

REGISTERED
SPEED POST



According to Corrigendum

Order No- 39 / 2018 ST

F.No. 196/11/ST/2016-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... *20/6/18*

ORDER NO. *11/2018* - ST dated *18/6/* 2018 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI R.P.SHARMA, PRINCIPAL COMMISSIONER & ADDITIONAL
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 83 of the Finance
Act, 1994 read with Section 35EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 read with section 83 of Finance
Act, 1994, against the Order-in-Appeal No. 27-28-
ST/DLH/2015 dated 14.09.2015, passed by the
Commissioner of Central Excise (Appeals -I), Delhi.

APPLICANT : M/s. GRM Overseas, Panipat

RESPONDENT : Assistant Commissioner of CGST, Panipat

ORDER

A revision application no.196/11/ST/16-RA dated 30/06/2016 is filed by M/s GRM Overseas Ltd., Panipat (hereinafter referred to as the applicant) against the Order-In-Appeal No. 27-28-ST/DLH/2015 dated 14.09.2015, passed by the Commissioner of Central Excise (Appeals-1), Delhi, who has rejected the appeal of the applicant filed before him.

2. The brief facts leading to the present proceeding are that the applicant filed two rebate claims of Rs.5,90,303/- for the period 01/07/2012 to 30/09/2012 and of Rs.2,92,100/- for the period 01/10/2012 to 31/12/2012 with the jurisdictional central excise office under the provisions of notification 41/2012-ST Dated 29/06/2012 in respect of Service Tax paid on taxable services received and used in the export of goods. The rebate claims were rejected by the jurisdictional Deputy Commissioner of Central Excise on the ground that the difference between the amount of rebate of service tax under the procedure specified in Para 2 and Para 3 is lesser than 20% of the rebate admissible under the procedure specified in Para 2 of Notification no. 41/2012-ST dated 29/06/2012. The applicant's appeal filed before the Commissioner (Appeals) with regard to the above stated orders-in-original was also rejected vide above mentioned Order-in-Appeal dated 14/09/2015. Consequently, the above revision application is filed before the Government mainly on the grounds that since the rebate claims filed by them under Para 3 of notification no. 41/2012 are lesser than even the amount admissible under Para 2 of this notification, rebate of service tax should be allowed to them under Para 2 of the said notification and in reference to some of the shipping bills the rebate of duty admissible to them is even more than 120% of the rebate permissible under Para 2.

3. Personal hearing was held on 24/05/2018 which was attended by Sh. Pardeep Tayal, C.A, and Smt. Suman Bansal, C.S., on behalf of the applicant in this case who furnished written submissions dated 17/05/2018 during the hearing. The applicant also provided additional submissions subsequently under their letter dated 01/06/2018 along with the copies of the shipping bills

and invoices. However, no one appeared from the respondent's side and no request for any other date of hearing was also received.

4. On examination of Commissioner (Appeals)'s order, revision application, additional submissions of the applicant and all relevant records it is observed by the Government that it is not in dispute that the rebate claims of the applicant have been rejected on the sole ground that the difference between the claimed amount under Para 3 viz-a-viz the rebate of service tax which could be admissible under Para 2 of the said notification was lesser than 20%. Now the main issue before the Government is whether the rebate of service tax can be allowed under Para 2 of the above notification.

5. On mere reading of the notification 41/2012, it is evident that an option is given to the claimant either to claim rebate of service tax under Para 2 or Para 3 of the said notification. The rebate claim under Para 2 is required to be filed with the concerned Custom House along with shipping bills as per rates specified for different items in the Schedule to the above notification. Whereas the rebate claim of service tax under Para 3 is to be claimed from the jurisdictional Assistant/Deputy Commissioner of Central Excise on the basis of actual service tax paid on the input services used in the exported goods and the procedure for the same is entirely different. Thus, claimant is given liberty for choosing the most beneficial option in terms of more amount and convenience. Since the claim under Para 2 is in terms of already fixed rates for each item in the Schedule of the notification itself, it is prima facie hassle-free procedure for getting the rebate of service tax at earliest from the customs authorities. On the other hand rebate of service tax under Para 3 is admissible only on the basis of documents evidencing payment of actual service tax which certainly requires proper record keeping and other efforts on the part of the claimant. However, option to file claim under Para 3 is not open ended and it can be filed under this Para only if the difference between the amount of rebate admissible under Para 2 and under Para 3 is not lesser than 20% of rebate admissible under Para 2.

6. As regards the issue whether the rebate of service tax can still be granted under Para 2, it is already discussed above that rebate of service tax under Para 2 can be claimed only from Customs authorities after complying with the procedure laid down under the above notification and rebate of

service tax under Para 2 cannot be granted by the Central Excise authorities as custom authorities have only been entrusted under notification no, 41/2012-ST to disburse rebate of service tax as per rates specified in the schedule like drawback of duty of customs. Since this restriction is specified in the notification itself, it cannot be relaxed even when the rejected amount of rebate of service tax is lesser than the amount admissible under Para 2 of the notification, as claimed by the applicant, Considering these facts and legal restrictions inbuilt in the notification no, 41/2012-ST, the government finds that Commissioner (Appeals) has rightly set aside the applicant's appeal before him and no interference from the government is warranted.

7. While the applicant has also not disputed the fact of non-maintainability of their rebate claims under Para 3 for the reason that the claimed amount is hit by Para 1C, it is contended that the rebate of duty in reference to some of the Shipping Bills was higher than 120% of the amount admissible under Para 2 of the notification as detailed in Annexure 4A and Annexure 4B of the revision application. They have also provided the copies of the Shipping Bill wise invoices in support of their claim is more than 120% of rebate under Para 2 of the said notification. However, it is observed by the government that this argument is advanced for the first time in their revision application and it was never pleaded either before the original adjudicating authority or the first appellate authority. This fact is quite evident from order-in-original and order-in-appeal. Further they also did not produce the copy of their appeal filed before the Commissioner (Appeal) also duly acknowledged in the office of the Commissioner (Appeal) evidencing that they had raised this argument in their appeal but it was not considered by the Commissioner (Appeal). The applicant has submitted a copy of appeal along with their additional submissions which was claimed to have been filed before Commissioner (Appeal). But this copy does not bear any stamp or signature of the office of the Commissioner (Appeal) to show that the said copy of the appeal was only filed. Thus the above claim of the applicant cannot be given any credibility.

8. Accordingly, the revision application is rejected.

R.P. Sharma
15.6.18

(R.P.Sharma)

Additional Secretary to the Government of India

M/s. GRM Overseas Ltd.,
Gohana Road, Near Sugar Mills,
Panipat-132 103

ORDER NO. 11/2018-ST dated 18/6/2018

Copy to: -

1. Commissioner of Central Excise & Customs, Rohtak.
2. Commissioner (Appeals - I), Customs & Central Excise, Delhi, Room No. 134, Central Excise Building, Indraprastha Estate, New Delhi.
3. The Assistant Commissioner, Central Excise and Service Tax Division, Ambala
4. PA to AS(RA)
5. Guard File
6. Spare copy

ATTESTED

N.D.
15/6/18

(NIRMALA DEVI)
(SECTION OFFICER)