

SPEED POST



F.No. 195/174/2018-RA (CX)
F.No. 195/175/2018-RA (CX)
F.No. 195/176/2018-RA (CX)
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. 12.11.21

Order No. 01-03/21-Cx dated 11-01-2021 of the Government of India passed by Sh. Sandeep Prakash, Principal Commissioner & Additional Secretary to the Government of India, under Section 35EE of the Central Excise Act, 1944.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.15/Kol-I/2018 dated 30.01.2018, 61/Kol-I/2018 dated 20.03.2018 and 26/Kol-I/2018 dated 05.02.2018, passed by the Commissioner of Central Excise (Appeals), Kolkata-I.

Applicant : M/s Jyothy Labs Limited (formerly known as M/s Jyothi Laboratories Limited)

Respondents : Commissioner of CGST & Central Excise, Kolkata-North

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ORDER

Three Revision Application Nos. 195/174/2018-RA (CX) dated 30.05.2018, 195/175/2018-RA (CX) dated 30.05.2018 and 195/176/2018-RA (CX) dated 30.05.2018 , have been filed by M/s Jyothy Labs Limited (formerly known as M/s Jyothy Laboratories Ltd) (hereinafter referred to as the applicant) against the Order-in-Appeal Nos. 15/Kol-I/2018 dated 30.01.2018, 61/Kol-I/2018 dated 20.03.2018 and 26/Kol-I/2018 dated 05.02.2018 passed by the Commissioner of Central Excise (Appeals), Kolkata-I wherein the Order-in-Original nos. 17/Rebate/Til/Kol-I/2014-15/1735 dated 31.08.2015, 16/Rebate/Til/Kol-I/2014-15/1743 dated 31.08.2015 and 15/Rebate/Til/Kol-I/2014-15/1739 dated 31.08.2015 passed by the Additional Commissioner, Central Excise Kolkata-I Commissionerate have been upheld.

2. The brief facts of the case are that the applicant (merchant exporter) has exported goods through the manufacturer, namely, M/s VVG (India) Ltd. It is the contention of the applicant that duty was wrongly paid by the manufacturer on the fob value of the goods instead of transaction value. Jurisdictional Central Excise authorities sanctioned the rebate claims, under Rule 18, equivalent to the duty calculated on the transaction value. The refund claims, filed separately under Section 11 B of the Central Excise Act, 1944, in respect of balance amount of duty as calculated on the differential of fob value and transaction value were rejected by the original authority. Aggrieved, the applicant filed appeals before the Commissioner (Appeals) who vide the above mentioned OIA upheld the two orders of lower authorities on merits and rejected the appeal vide OIA No. 61/Kol-I/2018 dated

20.03.2018 on the grounds that refund claim had been filed beyond the limitation period prescribed under Section 11 B. Instant Revision applications have been filed on the ground that they are entitled for refund of excess duty paid on the differential value between fob value and transaction value.

3. Personal hearing in virtual mode was held on 08.01.2021. Sh. Satya Prem Majumder, Advocate, attended the hearing on behalf of the applicant. He stated that rebate of central excise duty corresponding to transaction value has already been sanctioned. The dispute is regarding refund of excess duty paid by the manufacturer, incidence whereof has been borne by them. Upon being asked, Sh. Majumder fairly admitted that the applicant has no grievance with the rebate sanctioned and their contention is that the amount paid in excess is nothing but deposit and should be refunded to them under Section 11B of the Central Excise Act, 1944. He, further, submitted that the instant revision applications are not covered under the purview of Section 35 EE of the Central Excise Act. Accordingly, he prayed for the withdrawal of the instant revision applications with liberty to pursue appellate remedy before CESTAT. None appeared for the respondent. No request for adjournment has also been received. Therefore, the case is taken up for disposal as per records.

4. The Government, on going through the material available on record and submissions made by the applicant, has observed that the applicant had filed three rebate claims with the jurisdictional Central Excise authorities. The said rebate claims were duly sanctioned by the jurisdictional Central Excise authorities and the applicant has no grievance vis-à-vis the rebate sanctioned. The dispute is with

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respect to the refund claims filed separately in respect of duty amount claimed to have been paid in excess of what was due to be paid. Thus, the issue involved in the present revision applications pertains to the refund of duty claimed to have been paid in excess and there is no grievance with reference to the rebate sanctioned. As such, the grievance is not with respect to an order of the nature referred to in the first proviso to sub-section (1) of Section 35 B of the Central Excise Act, 1944. The Government, therefore, holds that instant revision applications are not maintainable under Section 35EE. The applicant has also requested that they may be allowed to withdraw these cases with liberty to pursue remedy before CESTAT.

5. In view of the above discussions, the Revision Applications are disposed of as withdrawn. The applicant may pursue the appellate remedy, as per law.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. The Commissioner of CGST, Kolkata North, GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.
2. M/s Jyothy Labs Limited (formerly known as M/s Jyothy laboratories ltd), Poonam Building, 3rd floor, flat No. 3A & EB, 5/2, Anandilal Poddar Sarani, Kolkata 700071/

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Copy to:

1. Commissioner of Central Excise (Appeals), Kolkata-I, Bamboo Villa, 3rd Floor, 169, A.J.C. Bose Road, Kolkata-700014.
2. PA to AS(RA)
3. Guard File.
4. Spare Copy

ATTESTED


12-01-2021
(Nirmala Devi)
Section Officer (RA)