

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, Cuffe Parade,
Mumbai- 400 005

F. No. 195/142/14-RA

Date of Issue:- .09.2020

ORDER NO. 630/2020-CX(SZ)/ASRA/MUMBAI DATED 14.09.2020
OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Sl.No.	Revision Application No.	Applicant	Respondent
1	195/142/2014-RA	M/s Sree DRG Vinyl Industries, Plot No. FF-55, SIPCOT Industrial Growth Centre, Perundurai, Tamil Nadu - 638 052.	Commissioner of CGST, Salem.

Subject: Revision applications filed under Section 35EE of the Central Excise Act, 1944, against the Order in Appeal No. SLM-CEX-APP-44&45-14 dated 05.02.2014 passed by the Commissioner of Central Excise (Appeals), Salem.

ORDER

This Revision application is filed by M/s Sree DRG Vinyl Industries, Plot No. FF-55, SIPCOT Industrial Growth Centre, Perundurai, Tamil Nadu - 638 052 (hereinafter referred to as the 'applicant') against the Orders-In-Appeal No. SLM-CEX-APP-44&45-14 dated 05.02.2014 passed by the Commissioner of Central Excise (Appeals), Salem.

2. The applicants are holders of Central Excise Registration No. Abrfs0294gem001 for manufacturer of PVC Leather Cloth falling under Chapter S.H. 59031090 of the First Schedule to the Central Excise Tariff Act, 1985. The Applicant had filed a rebate claim for Rs. 4,89,804/- (Rupees Four Lakh Eighty Nine Thousand Eight Hundred Four Only) for export made under ARE-1 No. 04/2012-13 dated 10.08.2012 & 06/2012-13 dated 05/09.2012. The rebate claim was filed on 26.06.2013 to the proper officer. The Range Officer verified the eligibility of the availment of Cenvat Credit by the applicant and reported that a show cause notice Sr. No. 43/2013 CEX. (ADC) dated 02.07.2013 has been issued to the applicant for disallowing and recovering the irregular credit of Rs. 9,04,934/- towards excess credit availed by them during the period from June, 2012 to March, 2013. On deduction of this irregular credit amount from Cenvat Credit account, there was a short balance of Rs.1,96,840/- during the month of September,2012. Accordingly, the Rebate Sanctioning Authority rejected the rebate claim to the tune of Rs. 1,96,842/- vide Order in Original No.86/2013-(R)AC/Erode I Dn. Dt. 05.09.2013 on account of short credit

3. Being aggrieved by the Order in Original, the applicant filed appeal before the Commissioner of Central Excise (Appeals), Salem. The appellate authority vide Order in Appeal No. SLM/CE-APP-44 & 45-2014 dated 05.02.2014

rejected the appeal and upheld the Order in Original. The appellate authority observed that :-

3.1 The demand towards recovery of availment of irregular Cenvat Credit of Rs. 9,04,934/- had been confirmed vide Order in Original No. 16/2013-CX ADC dated 02.12.2013. Thus the demand was confirmed as on the date which was not stayed by competent authority.

3.2 Without balance in the Cenvat Credit account, claiming of rebate would not be available as prescribed in the Notification No. 5/2006-CE.

3.3 When the Cenvat Credit itself is in question and demand has been confirmed, it would not be proper for the applicant to claim the rebate on such disputed Cenvat Credit at this stage.

4. Aggrieved by the said order, the applicant filed this Revision Application on following grounds :-

4.1 They have paid Rs. 1,96,842/- in cash along with interest of Rs. 24,431/- on 18.10.2013. This was reported to the Commissioner, Appeals. But the Appellate Authority held that on the date of clearance of goods for exports, there was no credit to the extent of Rs. 1,96,842/- and as per Rule 5 of Cenvat Credit Rules, 2004 only the credit available on that particular date is available as refund or rebate.

4.2 The finding of the Appellate Authority is not sustainable because the short credit was made good by payment in cash along with interest.

4.3 The substantial benefit should not be denied on account of procedural infractions.

5. A Personal Hearing in the matter was fixed on 16.05.2018, 10.10.2019, 20.11.2019 and 29.11.2019. Shri R. Balagopal, Consultant attended the same

on behalf of the applicant on 28.11.2019. Shri R. Balagopal, Consultant filed additional submission vide his letter dated 28.11.2019.

6. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

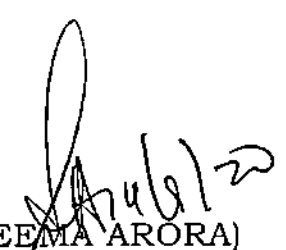
7. In the instant case, the Government finds that the impugned rebate claim was rejected by the original authority on the grounds that there was short credit to the tune of Rs.1,96,840/- in the month of September 2012. The subject short credit had occurred due to the demand for recovery of availment of cenvat credit by the applicant as alleged by the department in the show cause notice Sr. No. 43/2013 CEX. (ADC) dated 02.07.2013. the impugned SCN was adjudicated and the demand was confirmed by the Adjudicating Authority vide Order in Original no.16/2013-CX(ADC) dated 02.12.2013. Further, the appeal filed by the applicant in this regard was rejected by the Appellate Authority vide Order in appeal No. 135/2014 dated 25.04.2014.

8. The Government finds that the Hon'ble CESTAT has passed Final Order No. 40134/2015 dated 06.02.2015 in respect of appeal arising out of Order in Appeal No. 135/2014-CE dated 25.04.2014 issued by the Commissioner (Appeals), Salem for recovery of irregular cenvat credit alleged in the impugned show cause notice. The Hon'ble CESTAT vide its above referred order remanded the case to the authority below to verify the credits for appropriate dealing in re-adjudication. Further, it is observed that the lower authority, in the light of directions given by Hon'ble CESTAT, verified the records and allowed the cenvat credit to the extent of Rs. 7,11,337/- as fresh credit during the month of June 2012 vide Order in Original No. 03/3016-CX(JC) dated 31.03.2016. As the short credit in Cenvat account has been regularised by the

department, the Government opines that the original cause for rejection of impugned rebate claim as of date does not subsist.

9. The revision application is allowed.

10. So ordered.


(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

To,
M/s Sree DRG Vinyl Industries,
Plot No. FF-55, SIPCOT Industrial Growth Centre,
Perundurai, Tamil Nadu - 638 052.

Copy to :

1. The Commissioner of CGST, Salem Commissionerate, No.1,- Foulkes Compound, Anaimedu, Salem - 636001.
2. The Commissioner of CGST & Central Excise (Appeals), No.1, Foulkes Compound, Anaimedu, Salem - 636001.
3. The Assistant Commissioner of CGST, Erode-I Division, Salem Commissionerate, No. 81, Bharathi Nagar, Veerappanchatram Post, Soolai, Erode 638 004.
4. Sr.P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare copy.