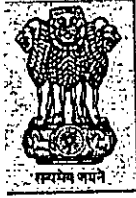


REGISTERED  
SPEED POST



F. No. 195/82/14-R.A.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 3/.....

Order No. 495/2018-C.E. dated 01-9-2018 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI R.P. 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. LUD-EXCUS-000-APP-623-13-14 dt. 13.12.2013, passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh-I.

Applicant : M/s Gardex, C-7, Focal Point, Jalandhar (Punjab)

Respondent: The Commissioner of CGST, Jalandhar, CGST House, 'F'-Block, Rishi Nagar, Ludhiana-141001, Punjab

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**ORDER**

A Revision Application no. 195/82/14-RA dt. 11.03.2014 has been filed by M/s Gardex, Jalandhar (hereinafter referred to as the applicant) against the Order-in-Appeal no. LUD-EXCUS-000-APP-623-13-14 dt. 13.12.2013 of the Commissioner (Appeals), Chandigarh whereby the applicant's appeal against the Order-in-Original of the Deputy Commissioner of Jalandhar Division has been rejected and Order-in-Original dt. 19.09.2011 has been upheld.

2. The Revision application has been filed mainly on the ground that as per Revision order of the Government dt. 17.02.2011 they were eligible for restoration of the CENVAT Credit of Rs. 4,27,280 in their credit account since they had not maintained separate records of the inputs, had also manufactured other dutiable goods, correctness of the CENVAT credit taken by them is not an issue and the Commissioner(Appeals) has not complied with the Government's above stated order dt. 17.02.2011.

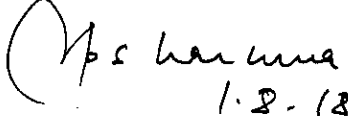
3. Personal hearing was held in this case on 06.06.2018 and it was availed by Shri Ravi Chopra, advocate, for the applicant who reiterated the grounds as already pleaded in their revision application.

4. The Government has examined the matter and it is observed that the present proceeding is a second round of litigation. Long before in 2007 the applicant had claimed rebate of duty on export of Garden Rakes on which the duty of Excise had been paid from CENVAT Credit. But the rebate claims were rejected by the Divisional Assistant Commissioner and the Commissioner (Appeals) on the ground that duty of Excise was not payable on the Garden Rakes and the applicant had wrongly paid duty by classifying the Garden Rakes under wrong classification heading. The applicant filed Revision application against the Commissioner (Appeals)'s order dt. 04.11.2008 before the Government which was upheld by the Government vide above referred order dt. 17.02.2011. But it was categorically ordered by the Government in its order that the re-credit of the CENVAT Credit for the amount paid on exported goods is to be allowed

in the applicant's CENVAT Credit account if the applicant had manufactured other dutiable products and the inputs are common for both dutiable and exempted goods. In accordance with the Government's order, the applicant approached the jurisdictional Deputy Commissioner to allow them re-credit of Rs. 4,27,280/- on the basis of their claim that they had manufactured other dutiable products such as Chisel, Hammer, Wrecking bar etc. and they had not maintained separate accounts for the inputs of dutiable and exempted goods as they had not claimed exemption on any of their products. To support their claim, they had also produced the copies of periodical ER1, but the jurisdictional Deputy Commissioner still rejected their request for the re-credit on the ground that they had maintained separate accounts for inputs used in manufacturing of dutiable and exempted goods. The applicant's appeal against the said order of jurisdictional Deputy Commissioner dt. 19.09.2011 was rejected by the Commissioner (Appeals) also vide above mentioned Order-in-Appeal dt 13.12.2013. Thus the sole basis taken by the lower authorities for rejection of applicant's claim for restoration of CENVAT Credit is that they had maintained separate account of inputs. But their above conclusion is not supported by any evidence and the assertion of the applicant that they had not maintained any separate account is outrightly rejected without assigning any reason. Whereas the Government finds force in the claim of the applicant regarding non-maintenance of separate accounts of inputs since it is corroborated by the fact that the applicant had earlier considered all its products, including Garden Rakes, as dutiable goods, had paid Central Excise duty on all their products as per the copies of ER-1 submitted by the applicant and hence there was no reason with the applicant to maintain separate accounts for inputs. Moreover, the applicant has rightly contended that after their rebate claims were rejected for the reason that exported goods were not dutiable, the issue before the lower authorities was not regarding eligibility of their CENVAT Credit and rather the main issue was regarding restoration of the CENVAT Credit wrongly utilized by the applicant. Accordingly the department could not refuse rebate of duty as well as recrediting of the CENVAT Credit to the applicant simultaneously. Therefore, the Government once

again iterate that since payment from CENVAT Credit was not accepted by the Department as payment of Central Excise duty, the CENVAT Credit of Rs. 4,27,280/- could not be considered to have been utilized by the applicant and the same remained with the applicant only. Correct availment of the said credit is not the issue here at all and if there is any such doubt, separate remedial action should have been taken. Considering these facts, the Government is fully convinced that denial of recrediting of CENVAT credit by the lower authorities is wholly unwarranted.

5. Accordingly, the Order-in-Appeal is set aside and the Revision application filed by M/s Gardex is allowed.

  
1.8.18  
(R.P. Sharma)

Additional Secretary to the Government of India

M/s Gardex,  
C-7, Focal Point,  
Jalandhar (Punjab)

495/2018-62  
GOI ORDER No. dt. 01-8-2018

Copy to-

- 1) The Commissioner of CGST, Jalandhar, CGST House, 'F'- Block, Rishi Nagar, Ludhiana-141001, Punjab.
- 2) The Commissioner(Appeals), C.R. Building, Plot no. 19-A, Sector 17-C, Chandigarh 160017
- 3) The Deputy Commissioner, CGST Division Jalandhar, Opposite Hotel Skylark, Model Town Road, C.R. Building, Jalandhar 144001.
- 4) Sh. Ravi Chopra, advocate, 14, Connaught Circus, Jalandhar 144001, Punjab.
- 5) P.S. to A.S.
- 6) Guard file
- 7) Spare Copy

ATTESTED

(Debjit Banerjee)  
Sr. Technical Officer