

SPEED POST



F.No. 196/20-22/ST/2018-R.A.
196/23-24/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..14.16.21....

Order No. 17-21 /2021-ST dated 14-06-2021 of the Government of India, passed by **Sh. Sandeep Prakash**, 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 Orders-in-Appeal No. 37-39/CE/BBSR-GST/2018 dated 30.10.2018 and 32-33/CE/BBSR-GST/2018 dated 31.07.2018 passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Bhubaneswar.

Applicants : M/s Misrilall Mines Pvt. Ltd, Kolkata.

Respondent : Commissioner of CGST, Bhubaneswar.

ORDER

Five revision applications nos. 196/20-22/ST/2018-R.A. and 196/23-24/ST/2018-R.A., all dated 27.12.2018 have been filed by M/s Misrilall Mines Pvt. Ltd, Kolkata (hereinafter referred to as the Applicant) against the Orders-in-Appeal nos. 37-39/CE/BBSR-GST/2018 dated 30.10.2018 and 32-33/CE/BBSR-GST/2018 dated 31.07.2018 passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Bhubaneswar, vide which the Commissioner (Appeals) has upheld the Orders-in-Original nos. AC/ST/JPR/Rebate/Misrilall/Saruabil/07/2017(R), AC/ST/JPR/Rebate/Misrilall/Saruabil/08/2017(R) and AC/ST/JPR/Rebate/Misrilall/Saruabil/09/2017(R), all dated 29.12.2017 and nos. AC/ST/JPR /Rebate/SCM/01/2017(R) and AC/ST/JPR/Rebate/SCM /01/2017(R), both dated 08.06.2017, passed by the Assistant Commissioner, CGST & Central Excise, Jajpur, Odisha.

2. Brief facts of the case are that the Applicants had filed five rebate claims for Rs. 4,56,717/-, Rs. 1,69,359/-, Rs. 73,383/-, Rs. 10,61,757/- and Rs. 1,18,126/- in respect of service tax paid for the services used in the export of Chrome Ore/Chrome Concentrate/Iron Ore, under notification no. 41/2012-ST dated 29.06.2012, which were rejected by the original adjudicating authority, vide the aforesaid Orders-in-Original, on a common issue that the claimant of the refund was M/s Saruabil Chromite Mines, Lessee: M/s Misrilall Mines Pvt. Ltd., Jajpur, although the Disclaimer Certificate issued by M/s MMTC Ltd. was in the name of M/s Misrilall Mines Pvt. Ltd., Kolkata and various grounds as listed below:

Grounds for rejection as per Orders-in-Original dated 08.06.2017

i) Detailed address of the service recipient i.e. M/s Saruabil Mines, Lessee: M/s Misrilall Mines Ltd., Jajpur Road was missing in the invoices submitted by the claimant and the address of the

service recipient in invoices was M/s Misrilall Mines (P) Ltd., Kolkata in the place of M/s Saruabil Mines, Lessee: M/s Misrilall Mines (P) Ltd., Jajpur Road, Jajpur; their head office address had not been mentioned anywhere in the ST-I application and the Kolkata address on invoice was not related to their manufacturing unit at Jajpur road.

ii) the claimant had not submitted any related document showing the receipt of export proceeds at Jajpur.

iii) the name of the commodity in the Shipping bill was mentioned as "Friable Chrome Ore" whereas in the invoice it was "Chrome Ore".

iv) the claimant had not submitted EP copy of their Shipping Bill and it could not be ascertained whether they had availed duty drawback on these exports which, if availed would render them ineligible for claiming Input Credit of Service Tax.

Grounds for rejection as per Orders-in-Original dated 29.12.2017

(i) Detailed address of the service recipient i.e. M/s Saruabil Mines, Lessee: M/s Misrilall Mines Ltd., Jajpur Road was missing in the invoices submitted by the claimant and the address of the service recipient in invoices was M/s Misrilall Mines (P) Ltd., Kolkata in the place of M/s Saruabil Mines, Lessee: M/s Misrilall Mines (P) Ltd., Jajpur Road, Jajpur. Also, their head office address had not been mentioned anywhere in the ST-1 application and the Kolkata address on invoice was not related to its manufacturing unit at Jajpur Road.

(ii) In some invoices, the name and address of service recipient differed from the name and address of the claimant, i.e., in the invoices it was mentioned that the service recipient was M/s Misrilall Mines Pvt. Ltd., Mineral House, 27A, CAMAC Street, Kolkata- 700016 instead of M/s Saruabil Chromite Mines, Lessee: M/s Misrilall Mines (P) Ltd., Jajpur road, Jajpur, Odisha- 755028.

