

SPEED POST



F.No. 195/42/2019-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. 21.5.2021

Order No. 108/2021-CX dated 21-5-2021 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. 289/CE/CGST-Appeal-GURUGRAM/SG/2019 dated 25.03.2019 passed by the Commissioner (Appeals) CGST, Gurugram.

Applicants : M/s. Luminous Power Technologies Pvt. Ltd., Gurugram.

Respondent : The Commissioner of CGST, Gurugram.

ORDER

A revision application no. 195/42/2019-RA dated 22.05.2019 has been filed by M/s Luminous Power Technologies Pvt. Ltd., Gurugram (hereinafter referred to as the applicant) against Order-in-Appeal No. 289/CE/CGST-Appeal-GURUGRAM/SG/2019 dated 25.03.2019, passed by the Commissioner, CGST (Appeals), Gurugram wherein the appeal filed by the Applicant against Order-in-Original No. 46/SA/CGST/2018-19/R dated 20.11.2018 passed by the Assistant Commissioner, CGST Division South-II, Gurugram has been rejected.

2. Briefly stated, the Applicants were registered with the Central Excise department as a dealer and were exporting from their warehouse. They filed 35 rebate claims, under Rule 18 of the Central Excise Rules, 2002, in respect of Central Excise Duty paid on goods exported out of India. The Assistant Commissioner considered the date of filing of rebate claims as 28.02.2018 and rejected 2 claims (out of 35 claims filed) totally amounting to Rs. 4,55,744/-, as barred by limitation. Balance rebate claims, totally amounting to Rs. 42,92,292/-, were sanctioned. The appeal filed by the Applicant against rejection of 2 claims was rejected by the Commissioner (Appeals). Hence, this revision application.

3. The revision application has been filed, mainly, on the grounds that rebate claims were filed on 14.02.2018 but the acknowledgment stamp was cut off; that it is evident from the cutting off the acknowledgement that the claim was returned to them by the range office with a direction to file a consolidated application; that therefore subsequent filing of consolidated application on 28.02.2018 was only in pursuance of the direction of the range office; that as such the date of filing of rebate claims should be taken as 14.02.2018; that in any case the EGM in respect of the shipping bill no. 4295588 dated 22.02.2017, involving the 2 rebate claims rejected, was filed only on 02.03.2017; that therefore the claim even if it is taken to be filed on 28.02.2018 was within limitation. The Applicant has also submitted that the sanctioned rebate of Rs. 42,92,292/- was credited to their

account only on 03.12.2018 and, therefore, they are entitled to interest on delayed payment, in terms of Section 11BB of the Central Excise Act, 1944.

4. Personal hearing in the matter was held on 21.05.2021. Ms. Shagun Arora, Advocate appeared for the Applicant and reiterated the contents of the RA. She highlighted that out of the 35 rebate claims filed, 2 claims have been rejected being barred by limitation. The goods in respect of these two claims have been shipped vide SB No. 4295588 dated 22.02.2017 wherein the relevant EGM has been filed only on 02.03.2017, as evident from the ICEGATE screenshot at Annexure-3 of the RA. Thus, even if the claim is taken to have been filed on 28.02.2018, it is within the limitation period of one year as provided under Section 11B. She fairly agreed that this aspect was directly not highlighted before the lower authorities. No one appeared for the respondent department. No request for adjournment has also been received. Therefore, the matter is being taken up for decision based on records.

5.1 The Government has carefully examined the matter.

5.2 At the outset, in respect of the contention of the Applicant that the rebate claim was filed on 14.02.2018, the Government observes that though there is a receipt stamp dated 14.02.2018 of the office of the Assistant Commissioner, however, the stamp is crossed. It is the contention of the applicant that they filed the claim on 14.02.2018 but they immediately took it back as per the advice of the Range Office to file the consolidated claim, which was filed on 28.02.2018. The Commissioner (Appeals) has, upon verification, found that the claim was not filed on 14.02.2018. Further, if the contention of the Applicants that the claim was originally sought to be filed on 14.02.2018 and was taken back as per advice of Range Office is correct, the claim would have been filed in the Range Office and would have carried the receipt stamp of the Range Office and not that of the office of Assistant Commissioner, i.e., the Division Office. Therefore,

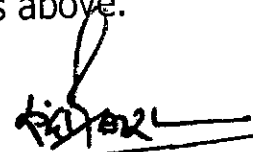
the Government agrees with the decision of the Commissioner (Appeals) that the claim was actually filed only on 28.02.2018.

