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F.No. 198/21/14-RA
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...4/4/18...

ORDER NO. 162/2018-CX dated 2-4-2018 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI RAJPAL SHARMA, ADDITIONAL SECRETARY TO THE GOVERNMENT
OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed under section 35EE of
the Central Excise Act 1944 against the Order-in-
Appeal No. . NOI/EXCUSE/000/APPL/188-
189/2013-14 dated 28.09.2013, passed by the
Commissioner (Appeals) of Customs & Central
Excise, Noida.

APPLICANT : Commissioner of Central Excise, Noida

RESPONDENT : M/s Connect International (P) Ltd.,

ORDER

A Revision Application has been filed by the Assistant Commissioner, Central Excise Division-IV, Noida (hereinafter referred to as the applicant) against Order-In-Appeal No. NOI/EXCUSE/000/APPL/188-189/2013-14 dated 28.09.2013, passed by the Commissioner of Central Excise (Appeals), Noida, whereby the Order of the original adjudicating authority rejecting the claim of rebate of Rs. 4,27,445/- filed by M/s Connect International (P) Ltd. (hereinafter referred to as the respondent) has been set aside.

2. Brief facts leading to the filing of the Revision Application are that the rebate claim of Rs. 4,27,445/- of the respondent was rejected by the original adjudicating authority on the ground that the respondent had availed both the CENVAT credit as well as drawback of duty for Customs, Central Excise and Service Tax component on the condition of non availment of CENVAT credit on inputs etc. However, the respondent's appeal against the Order of the Assistant Commissioner was allowed by Commissioner (Appeals) vide above mentioned O-I-A. Being aggrieved, the applicant has filed the Revision Application mainly on the ground that the respondent could not avail CENVAT credit and drawback of duty simultaneously.

3. Personal hearing was held on 15.03.2018 and Sh. Reddy, advocate, appeared for the respondent and furnished a copy of their written reply dated 11.04.2014 given earlier during the hearing. However, nobody appeared for the applicant and even no request for any other date of hearing was also received from which it is implied that the applicant is not interested in availing the personal hearing.

4. On examination of the Revision Application, the Government observes at the outset that the Revision Application filed in form EA-8 by the applicant is not proper and complete in as much as while the Statement of Facts and grounds of Revision Application are claimed to have been enclosed in form EA-8, these are not actually found enclosed. Therefore, the Revision Application is liable for rejection for this

reason alone. Further, in the light of all relevant orders and case records it emerges that while the applicant has claimed that drawback of duty and CENVAT credit in respect of inputs etc. cannot be availed simultaneously, the respondent has opposed the Revision Application on the ground that drawback of duty or availment of CENVAT credit is not the issue in their case and the rebate of duty is admissible to them as they have fulfilled all conditions of Rule 18 of Central Excise Rules 2002 and notification 19/2004-CE(NT) dated 06.09.2004. The Government entirely agrees with the respondent's above contention as there is no dispute in this case regarding export of duty paid finished goods and compliance of other conditions specified under notification 19/2006. As regards availment of drawback and CENVAT credit, no such condition is stipulated under the above mentioned Central Excise provisions governing rebate of duty of Excise and it is relevant only when the issue regarding eligibility to duty drawback is involved which is not the case here. Further even under the Drawback Rules 1995, availment of CENVAT credit in respect of any inputs or input services is only a disqualification for availment of the duty drawback in respect of Customs, Central Excise and Service Tax component and availment of CENVAT credit on capital goods is not specified as a hurdle. This position is clearly evident from notes and condition No. 15 of notification No. 84/2010-Cus (NT) dated 17.09.2010 whereunder All Industry Rates of drawback 2010-11 have been notified. The applicant has not produced any evidence that the respondent had availed CENVAT credit in respect of input and input services and it has merely stated that the respondent had availed CENVAT credit as per extract CENVAT credit account for the period 19.11.2011 to 17.02.2012 submitted by the respondent with the rebate claim. The applicant has not denied availment of CENVAT credit but has emphasised that the entries made in the aforesaid CENVAT credit account relate to capital goods and not the inputs or input services. Thus, even for the purpose of drawback of duty, the applicant has not established any case regarding violation of the condition relating to availment of CENVAT credit on inputs and input services. Above all, the respondent has claimed to have deposited the duty drawback amount to the department alongwith interest and it has not been contested by the applicant in the Revision Application or otherwise. Thus, now there is no basis even for alleging double benefit to the respondent as per understanding of the applicant also. Considering these facts and legal position as

discussed above, the Government does not find any merit in the revenue's Revision Application.

5. Accordingly, the Revision Application filed by the applicant is rejected.

R.P. Sharma
2.4.18

(R.P SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

The Commissioner of Central Excise, Noida-I
C-56/12, Renu Tower, Sector-62,
Noida-201 307.

ORDER NO. 162/2018-CX dated 2-4-2018

Copy to:-

1. M/s Connect International (P) Ltd., B-5, Sector-81, Noida.
2. Commissioner (Appeals), Customs & Central Excise, Noida C-56/12, Renu Tower, Sector-62, Noida-201 307.
3. Assistant Commissioner, Central Excise Division IV, Noida C-56/12, Renu Tower, Sector-62, Noida-201 307.
4. M/s Bhasin Sethi & Associates, Advocates & Consultants, Chamber-401, Satyam Cinema Building, Ranjit Nagar, New Delhi -110 008.
5. PS to AS(RA)
6. Guard File.

ATTESTED

2.4.2018
(Debjit Banerjee)

STO (REVISION APPLICATION)