

REGISTERED
SPEED POST



F.No. 196/06-11/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-110066

Date of Issue.....

Order No. 14-19/2018 -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 Applications filed under Section 35 EE of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994 against the Orders-in-Appeal 274-275-ST/APPL-AGRA/LKO/2015 dated 17.7.15, 265-268-ST/APPL-AGRA/LKO/2015 dated 14.7.15, 387-ST/APPL-AGRA/LKO/2015 dated 13.10.2015 & 13-18-ST/APPL/KNP/2017 dated 17.1.17, passed by Commissioner of Central Excise (Appeals), Lucknow

Applicant : M/s. Ginni Filaments Ltd., Chhata, Mathura

Respondent : Commissioner of Central Excise, Aligarh, U.P.

ORDER

Thirteen Revision Applications Nos.196/14-15/ST/15-RA, 196/16-19/ST/15-RA, 196/01/ST/2016-RA & 196/6-11/ST/17-RA dated 12.10.15, 19.10.15, 11.1.16 & 19.1.17 are filed by M/s. Ginni Filaments Ltd., Chhata, Mathura (hereinafter referred to as the applicant) against the Orders-in-Appeal Nos.274-275-ST/APPL-AGRA/LKO/2015 dated 17.7.15, 265-268-ST/APPL-AGRA/LKO/2015 dated 14.7.15, 387-ST/APPL-AGRA/LKO/2015 dated 13.10.2015 & 13-18-ST/APPL/KNP/2017 dated 17.1.17, issued by the Commissioner of Central Excise (Appeals), Lucknow/Kanpur, whereby the applicant's appeals filed against Deputy Commissioner's Orders In Original have been rejected.

2. The brief facts leading to the filing of the present revision applications are that the applicant filed rebate claims for service tax under Notification No.41/12 dated 29.6.12 against the service tax paid on commission agents services. However, it was rejected by the jurisdictional Assistant/Deputy Commissioner vide his orders by observing that the service of Indian commission agents used for procurement of export orders are in the nature of pre-removal services and hence it cannot be treated as services used beyond the place of removal for which the rebate of service tax is allowed under the above mentioned Notification. The applicant's appeals before the Commissioner (Appeals) were also rejected. Consequently the above 13 revision applications have been filed with the Government mainly on the grounds that the commission agents were not only required to obtain export orders from the overseas parties, but were also equally responsible to ensure realization of export proceeds from the overseas customers; that the definition of 'specified services' in Notification No.41/12-ST is also amended by Notification No.1/16-ST dated 3.2.16 retrospectively from 1.7.12 as per Section 160 of the Finance Act 2016 read with its Xth Schedule; that as per the amended definition of the 'specialized services' any taxable service that has been used beyond factory or any other place or premises of production or manufacture of the said goods is eligible for rebate of service tax and that the reliance on the definition of input services as per Rule 2(l) given in Cenvat Credit Rules, 2004 and Board's Circular No.943/4/2011-Cx dated 29.4.11 by the lower authorities for

● rejection of their rebate claims is erroneous as these are not relevant for deciding the admissibility of rebate of service tax under Notification No.41/12-ST.

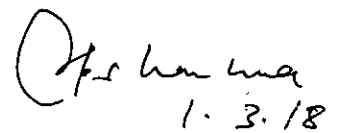
3. A personal hearing was held in these cases on 6.2.18 and 8.2.18 and it was attended by S.C.Kamra, Advocate, for the applicant who furnished written submissions dated 6.2.18 and 8.2.18 during the hearings which are reiteration of above stated grounds of revision only.

4. On examination of revision applications in the light of orders of the lower authorities, the Government agrees with the above mentioned contentions of the applicant that the definition of input services and Board's Circular dated 29.4.11 relating to Cenvat Credit are not relevant for the purpose of determining the admissibility of rebate of service tax and the same is required to be decided with reference to Notification No.41/2012-ST only. While examining the maintainability of the service tax under Notification No.41/2012-ST, the lower authorities have rejected the claim of the applicant's ~~mainly on the ground that procurement of export orders by the commission~~ agents from the overseas buyers are used for the exported goods prior to removal thereof from the place of removal and, therefore, this service is not covered in the term 'specified services' which covers only those services which are used beyond place of removal as defined in Section 4 of the Central Excise Act 1944. The applicant has also not disputed that the rebate of service tax under this Notification is admissible only in respect of the 'specified services' which are only those which are used beyond a factory in this case. The applicant has contended that the definition of 'specified services' has been amended from retrospective effect so as to cover any taxable service that has been used beyond factory or any other place of production or manufacture of the exported goods and the services of commission agents are specified services. However, it has not been elaborated by the applicant in these revision applications or in their additional submissions furnished during the personal hearings as to how this amended definition has enabled them to be eligible for rebate of service tax in reference to the services provided by the commission agents whose services are not generally used between factory to the port of export. Whereas on examination of amending