5.3 It is observed that, as per sub-section (1) of Section 11B of the Central Excise Act, 1944, an application for refund of duty has to be made before the expiry of one year from the 'relevant date'. As per Clause (A) of the Explanation to Section 11B, "refund" includes the rebate of duty of excise paid on excisable goods exported out of India. Further, as per Clause (B) of the said Explanation, the 'relevant date' in the case of goods exported out of India, by sea, is the date on which the ship in which such goods are loaded leaves India. Therefore, it is clear that the 'relevant date' for the purposes of counting limitation under Section 11B, in the present case, is the date on which the ship in which export goods were loaded, left India. The original authority has treated the date of Bill of Lading i.e. 27.02.2017 as the 'relevant date'. In the present case, the applicant has, now, brought on record that the export manifest (EGM), as required to be filed under Section 41 of the Customs Act, 1962, in respect of the relevant shipping bill was filed only on 02.03.2017. A screenshot from the ICEGATE website has been annexed to the RA, evidencing the same. The Applicants have correctly pointed out that, as per sub-section (1) of Section 41 of the Customs Act, the person in charge of the vessel has to file the EGM before the departure of the vessel from the Customs Station. Thus, the Government finds that in case the relevant EGM was filed on 02.03.2017, the ship in which the export goods were loaded would have left India only on or after 02.03.2017. Therefore, the contention of the Applicant that the subject claims were filed within limitation, even if taken to be filed on 28.02.2018, would be correct, in case it is verified from records that the EGM was indeed filed on 02.03.2017. The Government, however, observes that this aspect of the relevant EGM having been filed only on 02.03.2017 is being taken up for the first time in the instant RA and, therefore, has not been verified in the proceedings before the lower authorities. As such, it would be in interest of justice that the matter is remanded to the original authority to verify whether the relevant EGM, in respect of the 2 rebate claims rejected on the grounds of limitation, was actually filed on 02.03.2017

and with the directions that, if upon such verification, the same is found to be correct, the relevant rebate claims shall be sanctioned.

5.4 The issue of interest, if any, to be paid, in terms of Section 11BB, in respect of the rebate claims amounting to Rs. 42,92,292/-, which were already sanctioned vide OIO dated 20.11.2018, shall also be decided by the original authority, in the de-novo proceedings, in accordance with law. The Applicants herein shall have the liberty of making their submissions, including oral submissions, on all issues to be decided during the de-novo proceedings.

6. In view of the above, the revision application is allowed by way of remand to the original authority, with directions as above.



(Sandeep Prakash)

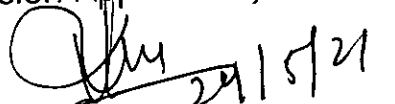
Additional Secretary to the Government of India

M/s. Luminous Power Technologies Pvt. Ltd.,
Khewat No. 503/678 & 679, Block-C,
Revenue Estate, Village Pathreri,
Gurugram- 122 143 (Haryana)

G.O.I. Order No. 108 /21-CX dated 2021

Copy to: -

1. The Commissioner of Central Goods & Service Tax, GST Bhavan, Plot No. 36-37, Sector- 32, Gurugram, Haryana- 122 001.
2. The Commissioner (Appeals), CGST, Gurugram.
3. M/s. Lakshmikumaran & Sridharan Attorneys, No. 5, Link Road, Jangpura Extension, New Delhi- 110014.
4. P.S. to A.S. (Revision Application).
5. Guard File.
6. Spare Copy.


21/5/21
ATTESTED
Supdt. (RA)