

REGISTERED  
SPEED POST



F.No. 196/35/ST/2016-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.....

ORDER NO. 11/2018-ST dated 01-03-2018 OF THE GOVERNMENT OF INDIA,  
PASSED BY SHRI R.P.SHARMA, PRINCIPAL COMMISSIONER & ADDITIONAL  
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 83 of the Finance  
Act, 1994 read with Section 35EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed under Section 35EE of the  
Central Excise Act, 1944 read with section 83 of Finance  
Act, 1994, against the Order-in-Appeal No. 88-89-  
ST/DLH/2016 dated 22.09.2016 passed by Commissioner  
of Central Excise (Appeals -I), Delhi.

APPLICANT : M/s. United Exports, Karnal

RESPONDENT : Commissioner of Central Excise & Customs, Panchkula

\*\*\*\*\*

## ORDER

A revision application No.196/35/ST/16-RA. dated 10/11/2016 is filed by M/s United Exports, 109/3 Km Stone, G.T. Road, Gharaunda, Distt Karnal (hereinafter referred to as the applicant) against the Order-In-Appeal No:88-89-ST/DLH/2016 dated 22/09/2016, passed by the Commissioner of Central Excise (Appeals-1), Delhi, who has rejected the appeal of the applicant filed before him.

2. The brief facts leading to the present proceeding are that the applicant filed two refund claims on 10/10/2014 for Rs.7,70,432/-under the provisions of notification 41/2012-ST Dated 29/06/2012 in respect of Service Tax paid on services used in the export of rice. However, out of the total amount of Rs. 7,70,432/-the Assistant Commissioner sanctioned the rebate of service tax for Rs.4,77,779/-only and rejected the remaining claim of Rs.2,92,653/-. Out of the rejected claim of Rs.2,92,653/-, the claim of Rs.1,79,962/- was rejected on the ground that the difference between the amount of rebate under the procedure specified in Para 2 and Para 3 is lesser than 20% of the rebate admissible under the procedure specified in Para 2 of Notification no. 41/2012-ST dated 29/06/2012. The applicant's appeal filed before the Commissioner (Appeals) with regard to the above stated rebate claim for Rs.1,79,962/-is also rejected vide above mentioned Order-in-Appeal dated 22/9/2016. Consequently, the above revision application is filed before the Government mainly on the ground that the rebate claim filed by them under Para 3 of notification no. 41/2012 is lesser than even the amount admissible under Para 2 of this notification and, therefore, if the rebate claims are not found maintainable under Para 3, rebate of service tax should be allowed to them under Para 2 of the said notification.

3. Personal hearing was offered on 17/01/2018 which was attended by Sh. Pardeep Tayal, C.A, on behalf of the applicant in this case and reiterated the grounds of revision already pleaded in their application. He also furnished additional submissions. However, no body appeared from the respondent's side.

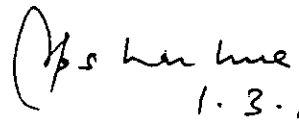
4. On examination of Commissioner (Appeals)'s order, revision application, additional submissions of the applicant and all relevant records it is observed by the Government that it is not in dispute that the applicant had claimed the rebate of service tax to the extent rejected by the Assistant Commissioner under Para 3 of the notification no. 41/2012-ST and it is also not disputed that the difference between the claimed amount under Para 3 viz-a-viz the rebate of service tax which could be admissible under Para 2 of the said notification was lesser than 20%. Now the main issue before the Government is whether the rebate of service tax can be allowed under Para 2 of the above notification at this stage after it has been already rejected by the Assistant Commissioner and the Commissioner (Appeals).

5. On mere reading of the notification 41/2012, it is evident that an option is given to the claimant either to claim rebate of service tax under Para 2 or Para 3 of the said notification. The rebate claim under Para 2 is required to be filed with the concerned Custom House along with shipping bills as per rates specified for different items in the Schedule to the above notification. Whereas the rebate claim of service tax under Para 3 is to be claimed from the jurisdictional Assistant/Deputy Commissioner of Central Excise on the basis of ~~actual-service-tax-paid-on-the-input-services-or-inputs-used-in-the-exported~~ goods and the procedure for the same is entirely different. Thus, claimant is given liberty for choosing the most beneficial option in terms of more amount and convenience. Since the claim under Para 2 is in terms of already fixed rates for each item in the Schedule of the notification itself, it is prima facie hassle-free procedure for getting the rebate of service tax at earliest from the customs authorities. On the other hand rebate of service tax under Para 3 is admissible only on the basis of documents evidencing payment of actual service tax which certainly requires proper record keeping and other efforts on the part of the claimant. However, option to file claim under Para 3 is not open ended and it can be filed under this Para only if the difference between the amount of rebate admissible under Para 2 and under Para 3 is not lesser than 20% of rebate admissible under Para 2.

6 As discussed above, there is no dispute that in the instant case the rebate claims are not maintainable under Para 3 as the difference between the amount of rebate claimed under Para 3 and the amount of rebate which could

be admissible under Para 2 is undoubtedly below 20%. This fact has not been questioned by the applicant also in their revision application. As regards the issue whether the rebate of service tax can still be granted under Para 2, it is already discussed above that rebate of service tax under Para 2 can be claimed only from Customs authorities after complying with the procedure laid down under the above notification and rebate of service tax under Para 2 cannot be granted by the Central Excise authorities as custom authorities have only been entrusted under notification no, 41/2012-ST to disburse rebate of service tax as per rates specified in the schedule a like drawback of duty of customs. Since this restriction is specified in the notification itself, it cannot be relaxed even when the rejected amount of rebate of service tax is lesser than the amount admissible under Para 2 of the notification, as claimed by the applicant, Considering these facts and legal restrictions inbuilt in the notification no, 41/2012-ST, the government finds that Commissioner (Appeals) has rightly set aside the applicant's appeal before him and no interference from the government is warranted.

7. Accordingly, the revision application is rejected.

  
1.3.18

(R.P.Sharma)  
Additional Secretary to the Government of India

M/s. United Exports,  
109/3 Km Stone, G.T. Road,  
Gharaunda, District - Karnal

ORDER NO. 11/18-ST dated 01-3-2018

Copy to: -

1. Commissioner of Central Excise & Customs, SCO No. 407-408, Sector - 8, Panchkula(Haryana) Pincode - 134 109.
2. Commissioner (Appeals - I), Customs & Central Excise, Delhi, Room No. 134, Central Excise Building, Indraprastha Estate, New Delhi.
3. The Assistant Commissioner, Central Excise and Service Tax Division, Ambala
4. PA to AS(RA)
- ✓ 5. Guard File
6. Spare copy

ATTESTED

(Ravi Prakash)  
OSD (RA)

*ND*  
1-3-2018  
(निर्मला देवी, AFR: L-1A/DEA)  
अनुपाल अधिकारी / Section Officer  
श्रीलक्ष्मी (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.),  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi