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F.No. 198/95/2015—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.....

Order No. 260/2018-CX dated 01-5-2018 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.361 (SLM) CE/JPR/2015 dated 14/05/2015, passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur.

Applicant : Commissioner, Central Excise, Alwar

Respondent : M/s Spirotech Heat Exchangers Pvt. Ltd., Bhiwadi

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ORDER

A Revision Application No. 198/95/2015-R.A. dated 04/09/2015 has been filed by the Commissioner, Central Excise, Alwar (hereinafter referred to as the applicant) against the Order-in-Appeal No. 361(SLM) CE/JPR/2015 dated 14/05/2015, passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur, whereby the order-in-original no. 325/2014-2015 (Refund) dated 23/06/2014 rejecting the rebate claim of the respondent, M/s Spirotech Heat Exchangers Pvt. Ltd, Bhiwadi, has been set aside.

2. The brief facts leading to the present proceeding before the Government are that the respondent had filed rebate claim for duty of excise paid on exported goods and the same was rejected by the original adjudicating authority. However, the respondent filed an appeal before the Commissioner (Appeals) and the same was allowed by the Commissioner (Appeals) vide the above said order-in-appeal dated 14/05/2015 with consequential relief.

3. The revenue has filed the present revision application mainly on the ground that respondent could not avail CENVAT credit on the inputs procured against Advance Licences, no central excise duty was required to be paid on the goods exported against Advance Licences and accordingly rebate of duty against wrongly paid central excise duty from the wrongly availed CENVAT credit account is not admissible to the respondent.

3. A personal hearing was offered on 21/03/2018. Sh. Rajat Dosi, Sh. Abhisheil Jain, Advocates, and Sh. Sanjeev Tomar, Company Secretary, appeared for the respondent and submitted written submissions, contesting the revision application. No one appeared for the applicant and

no reason for non-appearance was informed. Further no request for any other hearing was also received from them. It can thus be implied that they are not interested in availing any hearing in the matter.

4. The Government has examined the matter and has found that even though the supplier of the goods had option to supply the inputs without payment of duty against advance licences/invalidation letters of the respondent by following the procedure specified under Notification No. 44/2001-CE(NT) dated 26/06/2001, there was no legal compulsion on their part to do so. Notification No. 44/2001-CE (NT) only provide facilities to the exporters to procure duty free inputs etc., but no manufacturer can be forced not to supply the inputs on payment of duty. Notification No. 44/2001 is not even the exemption notification and, therefore, Section 5A (1A) of Central Excise Act, 1944 is not applicable which stipulates that where the duty exemption is given absolutely the manufacturer excisable goods shall not pay the duty of excise on the exempted goods. Above all, whether supplier of the inputs was liable for paying duty or not can be decided only by the jurisdictional authorities of the supplier manufacturer and not by the jurisdictional central excise authorities of the manufacturer-exporter as held by the Hon'ble Supreme Court in the case of CCE & CUS Vs M/s MDS Switchgear Ltd. [2008 (229) ELT 485 (SC)]. Further it is also noted that the present proceeding is regarding admissibility of the rebate of duty to the respondent and not regarding availability of any benefit due to non-compliance of the procedure under Notification No. 44/2001-CE or advance licence etc. The issue regarding rebate of duty is to guide by Rule 18 of Central Excise Rules, 2004 and Notification No. 19/2004 dated 06/09/2004 which primarily provides that the rebate of duty is to be granted in respect of the duty paid exported goods. This fundamental

condition is undisputedly fulfilled in this case and there is no allegation that other conditions envisaged in the above mentioned notification have not been satisfied. This view is strongly supported by Bombay High Court's decision in the case of M/s Oleofine Organics (India) Pvt. Ltd. Vs CCE, Thane [2015 (319) ELT A 192 (Bom)], CESTAT's Order No. A/52301/2016-EX[DB] dated 23/06/2016 in the case of M/s Medicamen Biotech Ltd., Bhiwadi, the Hon'ble Rajasthan High Court's decision in the case of M/s Balakrishna Industries Ltd which has been accepted by CBEC vide Circular No.1063/2/2018-CX dated 16/02/2018 and the same is found squarely applicable to the present case. Considering these facts and the legal position, the revision application filed by the revenue is completely misplaced and is not found maintainable.

7. Accordingly, the revision application is rejected.

1.5.18

(R. P. Sharma)
Additional Secretary to the Government of India

Principal Commissioner of Central Excise,
"A" Block, Surya Nagar, Alwar-301 001

G.O.I. Order No. 260 /18-Cx dated 01-5-2018

Copy to:-

1. M/s Spirotech Heat Exchangers Pvt. Ltd., A-45,46.51 & 52, RIICO Industrial Area, Kahrani, Bhiwadi-301 019, Alwar.
2. The Commissioner of Central Excise & Service Tax, Alwar, "A" Block, Surya Nagar, Alwar-301 001
3. Commissioner (Appeals), Customs & Central Excise, Jaipur.
4. PA to AS(Revision Application)
5. Guard File

1-5-18

NIRMALA DEVI
(Section officer)
(Revision Application unit)