration is limited to two cases of rebate claims filed under Notification No. 39/2012-ST dated 20.06.2012. As already brought out hereinabove, the rebate claims came to be rejected by the original authority on the ground of limitation as well as on the ground that the Respondent herein acted only as an 'Intermediary' in the export of services and, therefore, was not eligible for

rebate. It is observed that the Commissioner (Appeals) has not dealt with the issue of 'intermediary' in the impugned Order-in-Appeal. Therefore, as decided with the consent of parties, the only issue that remains to be considered is the issue of limitation. The Government observes that this issue has been dealt with by the original authority in para 8 of the aforesaid Order-in-Original dated 22.10.2019. However, there is no specific finding recorded by the original authority therein regarding the rebate claims under Notification No. 39/2012-ST being hit by limitation, though specific findings are available in respect of refund claims under Notification No. 27/2012-CE (NT). As such, it would be an interest of justice that this aspect also should be remanded to the original authority. Accordingly, the impugned Order-in-Appeal is set aside to the extent of two rebate claims filed under Notification No. 39/2012-ST dated 20.06.2012, and the matter is remanded to the original authority for consideration afresh, after following the principles of natural justice. It is clarified that all issues, including the issue of limitation, are kept open for de-novo consideration.

6. The revision application is allowed by way of remand to the original authority, in above terms.



(Sandeep Prakash)

Additional Secretary to the Government of India


The Commissioner of CGST & CX, Gurugram,
GST Bhawan, Plot No. 36-37, Sector-32,
Gurugram – 122001.

G.O.I. Order No. 34/21-ST dated 24-12-2021

Copy to:-

1. M/s Xchanging Technology Services India Pvt. Ltd., Plot No. 271, Udyog Vihar, Phase – II, Gurugram (Haryana) – 122008.
2. The Commissioner (Appeals), CGST & Central Excise, Gurugram, 5th Floor, Mudit Square, Plot No. 24, Sector 32, Gurgaon – 122001.
3. PA to AS(Revision Application).
4. Spare Copy.
5. Guard File.

ATTESTED


(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