

F. No. 199/01/ST/2018-R.A.

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F.No. 199/01/ST/2018-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110066

Date of Issue. 11/12/18

Order No. 67/2018 - -ST dated 6-12-18 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & 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-1526 to 1528-17-18 dated 29.12.2017, passed by the Commissioner of Customs & Central Excise (Appeals), NOIDA

Applicant : Commissioner of Central Tax, NOIDA-I

Respondent : M/s. Adobe Systems India P.Ltd., NOIDA

ORDER

A revision application No.199/01/ST/18-R.A. dated 04.5.2018 has been filed by the Commissioner of Central Excise, NOIDA (hereinafter referred to as the applicant) against the Order-in-Appeal No.NOI-EXCUS-001-APP-1526 to 1528-17-18 dated 29.12.2017, passed by the Commissioner of Central Excise (Appeals), NOIDA, whereby the appeal of the respondent, M/s. Adobe Systems India P.Ltd., NOIDA, accepting their eligibility for refund of service tax paid on the exported services has been allowed.

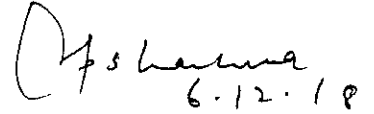
2. The revision application is filed mainly on the grounds that rebate of services is no longer available w.e.f. 1.7.12 as no Notification providing rebate of service tax in respect of exported services is available, Rule 6A of the Service Tax Rules does not cover rebate of output taxes and the Notification No.39/2012 dated 20.6.12 provides for rebate of service tax on inputs and input services only. The revision application is, however, contested by the respondent by filing a detailed reply dated 27.7.18 primarily for reasons that they were not required to pay service tax on exported services, the service tax paid by them is refundable to them under Section 11B of the Central Excise Act read with Section 83 of the Finance Act 1994 and Article 265 of the Constitution of India as per which no tax shall be levied or collected except by authority of law and the service tax provided by them qualify as export of services also.

3. A personal hearing was earlier fixed on 24.10.18 and second hearing was scheduled on 26.11.18 on the request of the respondent. While the respondent availed the hearing on 26.11.18 and furnished written submissions dated 22.11.18 during the hearing emphasizing that service tax is not leviable on export of services under Section 66B read with Section 66C of the Finance Act, 1994 and any amount collected without authority of law cannot be retained by the Government in terms of Article 265 of the Constitution of India, the applicant did not avail the hearing on both the occasions and no request for any other date of hearing was also made from which it is implied that they are not interested in availing the personal hearing in this case. Hence, the revision application is taken up for a decision on the basis of available records.

4. The Government has examined the matter and it is observed that the Commissioner (Appeals) has allowed the respondent's appeal vide aforesaid OIA by accepting the fact that the respondent was not required to pay any service tax on the exported services and the refund of service tax wrongly paid on the exported services is admissible under Section 11B of the Central Excise Act. This legal postulation that the respondent was not required to pay any service tax on the exported services is not questioned by the applicant also in their revision application. Instead the applicant has only stressed that no rebate of service tax could be granted from 1.7.12 as no Notification providing for rebate of service tax is available from the said date even when Commissioner (Appeals) has not allowed any rebate of service tax. On bare reading of the Order in Appeal the Government clearly finds that the Commissioner (Appeals) has allowed refund of service tax on the above stated ground that the respondent was not required to pay any service tax on the export of service and the tax paid erroneously cannot be retained by the Government. Thus the Order in Appeal is manifestly relating to refund of service tax and not the rebate of service tax which can be granted only if a Notification issued by Central Government authorizes in respect of export of services. But the applicant has still filed the revision application for the reasons discussed in para (2) by considering the matter relating to rebate of tax and ignoring the truth that the Commissioner has allowed refund of excess service tax paid in this matter under Section 11B of the Central Excise Act. Whereas Section 86(2) of the Finance Act, read with Section 35EE of the Central Excise Act, 1944, unambiguously stipulate that the revision application can be filed before the Central Government against the Order of the Commissioner (Appeals) if the Order relates to grant of rebate of service tax on input or rebate of duty paid on inputs used in providing exported services. But there is no legal provision for filing the revision application against the Order in Appeal which is relating to refund of service tax as is in the present case. Accordingly, the Government does not have any legal authority to deal with the Commissioner (Appeals)'s above referred Order which is clearly relating to refund of service tax and not the rebate of service tax

on input services or rebate of duty paid on inputs as is envisaged in aforementioned Section 86(2) of the Finance Act.

5. In view of the above discussions, the Government reject the revision application as non-maintainable due to lack of jurisdiction.


6.12.18

(R.P.Sharma)

Additional Secretary to the Government of India

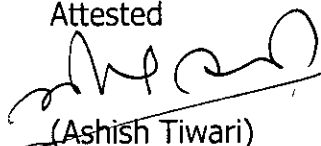
Commissioner of Central Tax,
Noida, C-56/42, Sector-62,
Noida-201307

G.O.I. Order No. 67/18-ST dated 6-12-2018

Copy to:-

1. M/s. Adobe Systems India P. Ltd., Plot No.1-1A, Sector 25A, NOIDA
2. Commissioner of Customs & Central Excise (Appeals), NOIDA, C-56/42, Renu Tower, Sector-62, Noida-201307
3. The Deputy Commissioner of Service Tax, Division-II, Noida
4. PA to AS(Revision Application)
5. Guard File
6. Spare Copy.

Attested



(Ashish Tiwari)

Assistant Commissioner