

ORDRE IN APPEAL

Mrs. Patricia Conceller de Urte, Abat Venerable, C/ de San Sebastián, 111, 7, 1, 20018, Donostia, Guipúzcoa, Spain, has referred to us (the applicant), having Service Tax Registration No. A21423009, engaged in providing technical services on the field of Information Technology - Software Costs, among other activities, filed a request against the RPO no. R002320 / 2018 of 03/04/2018 issued by the Assisted Commissioner, Service Tax Office, Guipúzcoa, in reference to the said tax identification number, with regard to return of unutilized General Credit and the request of services.

As it is clearly stated, the facts are that Mrs. Patricia Conceller de Urte, has received a total value of 1.240,00 € for the period from July 2016 to September 2016 of services received without services received in providing computer services to clients and outside India. The said amount was duly used by the service for business, management and other found to be having economic reality. The verification conducted by the corresponding Service Administration accordingly is hereby established. R002320/2018 was issued to the concerned taxpayer clarifications are hereby given.

- a) The invoices relating with the RPOs to arise receipt of expert declaration are not available. Also, the RPOs raised on the stated matter is submitted.
- b) The evidence of services tax amount paid documents regarding settlement of General Credit and the amount for which the return claim has been filed are not been mentioned.
- c) The Certificate of CA regarding General Credit amount details is a dated and legible proof for the relevant period for which the return is filed, documents regarding said expenses and total amount clearance for the relevant period not submitted.
- d) The documents in support of deduction of service tax paid for the relevant period not submitted.
- e) The Bank details and signature authentication proof of authorized signatory not submitted.
- f) The certificate regarding IIT and other taxes payable to the next tax party is to be submitted, if any.

As it is seen, there was no available IIT No. R002320 / 2018 of 03/04/2018 by the Assisted Commissioner, Service Tax Office, Guipúzcoa, wherein the Assisting Authority rejected the return claim of said RPO, not finding the required eligible return of the General Credit under provisions of rule 5 of the General Credit Rules, 2018 and the Notification 24/2018 dated 13/07/2018 and Section 114 of the Central Goods Tax Act, 1984 means procedure to be followed as matters under provisions of section 65 of the Finance Act, 1994.

As it is found, the applicant has not accepted the findings of the proceedings against the impugned order.

- That the order was passed without mentioning all documents produced before them were not sufficient to the said order. Also, it was not noted by the said Assisted Commissioner, Guipúzcoa, that the amount paid and amount were different which was not a mistake.
- That it was not finding that the amount of the deduction claimed was not in accordance with the Notification No. 24/2018 dated 13/07/2018 and rule 5 of the General Credit Rules, 2018, which was not mentioned in the said order to the effect of 13/07/2018.

As it is seen, the applicant has not further grounds of appeal in the above signed order and the applicant has no other arguments and grounds for correction below.



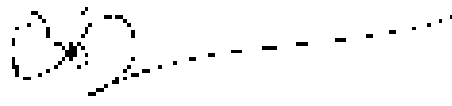
- That they have not received any kind of report, notices or there was no complete services provided to any party during the relevant period, including sale of or the service of the form, 1997 and 1998, of Digital services.
- That as the notices or bills by them are covered as taxes on services as the same is not liable as digital services.
- That they have not managed and recovered the service tax from the customer parties and they have received realizations in foreign currency as per the 57% of Asst. Prof's. Jan 1993.
- That they have used service tax on inputs services used for providing of their services which are not liable as per a tax service provided for instead of service tax on or input services with a main unit based.
- That as per their own records, though they have not received the Central Credit of the subject refund claim, but the order regarding the 57% returns had not been passed, passed and directed to the CCE, Mysore.
- That they understand that they belong to the group of Central Credit of the input services for which the refund claim has been made and directed, but they will be same in nature either be passed or not passed to the CCE, Mysore.
- That they have not charged the amount of Central Credit of the subject refund claim to their account but have shown the same as received as Central Credit of the same and advanced group in the book of accounts on 30.06.2017 while filing the refund claim.

