

SPEED POST



F. Nos. 196/11/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...05/08/21

Order No. 29/21-ST dated 05-08-21 of the Government of India, passed by Shri 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 Order-in-Appeal No. GZB-EXCUS-000-APP-02-14-15 dated 07.04.2014 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Ghaziabad.

Applicant: M/s. Albert David Ltd., Ghaziabad

Respondent: The Commissioner of CGST, Ghaziabad.

ORDER

A Revision Application No. 196/11/ST/2018-R.A. dated 02.08.2018 has been filed by M/s Albert David Ltd., Ghaziabad (hereinafter referred to as the applicant) against the Order-in-Appeal No. GZB-EXCUS-000-APP-02-14-15 dated 07.04.2014 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Ghaziabad whereby the Commissioner(Appeals) has upheld the Order-in-Original No. R-193/13-14 dated 06.11.2013 passed by the Deputy Commissioner, Central Excise & Service Tax, Division-V, Ghaziabad.

2. Brief facts of the case are that the Applicants were registered with the Central Excise & Service Tax and engaged in the manufacture and export of "I.V. Fluid, Capsule, Gel & I.V. Sets". During the course of exporting their final products, the Applicant received and utilized specified services of "Transport of goods in containers by rail" involving Service Tax amounting to Rs. 1,25,050.70. The Applicant filed a refund claim for this amount in terms of Notification No. 41/2012-ST dated 29.06.2012. The original authority, vide Order-in-Original dated 06.11.2013, sanctioned the amount of Rs. 33,804/- and the claim for balance amount of Rs. 91,247/- was rejected holding the same to be inadmissible in view of the provisions of paragraph 1 (c) of the said Notification. The appeal filed by the Applicant was rejected by the Commissioner (Appeals), vide impugned Order-in-Appeal. The Applicant filed an appeal against the impugned Order-in-Appeal before the CESTAT, which was rejected for want of jurisdiction, vide Final Order No. ST/A/71173/2018-CU[DB] dated 19.06.2018.

3. The revision application has been filed, mainly, on the grounds that Notification No. 41/2012-ST dated 29.06.2012 provides for rebate of service tax paid on specified services beyond the place of removal for the export of goods; that paragraph 2 of the said Notification provides for rebate as a specified percentage of the FOB value of export goods in respect of service tax paid, whereas, paragraph 3 provides for rebate on actual basis; that at the time of filing of shipping bill, the

exact amount of service tax was not known to the Applicant, and, therefore, after payment of service tax the claim of refund was filed under para 3; that, however, the original authority rejected the refund claim of Rs. 90,247/- on the grounds that the difference between the refund under para 2 and that under para 3 was less than twenty per cent; that in the present there is no dispute regarding the export of goods; and that, therefore, the rebate should not be denied on procedural grounds.

4. Personal hearing in the matter was held on 03.08.2021, in virtual mode. Ms. Pooja Agrawal, CA appeared for the Applicants. She reiterated the contents of the RA and the Written Synopsis filed on 03.08.2021. No one appeared for the respondent department nor any request for adjournment has been received. Therefore, the matter is taken up for disposal based on records.

5. The Government has carefully examined the matter. It is observed that the Notification No. 41/2012-ST dated 29.12.2012 provides for two alternate schemes for rebate of service tax paid on the specified services –the rebate can either be claimed on the basis of rates specified in the Schedule of rates annexed to the notification as per the procedure specified in paragraph 2 or it can be claimed on the actual basis on the basis of documents as per procedure specified in paragraph 3. In para 1 (c) of the notification, it is specifically provided that *"the rebate under the procedure specified in paragraph 3 shall not be claimed wherever the difference between the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 is less than twenty per cent of the rebate available under the procedure specified in paragraph 2"*. Thus, it is a specific condition of the Notification that the rebate under paragraph 3 shall not be admissible if the difference between the amount of rebate under paragraph 2 (as per Schedule of rates annexed to the Notification) and paragraph 3 (i.e. on actual basis) is less than twenty per cent of the rebate available as per Schedule of rates i.e. in terms of procedure specified in paragraph 2. This being a specific condition of the Notification, the contention of the Applicant that the requirement under paragraph 1 (c) is merely procedural in nature, cannot be accepted. The Commissioner (Appeals) has also correctly relied upon the judgment of Hon'ble Supreme Court in the case of Commissioner of Central Excise,

Chandigarh-II vs. Bhalla Enterprises {2004 (173) ELT 225 (SC)} to reject the appeal since on a plain reading of the notification, the rebate cannot be claimed under paragraph 3 if found inadmissible under paragraph 1 (c). As such, the Government finds no infirmity in the impugned Order-in-Appeal.

6. The Revision Application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

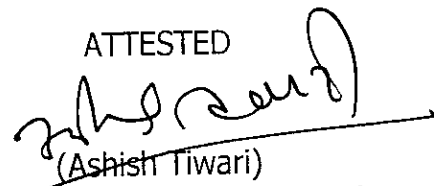
M/s. Albert David Ltd.,
B-12 & 13, Meerut Road Indl. Area,
Ghaziabad- 201 003.

G.O.I. Order No. 29 /21-ST dated 5-8-2021

Copy to:-

1. The Commissioner of CGST, CGO Complex, Kamla Nehru Nagar, Ghaziabad-201 002.
2. The Commissioner (Appeals), CGST, Room No. 232 CGO Complex-I, Kamla Nehru Nagar, Ghaziabad-201002.
3. Ms. Pooja Agarwal, Chartered Accountant.
4. PA to AS(Revision Application)
5. ✓ Spare Copy
6. Guard File

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)