

SPEED POST



**F. No. 196/03/ST/18—R.A.
196/04/ST/18---R.A.
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.. 16/2/21.....

Order No. 01-02/2021-ST dated 16-02-2021 of the Government of India, passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under Section 83 of Finance Act, 1994 read with Section 35 EE of the Central Excise Act, 1944.

Subject: Revision Application filed under Section 83 of Finance Act, 1994 read with Section 35 EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. 22/ST/Appeal/Audit/LKO/2018 dated 01.02.2018 and 07/ST/Appeal/Audit/LKO/2018 dated 09.01.2018 Commissioner (Appeals), Customs and CGST, Lucknow.

Applicant: M/s Ginni filaments Ltd., Mathura.

Respondent: Commissioner Central Excise & CGST, Agra.

ORDER

Two Revision Applications Nos. 196/03/ST/18—R.A. and 196/04/ST/18—R.A both dated 14.05.2018 have been filed by M/s Ginni Filaments Ltd., Mathura (hereinafter referred to as applicant) against Orders-in-Appeal Nos. 22/ST/Appeal/Audit/LKO/2018 dated 01.02.2018 and 07/ST/Appeal/Audit/LKO/2018 dated 09.01.2018 passed by Commissioner (Appeals), Customs and CGST, Lucknow .

2. The brief facts leading to the present proceedings are that the applicant had filed two rebate claims, amounting to Rs. 79,839/- and Rs. 1,83,979/-, on account of service tax paid to an Indian Commission Agent for providing services used for export of 100% Cotton Yarn during the period October, 2015 to March, 2016 in terms of Notification no. 41/2012-ST dated 29.06.2012. The rebate claims were rejected by the original authority on the ground that the service of Commission Agents does not fall within the ambit of specified services under the said notification as the said service has not been used beyond the place of removal. Aggrieved, the applicant filed appeals before the Commissioner (Appeals) who also rejected their appeals on the same ground.

3. The present revision applications have been filed, mainly, on the ground that the said services were eligible to be specified services as per the notification no. 41/2012-ST dated 29.06.2012, as amended vide notification no. 1/2016 dated 03.02.2016 with retrospective effect.

4. Personal hearing was held on 10.02.2021. Sh. S. C. Kamra, Advocate, attended and filed a written submission. He reiterated the contents of revision application and the written submissions. Sh. Kamra highlighted that the issue is covered in their favour by CESTAT's order in the case of Bharat Mines & Minerals [2020(38) GSTL 101(T-Del)]. No one appeared for the respondent and no request for adjournment has also been received. Hence, the matter is taken up for decision on the basis of facts and records available.

5.1 The Government has examined the matter. It is not in dispute that, originally, as per the Explanation Clause (A) (i) to the Notification No. 41/2012-ST dated 29.06.2012, the rebate could be granted by way of refund of service tax paid on the 'specified services', which was defined to mean as "in case of excisable goods, taxable services that have been used beyond place of removal, for the export of said goods". The original authority rejected the applicant's rebate claims as the services of Commission Agents were not provided post removal i.e. beyond the place of removal in terms of the said notification. This view was upheld by the Commissioner (Appeals) also in the impugned Orders-in-Appeal.

5.2 However, it is observed that the Notification No. 41/2012-ST dated 29.06.2012 was amended vide Notification No. 01/2016-ST dated 03.02.2016 whereby the definition of 'specified services' was changed to mean as the "taxable services that have been used beyond factory or any other place or premises of production or manufacture of the said goods, for their export". This amendment was given retrospective effect, vide section 160 of the Finance Act, 2016 read with the Tenth

Schedule thereof, for the period 01.07.2012 to 02.02.2016 (both days inclusive). On a plain reading of the amended definition, the Government finds that any service received in respect of export goods where such service is rendered outside the factory or any other place of manufacture is the 'specified service' for the purpose of notification no. 41/2012-ST dated 29.06.2012. Consequently, rebate of service tax paid in respect of such service shall be admissible.

5.3. It appears from the orders of the authorities below that the fact of retrospective amendment and inclusion of the "services used beyond factory" instead of "services used beyond place of removal" was neither pleaded before them nor did it come to their notice otherwise. In these facts and circumstances, it will be just and fair that the original authority considers the rebate claims, *de novo*, in view of the amended notification no. 41/2012-ST dated 29.06.2012.

6. Accordingly, the orders of lower authorities are set aside and the matter is remanded to the original authority to decide the matter afresh keeping in view the findings above.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Ginni Filaments Ltd.,

110 KM Milestone, Delhi-Mathura Road, Chhata, Distt- Mathura-281401

G.O.I. Order No. 01-02/21-ST dated 16-2-2021

Copy to:-

1. Commissioner of Central Excise & CGST, Agra.
2. Commissioner of Customs, CGST & Central Excise (Appeals), Lucknow.
3. PA to AS (Revision Application)

4. Guard File.
5. Spare copy.

ATTESTED


Assistant Commissioner (R.A.)