

**SPEED POST**



F. Nos. 196/14/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...09/8/21

Order No. 30/21- 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/APPL-MRT/234&235/2018-19 dated 03.08.2018 passed by the Commissioner, CGST (Appeals), Meerut.

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

Respondent: The Commissioner of CGST, Ghaziabad.

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**ORDER**

A Revision Application No. 196/14/ST/2018-R.A. dated 13.09.2018 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/APPL-MRT/234&235/2018-19 dated 03.08.2018, passed by the Commissioner, CGST (Appeals), Meerut whereby the Commissioner (Appeals) has upheld the Orders-in-Original Nos. R-47/AC/ST/Div.V/GZB/17-18 dated 31.05.2017 & 11/2017-18 dated 11.10.2017 passed by the Assistant Commissioner, Division Service Tax, Ghaziabad and Assistant Commissioner, CGST, Division-III, Ghaziabad, respectively.

2. Brief facts of the case are that the Applicants filed two refund claims of service tax amounting to Rs. 23,182/- and Rs. 33,110/-, under Notification No. 41/2012-ST dated 29.06.2012 in respect of service tax paid on the input services used in the goods exported. It was found that the Applicant had initially filed and obtained refund under para 2 of the said notification and the subject claims were for the differential amount i.e. the difference between amount of service tax actually incurred and that obtained as refund under para 2. The refund claims were rejected by the original authority. The appeals filed by the Applicant were also rejected by the Commissioner (Appeals), vide aforesaid Order dated 02.08.2018.

3. The revision application has been filed, mainly, on the grounds that as per para 1 (c) of the notification, there can be a refund under para 3 if the difference between refund under para 2 and actual service tax incidence is more than twenty per cent; that they were unaware of the service tax payable on export at the time of filing of Shipping Bill and, therefore, obtained refund under para 2; that once the actual incidence of service tax became known to them, they filed refund claim for balance amount under para 3; that the intention of the Government is to grant the refund claim manually under para 1 (c) when option under para 2 is exercised and refund under para 2 is less than 80% of the service tax suffered.

4. Personal hearing, in virtual mode, was held on 03.08.2021. 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 case is taken up for disposal based on records.

5. The Government has carefully examined the matter. The issue involved herein is whether having exercised the option and having availed the refund as per procedure specified under paragraph 2, it is open to the exporter to claim the refund of the differential amount under para 3 of the Notification No. 41/2012-ST dated 29.06.2012. It is observed that the Notification No. 41/2012-ST dated 29.06.2012 provides for two alternate schemes for rebate of service tax 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. It is a condition of the notification, vide para 1 (b) that *"the rebate shall be claimed either on the basis of rates specified in the Schedule of rates annexed to this notification (hereinafter referred to as the Schedule), as per the procedure specified in paragraph 2 or on the basis of documents, as per the procedure specified in paragraph 3"*. Thus, on a plain reading of para 1 (b), it is clear that the rebate/refund can be claimed either under para 2 or under para 3 and not under both of them. The Applicant has relied upon para 1 (c) to contend that when the difference between the amount of rebate under para 2 and that under para 3 is more than twenty per cent, rebate shall be available under both para 2 as well as para 3. Para 1 (c) reads as *"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"*. On a plain reading of para 1 (c), the Government observes that the said clause restricts applicability of rebate under para 3 and there is nothing therein to indicate that if the difference is more than twenty per cent, the rebate shall be admissible under para 2 as well as under para 3. In fact, as already observed, admissibility of rebate under

both the paras has specifically been barred by para 1 (b) of the notification. Therefore, there is no infirmity in the impugned Order-in-Appeal and the contention of the Applicant cannot be accepted.

6. The Revision Application is rejected.

  
(Sandeep Prakash)

Additional Secretary to the Government of India

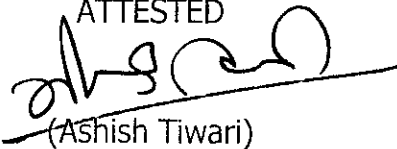
M/s. Albert David Ltd.,  
B-12 & 13, Meerut Road Indl. Area,  
Ghaziabad- 201 003.

G.O.I. Order No. 30 /21-ST dated 5-8-2021

Copy to:-

1. The Commissioner of CGST, CGO Complex-II, Kamla Nehru Nagar, Ghaziabad-201 002.
2. The Commissioner, CGST (Appeals), Meerut, Mangal Pandey Nagar, Opp. Ch. Charan Singh University, Meerut-250 005.
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.)