File No. 01/61/180/246/AM23/PC-3/E-34893/611-612

Government of India
Ministry of Commerce and Industry
Directorate General of Foreign Trade
Vanijya Bhawan, New Delhi

Dated: 28.11.2023

To,

M/s Omya India Private Limited,
1st Floor, Fleet House Andheri - Kurla Road,
Marol, Mumbai-400059
Email: rakyadav@deloitte.com; Shyam.Mahadik@omya.com;

Subject: Review against rejection of SEIS claim for FY 2016-17, FY 2017-18 and FY 2018-19.

Dear Exporter,

Kindly refer to your representation for review against rejection of SEIS claims filed for FY 2016-17, FY 2017-18 and FY 2018-19 by RA Mumbai. It may be noted that the personal hearing was held before the competent authority on 11.07.2023 with representative of your company.

2. Order-in-review signed dated 28.11.2023 passed by Competent Authority is attached herewith.

Encl: As above

Yours faithfully,

Deepak 28/11

(Deepak Jhalani)
Deputy Director General of Foreign Trade
E-mail: deepak.jhalani@gov.in

Copy to:

Additional DGFT, C G O New Building, South East Wing, 48, Vithaldas Thackersey Marg, Churchgate, Maharashtra 400020, Email: mumbai-dgft@nic.in

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Directorate General of Foreign Trade

Vanijya Bhawan, New Delhi

Dated: 28.11.2023

Order In Review

Subject: Review against rejection of Service Export from India Scheme claim made by M/s Omya India Private Limited for FY 2016-17 by the office of the Zonal Director General of Foreign Trade, Delhi.

M/s Omya India Private Limited, having registered office at 1st Floor, Fleet House Andheri - Kurla Road, Marol, Mumbai-400059 with IEC 0305016466 (hereinafter referred to as the Applicant), had filed application under Service Export From India Scheme (hereinafter referred to as SEIS), at the office of Director General of Foreign Trade, Mumbai (hereinafter referred to as RA Mumbai) vide file No. 03/21/094/50055/AM21, 03/21/098/50525/AM21 and MUMSEISAPPLY00022319AM22 for issuance of SEIS duty credit scrip for services rendered in the FY 2016-17, FY 2017-18 and FY 2018-19, respectively.

2. The Applicant's claim for FY 2016-17 was rejected by the RA Mumbai vide letter dated 09.03.2021, stating that:

"It is found that the services mentioned in the application are not in terms of Appendix 3D notified vide Public Notice No.3 dated 01.04.2015. One of the conditions for obtaining benefit under SEIS is terms of the above Public Notice is the service is to be rendered as per the description mentioned against respective CPC code. However, it is found that in your case no such services is rendered which covered under said CPC code therefore your application for the SEIS benefit for the period 2016-17 stands rejected."

And claims for FY 2017-18 & 2018-19 were rejected vide rejection letter dated 06.03.2023, Stating that:

"From the documents submitted it is concluded that you are getting commission for the sale of goods from your principals which is not eligible for SEIS and letter was issued to you.

Accordingly, as the services are not qualified for the SEIS, your request for issue of SEIS cannot be considered by the competent authority and stands rejected."

3. Aggrieved by above rejections, the applicant has filed a review applications in under Foreign Trade (Development &Regulation) Act, 1992 vide representation dated 01.09.2022 for FY 2016-17 and on a later date review applications were filed for the FY 2017-18 and 2018-19 vide representation dated 20.07.2023. The applicant had also requested for a personal hearing opportunity which was granted and held on 11.07.2023 at 03:00 PM. In interest of uniform and expeditious disposal, this common order is passed as the ground of rejection as well as the contention of the applicant is similar in all the 3 matters before me.

4. The documents and arguments advanced by the applicant have been carefully gone through. The applicant contests that it is engaged in providing marketing support services to customers located outside India, namely parent entity Omya International, AG. The applicant has stated that M/s Omya India Private Limited (referred as "Agent" in the agreement) has entered into an agreements with its overseas group entities such as, Omya International, AG and Omya Malaysia Sdn Bhd (referred as "Principal" in the agreement), for the purpose of promoting their product locally. The Agreement stated that "*It is Principal's interest to engage Agent for the facilitation of sales and promotion of Principal's Products in the Territory and it is the Agent's interest to carry out promotion activities for Principal*". The applicant has mentioned that it handles all the activities in relation to promotion and solicitation of the sale of the products of Principal in the Indian Territory, activities to promote or market product ranges of overseas customer and advertising publicity, public relations activities with respect to the identified product ranges of the overseas customer. Further, the applicant has also submitted that it is engaged in providing information about the product to the identified range of Indian customers, passing on all the enquiries to the relevant customers and offshore entities for comments and quotations, liaison with the customers to strengthen the sales channels of the relevant products of overseas customers and performing necessary operation activities involves in the confirming sale order. With the above, the applicant has contended that the nature of services rendered are rightly classified under the CPC code 865 'Management Consulting Services' and sub code 86503 of Marketing Management Consultancy service.

5. It is noticed that while referring to the nature of services rendered by the applicant, the RA Mumbai had raised the deficiency and then rejected the claim of the applicant citing that the nature of services rendered do not match with the descriptions of the CPC code 86503 "Marketing Management Consultancy Service". It may be seen that as per the write up submitted by the applicant for services rendered mentions that the applicant is engaged in promotion and solicitation of the sale of the products in the Indian Territory, advertising publicity, and public relation activities with respect to the identified product ranges. Therefore, the nature of services rendered by the applicant does not match with the description mentioned with the CPC code 86503. The CPC code 86503 has a description as below:

86503 Marketing management consulting services

Advisory, guidance and operational assistance services concerning the marketing strategy and marketing operation of an organization. Marketing consulting assignments may deal with one or a combination of the following: analysis and formulation of a marketing strategy, formulation of customer service and pricing policies, sales management and staff training, organization of distribution channels (sell to wholesalers or directly to retailers, direct mail, franchise, etc.), organization of the distribution process, package design and other matters related to the marketing strategy and operations of an organization.

6. Further, the sample copy of invoices submitted by the applicant in support of its claim has been examined. In one such invoice, Invoice no. 03/2016-17 raised to Omya Malaysia, dated 05.08.2016, the description is mentioned as "Indent commission for the Month of July, 2016". All the invoices submitted by the applicant have the word "Indent Commission" in the description. The applicant is engaged in collecting and providing relevant information about Indian market to the overseas entities, thereby assisting then to take appropriate sales decisions. The consideration received for such service is termed as 'Agency Fee & Commission" under the agreements and invoices. The said consideration for such services is calculated as below:

Agency Fee = Customer Sales Price x Commission Rate

The para 9 of the service agreement pertains to the Commission (Agency Fee), Para 9.2 (i) clearly states that, Agent is entitled to Agency Fee when a commercial transaction is concluded as a result of Agent's action with a Customer in the Territory. Further, Para 9.2 (ii), states that Agency Fee falls due when the full purchase price has been received by Principal. It may be noted that, as seen from the documents submitted, the applicant is engaged in the business of trading agency services based on commission which is in linked to the sales happening in India and such services are not eligible services for SEIS in terms of Appendix 3D. The provisional CPC which is followed in Appendix 3D, has a separate code 621 for such services. Such services rendered by the company cannot be constructed as a part of Management Consulting or services related to Management consulting, as notified in the Appendix 3D of SEIS and thus are not eligible for claim under SEIS.

7. After having carefully gone through the oral and written submissions made before me and other aspects of application/claim, in terms of general power of review vested in me under Section 16 of FTDR Act 1992 (as amended in 2010) and Para 9.13 of HBP of FTP 2015-20, the following Order is passed:

Order:

- Rejection of SEIS claims for three years FY 2016-17, FY 2017-18 and FY 2018-19 by RA Mumbai is upheld with reason cited in Para 5 & 6 above.

The matter is accordingly disposed off.

28.11.2022

(Santosh Kumar Sarangi)
Director General of Foreign Trade
Ex-officio Additional Secretary to the Government of India