

REGISTERED
SPEED POST



F.No.196/14/ST/17-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.....

ORDER NO. 08/2018 - ST dated 01-03-2018 OF THE GOVERNMENT
OF INDIA, PASSED BY SHRI RAJPAL 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. 49/ST-I/KOL/2017 dated 27.02.2017
passed by the Commissioner of Central Excise &
Customs, Kolkata.

APPLICANT : M/s Mortex (India)

RESPONDENT : Commissioner of Central Excise & Customs,
Kolkata

ORDER

A Revision Application No. 196/14/ST/17-RA has been filed by M/s Mortex (India), 1A, East India House, 20, British India street, Kolkata (hereinafter referred to as the applicant) against Order in Appeal No. 49/ST-I/KOL/2017 dated 27.02.2017, passed by the Commissioner of Central Excise (Appeals-I), Kolkata.

2. The brief facts leading to the filing of this Revision Application are that the applicant filed a rebate claim for Rs. 5,72,681/- in terms of notification No. 41/2012-ST dated 29.06.2012 for Service Tax paid on various services used for export of goods. The original adjudicating authority sanctioned claim of Rs. 4,40,909/- and rejected the remaining claim of Rs.1,31,772/-. Thereafter the department filed an appeal with Commissioner (Appeals) with regard to sanctioning of rebate of Rs. 63,068/- out of Rs. 4,40,909/- on the ground that the inspection services were not used beyond the place of removal of goods for export of goods and, therefore, it could not be considered as specified services in terms of notification no. 41/2012-ST dated 29.06.2012 for which only the rebate of Service Tax is allowed under this notification.

3. Being aggrieved by the order of Commissioner (Appeals), the applicant has filed this Revision Application mainly on the following grounds:

- i) Notification No. 41/2012-ST has been amended by notification no. 1/2016-ST dated 03.02.2016 with retrospective effect from 01.07.2012 vide section 160 of the Finance Act as per which any service used beyond factory for export of excisable goods is now a specified service. Since inspection services are used by them within the factory but not at the place where goods are manufactured it is a specified Service being used at the place beyond the place of removal.

ii) The rebate has been granted under section 93A of Finance Act 1994 which does not talk of any interest where such rebate is sanctioned. Therefore, no interest can be charged upon recovery of the amount.

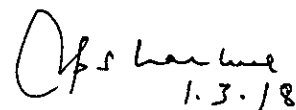
4. Personal hearing was held on 6.2.2018 which was attended by Sh. Jalan, advocate, for the applicant who furnished additional submissions alongwith two CESTAT's orders.

5. On examination of the Order-in-Appeal, the Government finds that the rebate claim of the applicant has been held to be not admissible on the ground that the inspection service was not used beyond the place of removal. The applicant has also not denied this fact in the Revision Application and they have only contended that the definition of 'specified service' has been amended under notification no. 1/2016-ST dated 03.02.2016 with retrospective effect from 01.07.2012. While this fact is not in dispute, the Government finds that even after the aforesaid amendment in the notification no. 41/2012-ST the specified services in relation to the export of excisable goods are only those which are used beyond the factory or any other place of manufacturing such as transportation of goods, cargo handling, port services and CHA services etc. which are generally used between the factory and the port of export of the goods. Thus, even after amended definition of specified services w.e.f 01.07.2012, the services which are used by an exporter within the factory in relation to exported goods are not covered in the category of specified services under notification no. 41/2012-ST. The applicant has not claimed anywhere that the inspection services were used in respect of the exported goods beyond factory and instead it has been unambiguously accepted in grounds of application at sl no. (B) that the inspection services are rendered after the manufacture of the goods but before the removal of the same from the factory from which it is explicit that the inspection service was used within the factory only and not beyond the factory. As a result, it is not a specified service in terms of notification no. 41/2012-ST for the purpose of getting rebate of service tax

paid on the specified services. Applicant's reliance on CESTAT's decision dated 24.07.2017 in the case of Commissioner of Service Tax, Kolkata Vs. SM Niriyat Pvt. Ltd. And M/s Vedica Metals Pvt. Ltd., passed in reference to ST Appeal No. 76979 & 76993/16, is completely misplaced as in this decision only CHA and terminal handling service, which were undoubtedly used beyond the factory, have been held to be eligible for rebate of service tax. But the inspection service used in the factory for inspection of the goods is certainly not used beyond factory of the applicant and, therefore, it cannot be equated with the above two services like CHA and terminal handling services. Further, the CESTAT's order No. 77622- 77631/2017 dated 30.01.2017, passed in reference to ST Appeal Nos. 76918/76926, 76925, 76927, 76922, 76921/16, 76961, 76924, 76919 & 76923/16, relied upon by the applicant, is also not found relevant to the present Revision Application as in the said decision the issue decided by the CESTAT is only that a rebate claim filed under para 3 of notification No. 41/2012-ST can be in respect of more than one shipping bill also and issue regarding admissibility of rebate of service tax on inspection service is not dealt in this case.

6. As regards applicant's liability of interest on erroneously granted rebate of Rs. 63068/-, the Government does not find any fault in the order of the Commissioner (Appeals) as under section 73 (3), read with explanation 1, interest under section 75 on erroneously refunded Service Tax is payable.

7. In view of the above discussion, the Revision Application filed by M/s Mortex (India) is rejected.


1.3.18

(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

M/s Mortex (India)
1A, East India House,
20, British India Street,
Kolkata-700069,
West Bengal

ORDER NO. 08/2018-ST dated 01-03-2018

Copy to:-

1. The Commissioner of Service Tax, Service Tax-I Commissionerate, Kendriya Utpad Shulk Bhavan, 180, Rajdanga Main Road, Shantipally, Kolkata- 700107
2. The Commissioner of Central Excise (Appeals-I), Kolkata, Bamboo Villa, 4th Floor, 169, AJC Bose Road, Kolkata-700014.
3. Assistant Commissioner of Service Tax, Division-I, Service Tax Commissionerate, 180, Shantipally, Rajdanga Main Road, (2nd floor) Kolkata- 700 107.
4. PS to AS(RA)
- ✓ 5. Guard File.
6. Spare Copy.

ATTESTED

(Debjit Banerjee)
STO (REVISION APPLICATION)