

SPEED POST



**F. No. 196/09/ST/2018—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...11/4/21.....

Order No. 07/21-ST dated 01-04-21 of the Government of India, passed by Shri Sandeep Prakash, Principal Commissioner & Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994.

Subject: Revision Application filed under Section 35 EE of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994 against the Order-in-Appeal No. GZB/EXCUS/000/APPL-MRT/15-16/2018-19 dated 19/04/2018 passed by Commissioner of CGST and Central Excise (Appeals), Meerut.

Applicant: M/s. Albert David Limited, Ghaziabad.

Respondent: Commissioner of CGST, Ghaziabad.

ORDER

A Revision Application No. 196/09/ST/2018—R.A. dated 04/07/2018 has been filed by M/s Albert David Limited, Ghaziabad (hereinafter referred to as applicant) against Order-in-Appeal No. GZB/EXCUS/000/APPL-MRT/15-16/2018-19 dated 19/04/2018 passed by Commissioner of CGST (Appeals), Meerut, wherein the appeals filed by the applicant, against Orders-in-Original Nos. R-106/ST/2016-17 and R-107/ST/2016-17, both dated 23.02.2017 passed by Assistant Commissioner, Service Tax, Division V, Ghaziabad, have been dismissed.

2. The brief facts leading to the present proceedings are that the applicant had filed two rebate claims for Rs.2,31,856/- and Rs.2,73,352/- for service tax paid on taxable services which were received by them and used for export of goods 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 applicant had already received the refund of the claimed service tax through EDI system in Customs under Para 2 of the said notification and no further rebate is admissible under Para 3 of the notification which allows rebate of actual service tax suffered. Aggrieved, the applicant filed appeals before the Commissioner (Appeals) who dismissed their appeals on the same ground. The present revision application has been filed on the ground that Para 1(c) of notification 41/2012-ST dated 29.06.2012 stipulates that rebate under Para 3 can be claimed if the difference between the rebate as claimed in Para 2 and Para 3 is more than 20% of the rebate available under Para 2. Since this condition is satisfied in their

case, rebate under Para 3 should be allowed to them even if they have opted for rebate under Para 2 of the said notification.

3. Personal hearing was held on 22/03/2021. Sh. Sonik Rana, Plant Commercial Head, attended the hearing on behalf of the applicant and reiterated the contents of revision application. None attended the hearing for the respondents and no request for adjournment has been received. Hence the matter is taken up for disposal on the basis of facts available on record.

4.1 The Government has examined the matter. The issue to be decided in this case is that whether the applicant can claim rebate under Para 3 of notification no. 41/2012-ST dated 29.06.2012 even when they have already claimed rebate under Para 2 of the said notification.

4.2 Para 2 of Notification No. 41/2012-ST dated 29.06.2012 requires the exporter to make a declaration in the electronic shipping bill to the customs for claiming rebate of service tax as a percentage of the declared FOB value of the said goods on a pre-specified rate. Para 3 of the said notification allows the rebate of service tax actually paid on the specified services used in export goods. Para 2(d) (ii) of the said notification reads as follows:-

"no further rebate shall be claimed in respect of the specified services, under procedure specified in paragraph 3 or in any other manner, including on the ground that the rebate obtained is less than the service tax paid on the specified services."

Para 2(g) stipulates that the shipping bill or bill of export on which rebate has been claimed, by way of procedure specified in Para 2, shall not be used for rebate claim

on the basis of documents specified in Para 3. Correspondingly, the Para 3 (k) (iii) of the notification similarly stipulates that the rebate under Para 3 shall not be admissible if it has been received on the shipping bills on the basis of procedure prescribed in Para 2. Thus, on a combined reading of aforesaid provisions, it is clear that an exporter can claim rebate either under Para 2 or Para 3 and having availed rebate under Para 2, the rebate under Para 3 cannot be claimed.

4.3 The applicant has relied upon Para 1(c) of the notification to contend that in case, the difference between the amount of rebate under the procedure specified in Para 2 and Para 3 is more than 20% of the rebate available under the procedure specified in Para 2, they can avail rebate under Para 3. Para 1(c) reads under:-

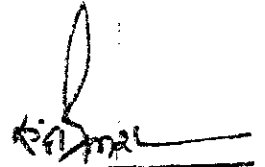
“the rebate under the procedure specified in paragraph 3 shall not be claimed wherever the difference between the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 is less than twenty percent of the rebate available under the procedure specified in paragraph 2.”

As already noted, the rebate under Para 2 is claimed as a percentage of declared FOB value of exported goods, on the basis of rate specified in the schedule whereas the rebate under Para 3 is to be claimed on the service tax actually paid. Keeping in view the provisions of Para 2(d) (ii), Para 2(g) and Para 3(k)(iii) of the notification, as enumerated in Para 4.2 above, and on a harmonious reading of Para 1(c) with the said provisions, only permissible interpretation of Para 1(c) is that rebate on actual basis (under Para 3) can be claimed only if it is more than 20% of the rebate admissible under Para 2 but it does not permit availment of rebate under Para 3 after rebate has

already been claimed under Para 2 even if difference is more than 20%. In other words, the default option is to claim rebate under Para 2, though it is open to an exporter to claim rebate under Para 3 if rebate on actual basis is 20% or more but such option has to be exercised at the time of export and option so exercised cannot be changed subsequently.

5. In the present case, the applicant has already claimed rebate of the service tax under Para 2 of Notification No. 41/2012-ST and now they want to claim rebate under Para 3 of the said notification, which is not permissible in view of the provisions elaborated above. If the applicant wanted to avail rebate under Para 3, they should not have opted for it under Para 2 at the outset. Hence, the Government does not find any reasons to interfere with the impugned Order of the Commissioner (Appeals).

6. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

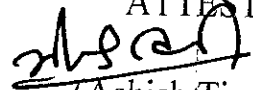
M/s. Albert David Limited,
B-12 & 13, Meerut Road Indl. Area,
Ghaziabad-201003.

G.O.I. Order No. 07/21-ST dated 01-04-2021

Copy to:-

1. Commissioner of CGST and Central Excise, Meerut.
2. Commissioner of Central Excise (Appeals), Meerut.
3. PA to AS(Revision Application)
4. Spare Copy
5. Guard File

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)