

REGISTERED
SPEED POST



F.No. 195/43/13-RA
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... 8/9/17

ORDER NO. 123/17-Cx DATED 8-9-2017 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 185(RDN)CE/JPR-I/2012 dated 7.11.2012, passed by Commissioner of CE (Appeal) Jaipur-1

Applicant : M/s Paramount Communication Ltd., Alwar

Respondent : The Commissioner of Central Excise, Jaipur-1

ORDER

This Revision Application has been filed by M/s Paramount Communication Ltd., S.P.30, RIICO Industrial Area, Khuskheda, Dist Alwar under Section 35EE of Central Excise Act 1944 against order in appeal number 185(RDN)CE/JPR-I/2012 dated 7.11.2012, passed by Commissioner of CE (Appeal) Jaipur-1, NCR Building, Statue Circle, C-Scheme, Jaipur.

2. Brief Facts leading to the Revision application are that M/s Paramount Communication Ltd. in terms of Rule 18 of CE Rules 2002 and Notification issued thereunder applied for rebate on 25.8.2010 for claiming rebate of Rs.63095/-, Rs.97936/- and Rs.753838/- after their goods had entered SEZ and the respective ARE-1 was received duly endorsed with the certificate of admittance of goods in SEZ by Customs Authorities. The Assistant Commissioner issued a SCN to the appellant asking them why the claims should not be rejected on the ground that they were not supported by shipping bills/bills of export. Following the reply of the appellant, the Assistant Commissioner rejected the rebate claims. Aggrieved by the order No.702/2010-2011 (Refund) dated 31.1.2011, passed by the Assistant Commissioner, the appellant preferred an appeal with Commissioner, CE, Appeals which was allowed vide order in appeal NO.219/DKV/ST/JPR-1/2011/831 dated 4.8.2011 directing the Assistant Commissioner to grant the refund claim with consequential benefit. The appellant requested the Assistant Commissioner vide letter dated 11.8.2011 to make the payment of rebate claim alongwith interest for the delayed payment under Section 11BB of CE Act 1944. The Assistant Commissioner granted the rebate claim but not the interest. Aggrieved by not having been granted interest the appellant preferred an appeal with Commissioner (Appeals) for payment of interest, who has also rejected their appeal.

3. Aggrieved by the aforesaid order, the appellant has filed Revision Application before the Government on the following grounds:

1. The impugned order is illegal, unjust and bad in law.
2. Claim of interest has been rejected on the ground that the applicant had not made any application for interest.
3. The Commissioner (Appeals) had allowed the appeal of the party for sanction of rebate claim with consequential benefit vide order in appeal No.219(DKV)CE/JPR-1/2011 dated 4.8.2011. The appellant had requested the Assistant Commissioner vide their letter dated 11.8.2011 to do the needful as per the OIA.

4. Personal hearing was held on 4.9.2017. During the personal hearing Shri. B.L.Yadav and Shri S.K.Yadav appeared on behalf of the appellant and contended that the interest is payable from the expiry of three months from the date of receipt of rebate claim and cited the following case laws namely:

- 2011(273)ELT3(SC)
- 2014(307)ELT608(GOI)
- 2016(333)ELT193(SC)
- 2017(49)STR98(Tri-Bang)

5. The Government has carefully gone through the order in appeal and the submissions made by the applicant alongwith the case laws cited. The Government observes that the original claim of rebate was filed on 25.8.2010 which was initially rejected by the jurisdictional Assistant Commissioner but it was subsequently allowed by the Commissioner (Appeals).

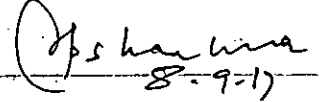
6. While the A.C. (Division) has sanctioned rebate of duty to the applicant in compliance of Commissioner (Appeals) order, he has refused to pay interest for delayed payment for the period after more than three months from the filing of the rebate claim. The Commissioner (Appeals) has also upheld the order of the Assistant Commissioner and as a result the applicant has approached the Government with a request to allow the interest from the date after expiry of three months from their original rebate claim and set aside the Commissioner (Appeals) order.

7. In the light of Section 11BB of the CE Act 1944 the Government does not have any doubt that interest is payable on the rebate claim if the rebate of duty is sanctioned after three months of the receipt of proper rebate claim and it is immaterial whether the delay is on account of inaction on the part of the sanctioning authority or prolonged litigation etc. When delay has occurred beyond the specified period of three months even on account of settlement of appeal etc. like it has happened in this case, the interest is payable after the specified period of three months to be counted from the original rebate claim and not from three months from the receipt of order of Commissioner (Appeals) etc. Thus the view taken by the original adjudicating authority and the first appellate authority, that the interest is payable to the applicant in this case only after three months period from receipt of the applicant's second rebate claim after Commissioner (Appeals) has allowed rebate of duty to them in his earlier order is completely incompatible with the provision of Section 11BB. This view is also fully supported by the following decisions of the Apex Court:

- Ranbaxy Laboratories Ltd. Vs. UOI-2011(273)ELT3(SC)
- UOI Vs.Hamdard (Waqf) 2016(333)ELT 193(SC)

➤ Surajbhan Synthetics (P) Ltd. Vs. CCEX, Hyderabad-IV 2017(49)STR98(Tri-Bom)

8. In view of the above discussion, the Commissioner Appeal's aforesaid order No.185(RDN)/CE/JPR-1/2012 dated 7.11.2012 is set aside and the above referred Revision Application filed by the Applicant is allowed.



(R.P.SHARMA)

Additional Secretary to the Government of India

M/s Paramount Communication Ltd.,
S.P.30, RIICO Industrial Area,
Khushkeda,
Distt. Alwar

G.O.I. Order No. 123 /17-Cx dated 8-9-2017

1. The Commissioner, Central Excise Commissionerate Jaipur-I, Statue Circle, C-Scheme, Jaipur
2. The Commissioner of CE (Appeal) Jaipur-1, NCR Building, Statue Circle, C-Scheme, Jaipur-302005
3. The Assistant Commissioner, CE, Division Bhiwadi, Alwar (Rajasthan)
4. PA to AS (Revision Application)
- ✓ 5. Guard File
6. Spare Copy.

ATTESTED

(Debjit Banerjee)
STO (RA)