Notification 1/16-ST, the Government finds that the amended definition of specified services has not brought any material change in the context of the present case in as much as even after amended definition of 'specified services' the rebate of service tax is admissible only on the taxable services that have been used beyond factory or any other place of production of the exported goods and the services which are not used beyond factory are not eligible for rebate of tax. Thus only the services like transportation of goods, cargo handling, port service and CHA services etc. which are normally used beyond factory and upto port for export of goods are only the specified services even after amendment in Notification 41/2012-ST. Procurement of the export orders from the overseas buyers is undoubtedly a service in relation to manufacturing of the goods in the factory and it is not used beyond the factory. This fact is not denied by the applicant also anywhere in their revision application or otherwise and they have emphasized only that the commission agents have not only procured the export orders but they were also responsible to ensure realization of export proceeds from overseas customers. Thus, the commission agent's responsibility to ensure realization of export proceeds is tried to be projected as a service used beyond factory of production of the exported goods so as to cover this service in the category of specified service. But they have not explained anywhere how the commission agents ensured realization of foreign proceeds from the overseas buyers when they were neither exporter nor they were having any other legal basis for recovering the export proceeds from the foreign buyers. They have also not given any concrete example where the commission agents recovered export proceed in any case for the applicant. Since the applicant had only received the export orders from the overseas buyers, whether directly or through the commission agents, the applicant could only obtain letter of credit etc. from the buyers to ensure realization of the export proceeds in time and in case of default in receiving the payments the applicant was only having locus standi for recovering the export proceeds. Therefore, even if in the agreements with the commission agents a clause has been incorporated that they will also ensure realization of export proceeds, the task of the agents was only to procure the export orders from the foreign buyers on the

● basis of which the applicant manufactured the exported goods in their factory. Therefore, it is quite evident that the commission agents have not actually provided any service regarding recovery of foreign proceeds from the foreign buyers and their services regarding procurement of the orders was not used beyond factory as envisaged in the definition of specified services. Hence, while it can be an input service for availing cenvat credit under CCR, 2004, it is not a specified service for getting rebate of service tax under Notification 41/2012-ST. Hence, the rebate of service tax on the commission agents' services is not admissible under Notification No.41/12-ST even in the light of amended definition of specified services with effect from 1.7.12. The applicant's reliance on two decisions of Tribunal in the case of M/s Sharda Exports Vs. Commissioner of Customs and Service Tax, Dehradun, 2017-TIOL-3168-CESTAT-DEL and in the case of 20 Microns Limited Vs. Commissioner of Central Excise & Service Tax, Vadodara, 2017(47)S.T.R. 257 (Tri-Ahmd.) is also completely misplaced as the Tribunal has allowed the rebate of service tax in these two cases on services like CHA, clearing and forwarding, transport of goods, terminal handling charges etc. which are manifestly used beyond the factory or other place of manufacture of the exported goods and no rebate of service tax has been allowed in these cases on commission agent's services of procuring export orders which is used for manufacturing of the exported goods in the factory and not beyond the factory.

5. In view of the above discussion, the Government does not find any fault in the orders of the Commissioner (Appeals) and the revision applications filed by M/s Ginni Filaments Ltd., Chhata, Mathura, are rejected.


1.3.18

(R.P.Sharma)

Additional Secretary to the Government of India

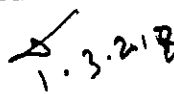
M/s. Ginni Filaments Ltd.,
Unit-I, 110 KM Milestone,
Delhi-Mathura Road, Chhata-281401
Distt. Mathura, U.P.

G.O.I. Order No. 1419 /18-ST dated 1-3-2018

Copy to:-

1. Commissioner of Customs, Central Excise & Service Tax, 113/4, Sanjay Place, Agra, U.P.
2. Commissioner of Central Excise (Appeals), Hall No.2, 8th Floor, Kendriya Bhavan, Aliganj, Lucknow, U.P.
3. Commissioner of Central Excise (Appeals), 117/7, Sarvodaya Nagar, Kanpur
4. The Deputy Commissioner Central Excise Division, Masood Mahal, Lal Digg Road, Aligarh-202001, U.P.
5. M/s S.C.Kamra & Co., Advocates and Solicitors, B-2/210 (Basement), Safdarjung Enclave, New Delhi-110029
6. PA to AS(Revision Application)
- ✓ 7. Guard File
8. Spare Copy.

Attested


1.3.218
(Debjit Banerjee)
STO (RA)