

SPEED POST



F.No. 195/184-185/2018-R.A.  
195/10/2020-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. 21/05/21.....

Order No. ~~105-108~~/2021-CX dated 20/05/2021 of the Government of India, passed by **Sh. Sandeep Prakash**, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Applications filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. CHD-EXCUS-001-APP-53-54-18-19 dated 27.04.2018 & CHD-EXCUS-001-APP-165-166-2019-20 dated 06.11.2019 passed by the Commissioner (Appeals), CGST & Central Excise, Chandigarh.

Applicants : M/s. CIPLA Ltd., Solan

Respondent : Commissioner of CGST, Shimla.

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## **ORDER**

Three revision applications nos. 195/184-185/2018-RA dated 30.08.2018 & 195/10/2020-R.A. dated 07.02.2020 have been filed by M/s. CIPLA Ltd., Solan (hereinafter referred to as the applicant) against Orders-in-Appeal Nos. CHD-EXCUS-001-APP-53-54-18-19 dated 27.04.2018 and CHD-EXCUS-001-APP-165-166-2019-20 dated 06.11.2019, passed by the Commissioner (Appeals), CGST & Central Excise, Chandigarh. The appeal filed by the respondent department has been allowed by the Commissioner (Appeals), vide Order-in-Appeal dated 27.04.2018 and the appeal filed by the applicant has been rejected by the Commissioner (Appeals), vide Order-in-Appeal dated 06.11.2019.

2. Brief facts of the case are that the applicant cleared the excisable goods without payment of duty for export under LUT, i.e., Rule 19 of the Central Excise Rules (No.2), 2001 but could not export the goods within the stipulated period of 06 months, as specified vide Notification No. 42/2001-CE (NT) dated 26.06.2001. Pursuant to their failure to export the goods within the specified period of 06 months, the applicants voluntarily discharged the duty liability along with interest and applied to the jurisdictional Assistant Commissioner for extension of time period of 06 months for export of goods, on post-facto basis, which was granted. As the goods stood exported, the applicant filed refund claims of Rs. 1,69,767/- and Rs. 10,73,297/-, of the duty paid by them, under Section 11B of Central Excise Act, 1944. The original authority sanctioned the refund claims by way of credit in CENVAT account of the applicants, vide Orders-in-Original No. 1684/AC/R/Baddi/2016 dated 22.11.2016 and No. 1880/AC/R/Baddi/2016 dated 09.12.2016. The said sanction orders of the original authority were reviewed by the Principal Commissioner, Central Excise, Chandigarh-I and the respondent filed appeals before the Commissioner (Appeals) who allowed the appeals vide Order-in-Appeal dated 27.04.2018. Meanwhile, Show Cause Notices were issued to the applicant for recovery of the refunded amounts, on the ground that there is no provision to sanction refund under Rule 19 of the Central Excise Rules, 2002. The adjudicating authority, i.e. the Joint Commissioner, CGST, Shimla confirmed the demands alongwith applicable interest, vide two separate Orders-in-Original, both dated 31.01.2019. Aggrieved, the applicant filed appeals before

Commissioner (Appeals) who rejected their appeals vide Order-in-Appeal dated 06.11.2019.

3. The revision applications have been filed, mainly, on the ground that there is absolute compliance to the provisions and conditions governing export of goods. The request for extension of time period beyond 06 months was duly accepted by the jurisdictional authority and the goods were exported within the extended period. Therefore, voluntary payment of duty with interest by the applicant, which otherwise was not payable, should be refunded.

4. Personal hearing in the case was held on 15.04.2021 in virtual mode. Sh. Nitin K. Dube, Associate Director, CIPLA Ltd. appeared for the applicant and reiterated the contents of the revision application and written submission dated 15.04.2021. None appeared for the respondents and no request for adjournment has been received. Hence, the matter is taken up for decision on the basis of facts available on record.

5. The Government has carefully examined the matter. The applicants had cleared the goods for export without payment of duty under LUT, as per the provisions of Rule 19 read with Notification No. 42/2001-CE (NT) dated 26.06.2001. Para 1 of the said notification specifies the conditions subject to which export is allowed. Condition 2., under para 1, specifies "*that goods shall be exported within six months from the date on which these were cleared for export from the factory of the production or the manufacture or warehouse or other approved premises within such extended period as the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise or Maritime Commissioner may in any particular case allow*". In the present case, the goods could not be exported within the stipulated period of 06 months from the date of removal from the factory of production. Therefore, the applicants paid duty on the goods cleared for export, along with interest. They informed the department of duty and interest so paid and, subsequently, i.e., after export of goods applied for extension of time/ condonation of delay to the jurisdictional Assistant Commissioner, which was granted. Consequent to extension of time, the refund claims under S. 11B for refund of duty paid were also sanctioned. The Government observes that the duty was paid in the instant case due to the applicant's failure to export the goods within a specified

period of 06 months, a condition which got complied with due to subsequent extension of time by the competent authority. It is also observed that the post-facto extension of time granted by the Assistant Commissioner has neither been disputed nor challenged by the department. Therefore, the grant of consequential refund, under S. 11B of the Central Excise Act, can also not be faulted. The view taken by the Commissioner (Appeals) that the refund could not be granted as there is no provision to grant refund under Rule 19 is misconceived in as much as the refund in the instant case is granted, under S. 11B, of the amount of duty paid which became not payable due to subsequent compliance with the conditions of the notification, and not under Rule 19. Therefore, the impugned Orders-in-Appeal cannot be sustained.

6. In view of the above, the impugned Orders-in-Appeal and the Orders-in-Original, both dated 31.01.2019, passed by the Joint Commissioner are set aside and the Orders-in-Original dated 22.11.2016 & 09.12.2016, passed by the Asstt. Commissioner, are restored. The revision applications are allowed, accordingly.

  
(Sandeep Prakash)

Additional Secretary to the Government of India

M/s. CIPLA Ltd.,  
Village Malpur, Hadbust No. 189,  
Upper, P.O. Bhud, Nalagarh,  
Distt. Solan, H.P.- 173 205.  
G.O.I. Order No. 105-107 /21-CX dated 20/05/2021

Copy to: -

1. Commissioner of CGST, Shimla.
2. The Commissioner (Appeals), Chandigarh.
3. P.S. to A.S. (Revision Application).
5. Guard File.

6. *space copy,*

ATTESTED  
  
21/5/21