

REGISTERED
SPEED POST



F.No. 195/273/17-RA
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.....7/12/18

ORDER NO. 638/18-Cx dated 5-12-2018 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI R.P.SHARMA ADDITIONAL SECRETARY TO THE GOVERNMENT OF
INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision Application filed under Section 35 EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.04/CE/Apl-
II/Delhi/2017 dated 28.04.2017, passed by the Commissioner
(Appeals), Central Excise, Gurugram

Applicant : M/s Subha International, New Delhi

Respondent : Commissioner of Central Goods & Service Tax, Rohtak

ORDER

A Revision Application No. 195/273/17-RA dated 03.08.2017 is filed by M/s Subha International, New Delhi (herein after referred to as the applicant) against the Order-in-Appeal No. 04/CE/AppI-II/Delhi/2017 dated 28.04.2017, passed by the Commissioner (Appeals), Central Excise, Gurugram, whereby denial of rebate of Rs.2,44,900/- in cash to the applicant and allowing the re-credit of the said amount in their CENVAT credit account has been upheld.

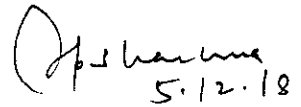
2. The above revision application is filed mainly on the ground that allowing of rebate of duty of Rs. 2,44,900/- in the form of CENVAT credit is wrong particularly when that they are the merchant exporter and not having any CENVAT credit account.

3. A Personal hearing in this case was fixed on 14.11.2018. But no one appeared for the hearing for both applicant as well as respondent. Even no reason for non availment of the said hearing was informed and no request for any other date of hearing was also received from which it implicit that they are not interested in personal hearing in this matter. Hence, the case is taken up for decision on the basis of facts available on record.

4. The Government has examined the matter and it is found evident from the Order-in-Original dated 28.12.2015 that the entire rebate amount of Rs. 14,37,500/-, including the amount of Rs.2,44,900/-, was held admissible to the applicant. But still in the order portion the Assistant Commissioner has allowed re-credit of the amount of Rs. 2,44,900/- in the applicant CENVAT credit account without assigning any reason. The Commissioner (Appeals) has also not elaborated any relevant reason for not sanctioning of the said amount in cash and has discussed several other reasons which were not considered in the Order-in-Original at all. The Government finds that when there is no dispute regarding payment of duty of Rs. 2,44,900/- also on export of goods and compliance of all other conditions specified in Notification No. 19/2004-Cx (NT) dated 06.09.2004, the rebate of duty to the extent of said amount in cash can not be denied to the applicant. Even the Central Board of Excise and Customs, an apex body to regulate the working of Central Excise related affairs, has clarified, vide its

Circular No. 687/3/2003-cx dated 03.01.2003 issued from File No. 267/57/20020/cx-8, that there is no discretion with the sanctioning authority to give the refund of duty paid on the goods exported and duty paid through cenvat credit must be refunded in cash only. Even earlier the CBEC had clarified vide its Circular No. 153/64/95-cx dated 12.10.95, 262/96/96-cx dated 06.11.1996, 407/40/98-cx dated 15.07.1988 and 408/41/98-cx dated 20.07.1998 that the rebate of duty paid through MODVAT credit is to be paid in cash only. Hence, the applicant is eligible for rebate of duty in cash only and thus the Order-in-Appeal is not legal and proper.

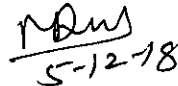
5. In view of the discussions above, the Order-in-Appeal is set aside and revision application is allowed.


5.12.18
(R.P.SHARMA)

(Additional Secretary to the Government of India)

M/s Subha International
Ist floor, Khasra No. 86/23, Village Ghevra,
Mundka, Udyog Nagar,
New Delhi-110041

ATTESTED


5-12-18

(Nirmla Devi)
Section Officer (RA)

Order No. 638/18-Cx dated 5-12-2018

Copy to:-

1. Commissioner of Central Goods and Service Tax, 2nd floor, Pacific City Centre, Opposite Shangrila Hotel, Near Jat Bhawan, Delhi Bypass, Rohtak, Haryana-124001
2. The Commissioner (Appeals), Central Excise, Plot No. 36&37, Sector 32, Gurugram, Haryana - 122001
3. The Assistant Commissioner, Central Excise Division, SCF - 11, Sector -6, Bahadurgarh, Haryana.

4. M/s Bhasin Sethi and Associates, Advocates, 401, Satyam Cinema Building
Ranjeet Nagar, New Delhi – 110008.

5. PS to JS (Revision Application)

6. Guard File

7. Spare Copy.