

REGISTERED
SPEED POST



F.No. 196/12/ST/2016-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.....

Order No. 13/2018-ST dated 01-3-18 of the Government of India, passed by Shri R.P.Sharma, 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.71-72/ST-I/KOL/2016 dated 18.5.2016 passed by Commissioner of Central Excise (Appeals-I), Kolkata

Applicant : M/s. Delta Grover & Viniyog Pvt. Ltd., Kolkata

Respondent : Commissioner of Central Excise, Kolkata

ORDER

A revision application No.196/12/ST/16-RA dated 04.07.2016 is filed by M/s Delta Grower & Viniyog Pvt. Ltd., 12 Government Place (East), Kolkata 700069 (hereinafter referred to as the applicant) against the Order-in-Appeal No.71-72/ST-1/KOL/2016 dated 18.05.2016, passed by the Commissioner of Central Excise (Appeals-I), Kolkata, who has rejected the appeal of the applicant filed before him.

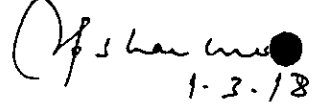
2. The brief facts leading to the present proceedings are that the applicant filed two refund claims of Rs.1140848/- and Rs.19,34,135/- under the provisions of Notification No.41/2012-ST dated 29.06.2012 in respect of service tax paid on railway freight services used in relation to export of Phospho Gypsum and Gypsum made. While both the above rebate claims were sanctioned by the jurisdictional Assistant Commissioner, his Order was reviewed by the Commissioner on the ground that since the applicant had already recovered freight charges and the service tax paid thereon from its foreign buyers, sanctioning of rebate would entail double benefit to the applicant which is contrary to the provisions of law and M/s Paradeep Phosphate, who had paid service tax on rail freight, had not given any NOC to the applicant for getting rebate of tax. Accordingly, the appeals were filed by the Department and accepting the above grounds the appeals were allowed by the Commissioner (Appeals-I), Kolkata, vide above referred OIA. Being aggrieved, the applicant has filed the revision application before the Government mainly on the grounds that Notification No.41/2012-ST is a complete code; that there is no condition under this Notification that amount of service tax paid by the claimant cannot be realized from the foreign customers and that the Principle of unjust Enrichment is not applicable to the rebate claims as per Ist Proviso to Sub-Section 2 of Section 11B of the Central Excise Act 1944.

3. Personal hearing was offered on 06.02.2018 which was attended by Shri Abhishek Jalan, Advocate, on behalf of the applicant and he furnished the additional

submissions alongwith NOC from M/s Paradeep Phosphate and STTG Certificates from the Railways. However, nobody appeared from the respondent's side.

4. On examination of revision application, additional submissions of the applicant and all relevant records, it is observed by the Government that the Revenue's appeal has been allowed by the Commissioner (Appeals) on two grounds that M/s Paradeep Phosphate, who had paid service tax on rail freight, has not issued NOC to the applicant for claiming rebate of service tax and the applicant has recovered the service tax amount from the foreign customers. As regards the first reason given by the Commissioner (Appeals) in his Order, the applicant has produced a letter dated 21.9.15 from M/s Paradeep Phosphate Ltd. stating that they have been reimbursed railway freight and service tax by the applicant and they have not claimed any cenvat credit against the service tax paid by them in respect of railway freight paid on transportation of phosphate. From this letter it is implied that M/s Paradeep Phosphate Ltd. does not have any objection with the rebate claim filed by the applicant in this case. Even otherwise M/s Paradeep Phosphate have not claimed any rebate against the service tax paid on the exported goods. As regards second reason adduced by the Commissioner (Appeals), the Government finds that the Principle of unjust Enrichment is not applicable to the rebate of service tax by virtue of Proviso to Section 11B (2) of the Central Excise Act which is made applicable to service tax matters by virtue of Section 83 of the Finance Act 1994. Therefore, while the Government does not agree with the applicant's claim that Notification No.41/2012-ST is a complete code and Section 11B of the Central Excise Act is not applicable to rebate of service tax, it fully agrees with the applicant's contention that the rebate of service tax in respect of exported goods cannot be refused for the reason that they have recovered freight and service tax amount from the foreign customers. The Commissioner (Appeals) has somehow overlooked the above stated. Section 11B (2) of the Central Excise Act while passing the OIA and consequently the above reason given by him to deny rebate of service tax to the applicant is not found legally tenable.

5. Accordingly, the revision application is allowed and the Commissioner (Appeals)'s Order is set aside.


1-3-18

(R.P.Sharma)

Additional Secretary to the Government of India

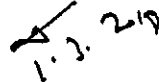
M/s. Delta Grower & Viniyog Pvt. Ltd.,
12, Government Place (East)
Kolkata-700069

ORDER NO. 13/2018-ST dated 01-3-2018

Copy to: -

1. Commissioner of Service Tax, Service Tax-I Commissionerate, Kendriya Utpad Shulk Bhavan, 18, Rajdanga Main Road, Shantipally, Kolkata-700107
2. Commissioner (Appeals-I), Central Excise, Commissionerate, Kolkata, Bamboo Villa, 4th Floor, 169, AJC Bose Road, Kolkata-700014
3. The Assistant Commissioner of Service Tax, BBD-II Division, Service Tax-I Commissionerate, Kolkata
4. PA to AS(RA)
- ✓ 5. Guard File
6. Spare copy

ATTESTED


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(Debjit Banerjee)
STO (RA)