2. The appeal was filed before the Commissioner (Appeals), Mysore. The undersigned has been nominated as Commissioner (Appeals) of Appellate Authority of records to the case of taxpayer vide Board's Circular No. 65/2017-Service Tax dated 01.12.2017 issued by the Joint Secretary (Service Tax, C&E), MCA 21 Dept. of Revenue, CB&I, Service Tax Wing, and the book of Board's Circular No. 298/2017-Service Tax dated 01.12.2017.

3. Refund claim was granted to the appellant for ₹66,21,519/- (Rupees Sixty six Lakhs twenty one thousand five hundred and ninety two and 19/100 paise).

4. There are two issues flowing through the appeal case. The questions mentioned in the appeal are: The two issues arise by the question: The question to be decided in the appeal is whether the refund claim of ₹ 2,40,21,00/- (Rupees Two Lakhs twenty one thousand two hundred and 00/- paise) under section 119A of the Central Excise Act, 1944 and section 11B of the Central Excise Act, 1944 as amended, made applicable to Service tax under Section 65 of the Finance Act, 1994 and otherwise.

5. As regards to the specific questions, as to the department, the appellant in his submissions has put forth the new Form A, in which it is mentioned that the quarter for which the refund claim is being made is the period from 01.01.2017 to 31.03.2017. Details taken on input services details of input services are not taken, accounts, bills and details, and they have only submitted the C&E's Certificate regarding the amount of export of services, which is stated to be taken thereby, concerning with inward supplies. Taxpayer has submitted along with copies of input services, the copy of tax and submitted with its submission, for the ₹66,21,519/- (Rupees Sixty six Lakhs twenty one thousand five hundred and 19/100 paise) during the relevant period for which the refund claim has been filed. They have not only received services to clients outside India as equal, and also and also services provided to domestic clients. That all the compliance submitted by the appellant was regard to the queries for the relevant period of the said refund claim sufficient. The Annual Accounts for AY-17-18, the Audit Report for AY-17-18, the Acknowledgement with the origin for AY-17-18, Charter of Services provided, the Acknowledgement for AY-17-18, the invoices, S-Returns and copies of input services provided and GST Acknowledgement-Confirms have also been submitted in support of their comments.



18. Further regarding the order of a refund of service tax paid prior to General Credit issued and assessment of a liability for the relevant period, find that the applicant has submitted a statement of service tax paid during the period which shows that the liability of service tax has been discharged after assessment and the General Credit available was being taken. From given facts and figures, it is found that the applicant, though the applicant has not reversed the General Credit for the amount of unpaid claim, has not taken any action to forward the General Credit Balance in the month of July 2017 which satisfying the above-mentioned facts.

Sl. No.	Particulars	April 15 th 2017	April 15 th 2017	July 2017	July 2017
1	Opening Bal.	127490	127490	140490	0
2	Credit taken on mail services	240917	115,420+128970	47500	0
3	Credit taken	0	0	0	0
4	Closing Bal.	378407	242910	217990	0

19. As per the above facts, it is found that the applicant has not utilized the General Credit taken on mail services and have taken credit on the basis of credit in the month of July 2017.

20. Find that the purpose of the Government to allow such refund or General Credit of service tax with regard to such of services is to remove the burden of tax and to encourage exports. Restriction imposed on such effective scrutiny by such authority to prevent a large amount of tax to be collected and to prevent the misuse of refund claimed by the Government of the concerned.

21. In view of the above, find that the applicant is entitled to refund amount of Rs. 140917 under the provisions of section 6 of the Act. The impugned order is accordingly set aside and the Applicant is directed to follow the appeal in the future as a remedy as set off.

[Handwritten signature]

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 Director
 Andhra Pradesh
 Hyderabad

Date: 09/07/2018

No. 12240 of 2017

Y. S. Reddy

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 Telangana
 Hyderabad

Copy to:

1. The Cash Commission 2015 & Control Unit: Abroad Fund
2. The Commission: Abroad Fund
3. The Commission: 2015 Fund
4. The Fund: Commission, Semara, 2015 Fund
5. The Fund: 2015 Fund, Commission, Semara
6. 2015 Fund