- (iii) Some invoices did not contain the name of items exported.
- (iv) From the Foreign Remittance Certificates issued by CITI Bank bearing Ref No. 3527019463 dated 20.01.2017 and ICICI Bank bearing No. 1500GRS021742129 dated 01.03.2017, it was noticed that in former, the name & place of the remitter was M/s MMTC Ltd., Bhubaneswar, while in the later, the name was M/s Avani Resources PTE Ltd., Singapore. Thus foreign inward remitters in the two cases were different.
- (v) Since the claimant had not submitted the Export Promotion copy of Shipping Bill, it was uncertain whether they had availed the duty drawback on exports. If availed, they could not claim the Input Credit of Service Tax under any other provision as per para 4 MF (DR) Circular No. 37/2013-Cus dated 14.09.2013.
- (vi) The name of commodity differed in Shipping Bill, Commercial Invoice No. EXP/08/16-17 dated 30.12.2016 (Rebate claim of Rs. 4,56,717/-), in the invoices issued by M/s Satish Chandra Das and M/s Mitra S K Pvt. Ltd.

Aggrieved, the Applicants filed appeals before the Commissioner (Appeals), who, vide the impugned Orders-in-Appeal held, on the issue of "Disclaimer Certificate", held that since the goods in question were canalized items and the Head Office of the applicant did all the negotiations with M/s MMTC Ltd., the rebate claims could not be rejected on this issue. As regards other issues, the Orders-in-Original were upheld.

3. The applicant has filed the instant revision applications on the grounds that:

- i) the addresses mentioned on the invoices are of the same entity.
- ii) some invoices did not have the name of the item exported because they pertained to the plot rent collected by Paradeep Port

Trust and these plots are allotted to the exporters to store the export goods.

iii) the foreign remittance certificate issued by banks mention the names of M/s MMTC and M/s Avani Resources PTE Ltd.as remitters. But in both the cases, the receivers of the foreign exchange were the applicants themselves.

iv) as regards the non-submission of EP copy of the Shipping Bill and subsequent uncertainty about their availment of drawback, their items are not prescribed goods for claim of drawback in terms of MF(DR) Circular No. 37/2013 dated 14.09.2013.

4. Personal hearing was held on 10.06.2021, in virtual mode. Sh. Tarun Gupta and Sh. Ramesh Gupta, Chartered Accountants, appeared for the Applicants. Sh. Tarun Gupta made the submissions and reiterated the contents of the subject revision applications. He also submitted a synopsis of the case on 11.06.2021. No one appeared for the respondent department. However, a letter dated 09.06.2021 has been received from the Deputy Commissioner, CGST and Central Excise, Bhubaneswar, that the matter may be decided on merits.

5.1 The Government has carefully examined the matter.

5.2.1 There are several issues based on which the original authority has rejected the rebate claims of the Applicants, which are mentioned in Para 3 above. But the Commissioner (Appeals) has recorded his findings only in respect of two issues i.e. (i) Disclaimer Certificate and (ii) non-matching of address of the Applicants on the invoices in the impugned Order-in-Appeal. The issue relating to Disclaimer Certificate has been held in favour of the Applicant whereas in respect of the other issue, the Commissioner (Appeals) has held against the Applicant's contention.

5.2.2 The Government observes that the present case relates to rebate of Service Tax paid on the taxable services which are received by an exporter of goods and used for export of goods, subject to the extent and manner specified in the notification no. 41/2012-ST dated 29.06.2012. As per Para 2(a) of the said notification, "(a) manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder shall register his central excise registration number and bank account number with Customs." Since the Applicants have filed the claim as manufacturer-exporter, the Central Excise registration is the document relevant in the present case. On perusal of the Form A-I (Application for Central Excise Registration), it is noted that the Applicants have clearly mentioned addresses of their Head-Office at Kolkata and business premises at Jajpur, Odisha. Thus, the rejection of claims on the basis of non-mention of their business premises on the Form ST-I (Application for Registration under Section 69 of the Finance Act, 1994) is not sustainable.

5.3 The Orders-in-Appeal record no findings on all other grounds on which the original authority has rejected the rebate claims. Thus, Government considers it appropriate to remand the case to Commissioner (Appeals) to decide the appeals afresh after considering and recording findings on each of the balance issues, on merits.

6. Accordingly, the revision applications are allowed by way of remand to the Commissioner (Appeals), with above directions.



(Sandeep Prakash)

Additional Secretary to the Government of India

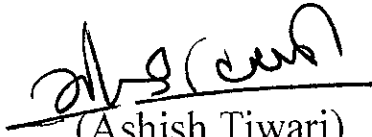
M/s Misrilal Mines Pvt. Ltd.,
"Mineral House", 27A, Camac Street,
Kolkata-700 016.

G.O.I. Order No. 17-21/21-ST dated 14-6-2021

Copy to: -

1. The Commissioner of CGST, Bhubaneswar.
2. Commissioner (Appeals), CGST, Central Excise & Customs, Bhubaneswar.
3. M/s Misrilall Mines Pvt. Ltd., Mines: Saruabil Chromite Mines, PO Jajpur Road, Jajpur-755 019
4. P.S. to A.S. (Revision Application).
5. Guard File.
6. Spare Copy.

ATTESTED


(Ashish Tiwari)

Assistant Commissioner (R.A.)