

REGISTERED
SPEED POST



F.No. 195/58-59/2016-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. 13/11/18..

Order No. 693-694/18-Cx dated 10-12-2018 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.

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. NOI-EXCUS-002-APP-0224-0225-15-16 dated 30.12.15, passed by the Commissioner of Central Excise (Appeals), Meerut

Applicant : M/s Vishal Pipes Ltd., Sikandarabad

Respondent : Commissioner of Central Goods & Service Tax, Noida-II

ORDER

Two revision applications No.195/58-59/2016-RA dated 4.4.16 have been filed by M/s Vishal Pipes Ltd., Sikandarabad (hereinafter referred to as the applicant) against the Order-in-Appeal No.NOI-EXCUS-002-APP-0224-0225-15-16 dated 30.12.15, passed by the Commissioner of Central Excise (Appeals), Meerut, whereby the applicant's appeal filed against the Order of the Assistant Commissioner rejecting the rebate claim of Rs.175243/- has been dis-allowed.

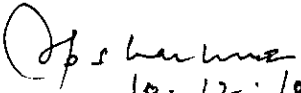
2. The revision application has been filed mainly on the ground that in case their rebate claim was not found maintainable due to full exemption from excise duty in respect of hand pumps exported by them, the CENVAT credit to the extent of duty wrongly paid by them from their CENVAT credit account should be allowed to them.

3. The personal hearing was held in this case on 03.10.2018 and it was availed by Shri Amar Singh, Authorized Signatory, for the applicant who reiterated the above ground of revision by providing written submissions dated 3.10.18 during the hearing.

4. The Government has examined the matter and it is observed that the rebate claim of Rs.175243 is rejected by the adjudicating authority and upheld by the Commissioner (Appeals) mainly on the ground that hand pumps and parts thereof were exempted from duty under Notification No.12/2012-CE dated 17.3.12 and thus the duty was paid by the applicant on exported hand pumps wrongly and unnecessarily. The applicant has also admitted in the revision application that hand pumps are absolutely exempted from central excise duty under aforesaid Notification and they were not required to pay duty thereon. Accordingly, their case in the revision application is not that their rebate claim has been wrongly rejected by the lower authorities. But the applicant's main claim is that the CENVAT credit amount of Rs.175243, which was wrongly utilized by them for payment of duty on the export of exempted hand pumps, should be allowed to be re-credited when their rebate claim is already rejected. The Government finds merit in this argument as the Revenue Authorities cannot deny both rebate claim as well as re-credit of the

CENVAT credit simultaneously in this case. In fact when payment from CENVAT credit on the exported hand pumps is not accepted as payment of appropriate duty of excise it is obvious that the CENVAT credit to the extent of paying wrong excise duty remained with the applicant and they could avail the re-credit of the said CENVAT credit amount soon after rejection of their rebate claim. But the applicant has shown due patience and discipline by not taking re-credit of the CENVAT credit amount on their own and instead requested the Commissioner (Appeals) for allowing them to take re-credit. However, the Commissioner (Appeals) has not appreciated the eligibility of the applicant to re-credit the CENVAT credit amount and rejected the applicant's request on a technical reason that the applicant had not raised this issue before the original adjudicating authority. In the revision application the applicant has claimed that the original adjudicating authority never issued any show cause notice before rejecting their rebate claim and as a result they did not get any opportunity to pray the Assistant Commissioner to allow them to re-credit the CENVAT credit amount. This fact is found corroborated from the OIO dated 13.2.15 also wherein no reference to any show cause notice or any personal hearing given to the applicant has been made. Thus it is evident that the applicant did not have any occasion to raise the point regarding re-crediting of the CENVAT credit amount before the jurisdictional Assistant Commissioner and thus the Commissioner (Appeals) has wrongly rejected the applicant's appeal on the above stated reason that the issue regarding re-crediting of the CENVAT credit was never raised before the adjudicating authority. Moreover, as stated above also, in the event of non acceptance of the duty payment of Rs.175243 from the applicant for the reason that no such duty was payable, the CENVAT credit utilized by them earlier cannot be considered to have been utilized in the event of rejection of their rebate claim. Consequently, the CENVAT credit to the extent of above mentioned amount remained unutilized for which the applicant is undoubtedly eligible to take re-credit in this case. Thus, the Government agrees with the applicant that the Commissioner (Appeals) has wrongly passed OIA to the extent of rejecting the applicant's appeal with regard to rebate claim of Rs.175243.

5. Accordingly, the OIA is set aside to the above extent and the revision application is allowed.


10.12.18
(R.P.Sharma)

Additional Secretary to the Government of India

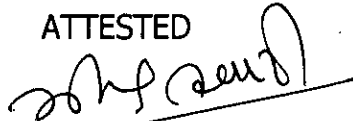
M/s Vishal Pipes Ltd.,
A-71, Industrial Area
Sikandarabad,
Distt. Bulandshahar, U.P.

Order No. 693-694/18-Cx dated 10-12-2018

Copy to:

1. Commissioner of Central Goods & Service Tax, Noida-II, Gautam Buddh Nagar Commissionerate, 3rd Floor, Wegmans Business Park, Greater Noida-201306
2. Commissioner of Central Excise (Appeals), Meerut-II, C-56/42, Renu Tower, Sector-62, Noida, Distt. Gautam Buddh Nagar, U.P.
3. Assistant Commissioner of Central Excise Division-V, Noida-II, Hotel Formule-1, Wegmans Business Park, KP-III, Greater Noida, U.P.
4. PA to AS(RA)
5. Guard File
6. Spare Copy

ATTESTED



(Ashish Tiwari)
Assistant Commissioner