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SPEED POST



F.No. 195/58/2015—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... 5/1/18.....

Order No. 16/2018-CX dated 04-01-18 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.  
HPU-EXCUS-000-APPEALS-I/148 dated 20/02/2015  
passed by Commissioner of Central Excise (Appeals)-I,  
Meerut.

Applicant : M/s. Amul Auto Components Private Limited (Unit-II)

Respondent : Commissioner of Central Excise, Meerut-II

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**ORDER**

A Revision Application No. 195/58/2015—R.A. dated 23/03/2015 is filed by M/s Amul Auto Components Private Limited (Unit-II) (hereinafter referred to as applicant) against order-in-appeal no. HPU-EXCUS-000-APPEALS-I/148 dated 20/02/2015, passed by Commissioner of Central Excise (Appeals)-I, Meerut.

2. The brief facts leading to the present proceeding are that the applicant, based in Uttarakhand and availing area based exemption under Notification No. 50/2003-GE dated 10/06/2003, is engaged in the export of auto parts and the goods manufactured by the applicant. The applicant exported goods on payment of central excise duty through CENVAT and filed rebate claims in the office of jurisdictional Assistant Commissioner who rejected the same on the ground that the applicant was availing area based exemption under the said notification and thus the exported goods were exempted goods not liable for any excise duty. The order of the Assistant Commissioner was upheld by the Commissioner (Appeals) vide his above order dated 20/02/2015.

3. The Revision Application is filed mainly on the ground that rebate of duty in respect of exported goods is admissible to them under Rule 18 of

Central Excise Rules, 2002 as they have exported the goods on payment of duty of excise.

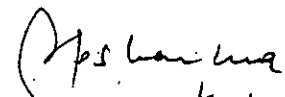
4. Personal hearing was granted on 13/11/2017 which was attended by Mrs. Paresh Sheth, Advocate, on behalf of the applicant who mainly reiterated the grounds of revision already pleaded in the revision application. However, no one appeared for the respondent.

5. On examination of the revision application, Commissioner (Appeals)'s order and all other relevant records in this case, the Government observes that there is no dispute about the fact that the exported goods have been manufactured in Uttarakhand and the applicant has been availing area based exemption under Notification No. 50/2003 dated 10/06/2003. In terms of this notification all the goods manufactured by the applicant are absolutely exempted goods. Section 5A (1A) of the Central Excise Act, 1944 expressly stipulates that when an absolute exemption from duty is given by way of any notification by the government, the manufacturer of such excisable goods shall not pay the duty of excise on any such goods. Hence, the applicant had no option to pay duty of excise and could not pay it by virtue of the above unequivocal mandate in Section 5A (1A) of the Act. Accordingly, the amount paid in respect of the exported goods cannot be considered as payment of duty of excise on exported goods and as a result rebate of duty in respect of such amount is not admissible under Rule 18 of Central Excise Rules, 2002

and notification no. 19/2004-CE dated 06/09/2004. However, for the above reason the CENVAT credit used for wrong payment of duty cannot be considered as having been utilized and consequently the CENVAT credit debited in this context has remained with the applicant in their credit account.

Accordingly the applicant is at liberty to re-credit the amount of Rs. 27,33,556/-. As regards the applicant's reliance on Malancha Polymers case, [2012 (285) ELT 302], the Government finds that this order is passed in entirely different context where the issue regarding exemption notification no. 33/99-CE applicable in North Eastern states operated through refund of duty to the manufacturer was involved. Whereas in Uttarakhand notification no. 50/2003 grants absolute exemption of duty from the payment of duty and it is not operated by way of refund of duty to the manufacturer. Thus the Government of India's above cited order is not relevant to the present proceeding.

6. In view of the above discussion, the revision application is rejected and the Commissioner (Appeals)'s order is modified to the above extent.

  
4.1.18  
(R. P. Sharma)

Additional Secretary to the Government of India

M/s Amul Auto Components Pvt. Ltd.,  
40, TATA Vendor Park, Sector 11, II-E,  
Pant Nagar, Distt. Udham Singh Nagar-263 153  
Uttarakhand

G.O.I. Order No. 76 /17-Cx dated 04-01-2018

Copy to:-

1. Commissioner of Central Excise & Customs, Hapur, Meerut-II, Bhainsali Ground, Meerut-250 005.
2. Commissioner of Central Excise (Appeals-I), Meerut, Opp. CCS University, Mangal Pandey Nagar, Meerut- 250 005.
3. Shri Paresh Sheth, C/o M/s V B Sheth & Co., Advocate, "Dhanraj" 15, Panchnath Plot, Near Moti Tanki, Rajkot-360 001.
4. PA to AS(Revision Application)
5. Guard File

ATTESTED

*2.1.2018*

(Debjit Banerjee)  
Sr. Technical Officer (R.A.)