

REGISTERED
SPEED POST



F.No.195/513/2013-RA ,195/742/2013-RA & 195/743/2013-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: 6.7/18

Order No. 422-424/2018 — Cx dated 05-07-2018 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.

Subject : Revision Applications filed under Section 35 EE of the Central Excise Act, 1944 against the Orders-in-Appeal No.01, 02 & 03-CE/GZB/2013 dated 20.1.2013, No.68 to 71-CE/GZB/2013 dated 30.4.2013 No.75 to 84-CE/GZB/2013 dated 14.5.2013 passed by the Commissioner of Central Excise (Appeals), Ghaziabad

Applicant : M/s Met Trade India Ltd., Village Bheel Akbarpur, G.T.Road, Dadri, U.P.

Respondent : Commissioner of Central Goods & Service Tax, Ghaziabad

ORDER

Three Revision Applications No. 195/513/2013-RA dated 22.4.13, 195/742/2013-RA dated 26.7.13 & 195/743/2013-RA dated 26.7.13 are filed by M/s Met Trade India Ltd., Village Bheel Akbarpur, G.T.Road, Dadri, U.P. (hereinafter referred to as the applicant) against the Orders-in-Appeal No.01, 02 & 03-CE/GZB/2013 dated 21.1.2013, No.68 to 71-CE/GZB/2013 dated 30.4.2013 & No.75 to 84-CE/GZB/2013 dated 14.5.2013, passed by the Commissioner of Central Excise (Appeals), Ghaziabad, whereby the department's appeals have been allowed and the Jurisdictional Deputy Commissioner's Orders allowing rebate of duty to the applicant have been set aside.

2. The revision applications have been filed mainly on the grounds that their Jammu Unit had paid correct amount of excise duty; that they have correctly availed CENVAT credit at their end; that the letter dated 31.5.12 of Kathua Range Superintendent to the Deputy Commissioner of Ghaziabad Division requesting for denial of CENVAT credit to their Unit at Dadri was subsequently withdrawn vide letter dated 11.7.12 after which there was no ground with the Commissioner (Appeals) to hold that the CENVAT credit was wrongly taken by them; that the proceeding regarding wrong payment of duty by their Jammu Unit is still pending at the level of the Commissioner of Central Excise, Jammu; that the appeal of the department before the Division Bench of the J&K High Court is also still pending and accordingly the Commissioner (Appeals) has wrongly passed the Orders disallowing rebate of duty to them on the ground that they had paid duty on exported goods by utilizing wrongly availed CENVAT credit.

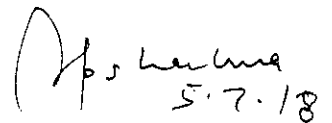
3. Personal hearings were offered in this case on 17.4.18, 17.5.18 and 8.6.18. However, no one appeared for the applicant or for the respondent on these dates. Further, no reason for non-availing of the hearing was also received from which it is implicit that they are not interested in availing the personal hearing. Hence, the revision applications are taken up for decision on the basis of available case records.

4. The Government has examined the matter and it is observed that the case against the applicant as per Commissioner (Appeals)'s Orders is simply that the

applicant had wrongly availed CENVAT credit on the basis of duty payment invoices issued by their Kathua based Unit and as a result the rebate of duty claimed by the applicant cannot be given since the duty on the exported goods was paid from wrongfully availed CENVAT credit only. The departmental case against the Jammu Unit is that after Notification No.56/2002-CE was amended by Notification No.19/2008-CE, the applicant could avail self-credit upto 36% of the total duty paid on the goods or the duty paid through PLA, but the applicant had availed self-credit of entire duty amount paid through PLA and it was used for clearance of the goods to the applicant. Accordingly two show cause notices were issued by the Commissioner of Central Excise, Jammu, to recover short payment of duty from the Kathua Unit which are still pending. The Deputy Commissioner of Ghaziabad Division was also requested by the Range Superintendent, Kathua, vide his letter dated 31.5.12 to initiate proceeding for denial of CENVAT credit availed by the applicant at their Dadri Unit. However, subsequently the said letter dated 31.5.12 was withdrawn by the Range Superintendent, Kathua, vide his letter dated 11.7.12. In the meantime, amending Notification No. 19/2008-CE was challenged by the manufacturers in Jammu Region before the J&K High Court and the Single Bench of the Hon'ble High Court, vide its Order dated 23.12.10 quashed the Notifications 19/2008-CE dated 17.3.08 and 34/2008-CE dated 10.6.08. The department has filed appeal against the said Order of the High Court before the Division Bench which is still pending as per the revision application. Consequently two show cause notices issued by the Commissioner of Central Excise, Jammu, to recover the duty amount from the applicant's Jammu Unit are also pending. Thus it is quite evident that the issue regarding short payment of duty by the Jammu Unit is not yet finalized and, therefore, the decision taken by the Commissioner (Appeals) in her Orders that the applicant has paid duty from wrongfully availed CENVAT credit on the basis of invoices of the Jammu Unit is pre-mature and having no legal basis. The issue regarding wrong availment of CENVAT credit and its wrong utilization for payment of duty on the exported goods by the applicant is directly linked with the dispute with the Jammu Unit with regard to their correct payment of duty for which the legal proceedings are yet to

be concluded by the Commissioner, Jammu. Therefore, the Commissioner (Appeals)'s conclusion that the duties on the exported goods were paid by the applicant from the wrongfully availed CENVAT credit merely on the basis of the two SCNs issued by the Commissioner, Jammu and resultant rejection of the rebate claims is founded on erroneous premise. For the same reason, the Government also finds that even the Orders in Original of the Jurisdictional Deputy Commissioner also deserve to be set aside as he has also sanctioned rebate of duty pre-maturely without waiting for the outcome of the proceedings pending at the end of the Commissioner of Central Excise, Jammu.

5. Accordingly, the Government set aside the Orders in Original and the Orders in Appeal and remand the matter back to the original adjudicating authority to decide the issue regarding admissibility of rebate of duty afresh only after the issue with regard to correctness or incorrectness of the duty paid by the Jammu Unit is decided by the Commissioner, Central Excise, Jammu. It is needless to say that the matter shall be decided only after giving full opportunity to the applicant. The revision applications are disposed off in terms of above discussion.


5.7.18

(R.P.Sharma)

Additional Secretary to the Government of India

M/s Met Trade India Ltd.,
Village Bheel Akbarpur,
G.T.Road,
Dadri, U.P.

Order No 422 - 424/2018-Cx dated 05-07-2018

Copy to:

1. Commissioner of Central Goods & Service Tax, CGO Complex-II, Kamla Nehru Nagar, Ghaziabad-201002
- 2.. Commissioner of Central Excise (Appeals), Ghaziabad
3. The Deputy Commissioner, Central Excise Division-IV, Ghaziabad
4. PA to AS (RA)
- ✓ 5. Guard File.
6. Spare Copy

ATTESTED

P/05/07/18

(Ravi Prakash)
OSD (RA)