

REGISTERED SPEED POST



**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005**

F. NO. 195/768/13-RA / 2171

Date of Issue: 22.03.2021

ORDER NO. 143 /2021-CX (WZ) /ASRA/Mumbai, DATED 16.03.21 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s APM Terminals India Private Limited., Navi Mumbai.

Respondent : Commissioner of Central Excise, Raigad.

Subject : Revision Application filed under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. US/79/RGD/2013 dated 21.03.2013 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

ORDER

This revision application has been filed by M/s. A.P.M. Terminals Pvt. Ltd. (Formerly known as M/s Maersk India Pvt. Ltd.), Navi Mumbai, (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/79/RGD/2013 dated 21.03.2013 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

2. The brief facts of the case are that the Additional Commissioner of Central Excise, Raigad vide Order in Original No. Raigad/ADC/72/12-13 dated 31.10.2012 confirmed a demand raised against the applicant of Rs. 21,06,032/- with interest under Section 75 of Chapter V of the Finance Act, 1994 read with Rule 6(3A) of Cenvat Credit Rules, 2004 and imposed equal penalty under Rule 15 of Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994 on the ground that the applicant deliberately availed inadmissible Cenvat credit by contravening the provisions of Rule 6(3)(ii) read with Explanation I to Rule 6(3)(ii) of the Cenvat Credit Rules, 2004 even after opting not to maintain separate account and to reverse proportionate amount under Rule 6(3)(ii) of the Cenvat credit Rules, 2004.

3. Being aggrieved by the aforesaid Order in Original the applicant filed appeal before Commissioner of Central Excise (Appeals-II), Mumbai who vide Order-in-Appeal No. US/79/RGD/2013 dated 21.03.2013 upheld the said Order in Original and rejected the appeal filed by the applicant.

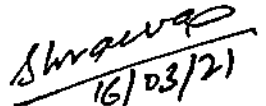
4. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant filed this Revision Application before the Government on 04.07.2013.

5. A personal hearing in the matter was fixed on 26.02.2021, however, the applicant vide emails dated 24/25.02.2021 informed that they had already filed appeal against the same Order-in-Appeal No. US/79/RGD/2013 dated 21.03.2013 before CESTAT, Mumbai and they have received favorable order from CESTAT, Mumbai on 24.07.2014 and hence the Revision application filed against same Order in Appeal may be closed. The applicant also attached copy of CESTAT Order No. A/1258/14/SMB/C-IV dated 24.07.2017 to their above referred email.

6. From the copy of the CESTAT, Mumbai's Order dated 24.07.2014 referred above it is observed that the issue involved in the instant Revision Application stands decided in favour of the applicant. Moreover, the issue involved in the present case

was regarding reversal of proportionate amount of Cenvat attributable to exempted services under Rule 6(3)(ii) of the Cenvat Credit Rules for which the Government does not have revisionary power under Section 86 of the Finance Act, 1994, read with Section 35EE of Central Excise Act. Under the said Section 86 of the Finance Act, 1994, the Government has been vested with the revisionary power for the order of the Commissioner (Appeals) involving the issue regarding the rebate of service tax against the exported services only. Thus, the above stated Revision Application had been filed wrongly before the Government.

7. In view of the above discussion, the Revision Application is rejected as not maintainable before the Government.


(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 143/2021-CX (WZ) /ASRA/Mumbai DATED 16.03.21

To,

M/s APM Terminals India Private Limited,
(Formerly known as Maersk India Private Limited),
CFS Division, Plot No. 100, Block-5, Sector-2,
Dronagiri Warehousing Complex,
Navi Mumbai - 400 707.

Copy to:

1. The Commissioner of CGST, Belapur CGO Complex, Sector 10, C.B.D. Belapur, Navi Mumbai -400 614.
2. The Commissioner (Appeals) of Central Goods & Service Tax, Raigad, 5th Floor, CGO Complex, Belapur, Navi Mumbai -400 614.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file,
5. Spare Copy.