

SPEED POST  
REGISTERED POST



**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. No.198/355-358/WZ/2018-RA/6480

Date of Issue: 12.11.2022

1069-  
ORDER NO. 1072/2022-CX (WZ) /ASRA/Mumbai DATED 14.11.2022 OF  
THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL  
EXCISE ACT, 1944.

Applicant : Commissioner of CGST & Central Excise, Mumbai East

Respondent : M/s Merc Limited,  
(Now M/s Procter & Gamble Health Limited)  
Godrej One, 8<sup>th</sup> floor,  
Pirojshah Nagar, Eastern Express Highway,  
Vikhroli (East), Mumbai – 400 079.

Subject : Revision Application filed under Section 35EE of the  
Central Excise Act, 1944 against the Order-in-Appeal no.  
PK/691 to 694/ME/2018 dated 24.07.2018 passed by  
the Commissioner (Appeals - II), CGST & Central Excise,  
Mumbai.

## **ORDER**

The subject Revision Application has been filed by the Commissioner of CGST & Central Excise, Mumbai East (here-in-after referred to as 'the applicant/Department') against the Order-in-Appeal dated 24.07.2018 passed by the Commissioner (Appeals - II), CGST & Central Excise, Mumbai, which decided appeals filed by the Department against four Orders-in-Original passed by the original rebate sanctioning authority which in turn decided the rebate claims filed by M/s MERC Limited, now M/s Procter & Gamble Health Limited (here-in-after referred to as 'the respondent').

2. Brief facts of the case are that the respondent filed rebate claims for the Central Excise duty paid on the goods exported under ARE-1s in terms of Rule 18 of the Central Excise Rules, 2002 and notification no.19/2004-CE(NT) dated 06.09.2004. The original authority found that FOB value of the goods was lesser than the invoice value and held that excess duty was paid by the respondent and that the rebate would be limited to the duty payable on the FOB value. However, the original authority, in addition to the rebate found payable also refunded in cash the excess duty totaling to Rs.1,67,976/- paid by the respondent, in light of Section 142(3) of the Central Goods and Services Tax Act, 2017 (CGST Act, 2017).

3. Aggrieved, the Department filed an appeal against the said Order before the Commissioner (Appeals) on the grounds that the original authority had erred in interpreting Section 142(3) of CGST Act, 2017 inasmuch as the amount found to have been paid in excess should have been treated as lapsed in terms of Section 142(3) of CGST Act, 2017. The Commissioner (Appeals) vide the impugned Order-in-Appeal dated 24.07.2018 found that the amount

paid in excess has been correctly refunded in cash to the respondent as Section 142(3) of the CGST Act, 2017 provided for the same.

4. Aggrieved, the Department has filed the subject Revision Application against the impugned Order-in-Appeal on the following grounds:-

(a) The respondent was not entitled to the rebate of the amount paid over and above the FOB value declared by them and the same was liable to be rejected and the same should be treated as lapsed in terms of Section 142(3) of the CGST Act, 2017;

(b) The refund sanctioning authority has erred in holding that the exporter was eligible for the entire rebate of Central Excise duty paid even on the value over and above the FOB value on the goods exported under notification no.19/2004-CE (NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944 and the provisions of Section 142(3) of the CGST Act, 2017.

(c) The Commissioner (Appeals) had incorrectly interpreted the Transitional provisions of Section 142(3) of the CGST Act, 2017 in holding that the excess amount paid by the respondent was required to be refunded to them in cash; that when an Act is implemented in the Legislature, proviso if any, incorporated therein should also be read with and examined with the Act itself and the eligibility should be determined on the basis of the said main Act as well as the proviso and that the Section cannot be implemented independently. In view of the above the Department has sought for the impugned Order-in-Appeal to be set aside.

5. Personal hearing in the matter was granted to the Department on 11.10.2022 and 01.11.2022, however no appeared for the same. Shri Sanjeev Nair, Advocate, appeared on 01.11.2022 on behalf of the respondent. He submitted that the Commissioner (Appeals) has rightly ordered that excess payment over FOB value requires to be re-credited to the Cenvat account; that sanctioning the same under Section 142(3) of the CGST Act, 2017 has been correctly done. He requested further time to make additional written submissions.

6. Thereafter, the respondent made the following written submissions on 02.11.2022 :-

(a) The Revision Proceedings filed by Revenue lack jurisdiction and deserves to be held as non-maintainable before the Revisionary Authority; that the issue concerning the interpretation of Section 142 of the CGST Act, 2017 does not come within the ambit of Section 35EE of the Central Excise Act, 1944 and therefore the revision proceedings filed by Revenue will have to be dismissed as non-maintainable;

(b) The Commissioner (Appeals) had rightly held that the provisions of Section 142(3) of the CGST Act, 2017 is inapplicable in the present case as the same was governed by Section 142(4) of the CGST Act, 2017 as well as Board Circular No.37/11/2018-CGST dated 15.03.2018.

7. Government has carefully gone through the relevant case records, the written and oral submissions and also perused the impugned Order-in-Original and the Order-in-Appeal.

8. Government notes that the short issue involved in the instant case is whether the amount of Central Excise duty paid in excess of the FOB value of the goods which were exported, is required to be refunded to the respondent in cash. Government notes that the respondent in their submissions before the Commissioner (Appeals) has not disputed the assessable values, arrived at by the original sanctioning authority, which were lower than the values at which Central Excise duty was paid by them. As such, Government notes that assessable values re-determined by the original authority are not in dispute.

9. Government notes that the issue to be decided is whether the amount paid in excess to the duty actually found payable, has to be treated as lapsed or should be refunded in cash as per the CGST Act, 2017. Government finds that this was the only issue that was agitated before the Commissioner (Appeals) by the Department and the impugned Order-in-Appeal is also limited to the deciding the same.

10. Government notes that the present proceedings are in exercise of the powers vested in terms of Section 35EE of the Central Excise Act, 1944. Government has examined the CGST Act, 2017 and finds that the same does not provide for application of Section 35EE of the Central Excise Act, 1944 in relation to matters under the CGST Act, 2017. The issue in the present case has to be decided as per the provisions of the CGST Act, 2017. Thus, Government finds that it does not have the jurisdiction to decide the issue covered by the subject Revision Application.

11. In view of the above, Government holds that the subject Revision Application filed by the Department is non-maintainable due to lack of

jurisdiction. The Department can seek relief under the provisions of the CGST Act, 2017, with the appropriate authority.

12. The Revision Application is disposed of in the above terms.

  
(SHRAWAN KUMAR)

. Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. <sup>1069 -</sup> 1072/2022-CX (WZ) /ASRA/Mumbai dated 14.11.2022

To,

The Commissioner of CGST & Central Excise, Mumbai East,  
9<sup>th</sup> floor, Lotus Info Centre, Station Road,  
Parel (East), Mumbai -- 400 102.

Copy to:

1. M/s Merc Limited,  
(Now M/s Procter & Gamble Health Limited)  
Godrej One, 8<sup>th</sup> floor, Pirojshah Nagar, Eastern Express Highway,  
Vikhroli (East), Mumbai - 400 079.
2. Commissioner of CGST & Central Excise, (Appeals - II) Mumbai, 3<sup>rd</sup>  
floor, Utpad Shulk Bhavan, Plot no.C-24, Sector - E, Bandra-Kurla  
Complex, Bandra (East), Mumbai - 400 051.
3. M/s Lumiere Law Partners,  
23/24, Mittal Chambers, m 2<sup>nd</sup> floor, Nariman Point, Mumbai - 400 021.
4. Sr. P.S. to AS (RA), Mumbai.
5. Notice Board.