

SPEED POST



**F. No. 198/60-63/2018—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..16/6/21.....

Order No.147-150/2021-CX dated 16-06-2021 of the Government of India, passed by Shri Sandeep Prakash, 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 Order-in-Appeal No. MRT/EXCUS/000/APPL-MRT/237 to 240/2017-18 dated 02.08.2018 passed by Commissioner (Appeals), CGST, Meerut.

Applicant: Commissioner, CGST, Meerut.

Respondent: M/s Saru Copper Alloy Semis Pvt. Ltd., Meerut

ORDER

Four Revision Applications Nos. 198/60-63/2018-R.A. dated 12.11.2018 have been filed by the Commissioner, CGST, Meerut (hereinafter referred to as Applicants) against Orders-in-Appeal Nos. MRT/EXCUS/000/APPL-MRT/237 to 240/2017-18 dated 02.08.2018 passed by Commissioner (Appeals), CGST, Meerut, wherein the appeals filed by the Respondents, M/s Saru Copper Alloy Semis Pvt. Ltd., Meerut (hereinafter referred to as Respondents), have been allowed with consequential relief.

2. The brief facts leading to the present proceedings are that the Respondents had filed 4 rebate claims, under Section 11B of the Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002, in respect of the duty paid on the finished goods (Phosphor Bronze Bars) exported by them. The original adjudicating authority partially sanctioned the rebate claims, i.e., only to the extent of duty paid on FOB value whereas the Applicant had paid duty corresponding to the CIF value and claimed rebate, accordingly. Aggrieved, the Respondents filed appeals before the Commissioner (Appeals), who, vide the impugned Orders-in-Appeal, allowed the appeals with consequential relief. The Applicant has filed the subject revision applications on the ground that the Commissioner (Appeals) had erred by allowing the rebate of duty paid on CIF value as such value did not correspond to the transaction value as per Section 4 of the Central Excise Act, 1944 and the duty paid in excess was not a "duty"

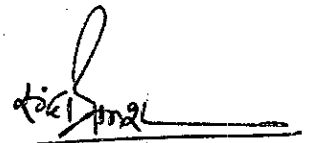
as per Rule 2(e) of the Central Excise Rules, 2002 read with Section 3 of Central Excise Act, 1944 and, thus, not rebatable.

3. Personal hearing was granted on 09.04.2021, 30.04.2021, 17.05.2021 and 14.06.2021. None appeared for the Applicant as well as for the Respondents. No request for adjournment has also been received from either of the parties. Since sufficient opportunities have been granted, the matter is being taken up for disposal on the basis of records and facts available.

4. The Government has examined the matter. It is observed that, in the present case, the Respondents had paid duty corresponding to the CIF value of the exported goods from the CENVAT credit account. The original authority has partially sanctioned the rebate restricting it to the duty payable corresponding to the FOB value of the exported goods. There is no dispute that the FOB value corresponds to the value for the purposes of Section 4 of the Central Excise Act, 1944. CBIC has also, vide circular no. 203/ 37/ 96-cx dated 26.04.96, stated that ARE-1 value of excisable goods should be determined under Section 4 of Central Excise Act, 1944. Thus, it cannot be disputed that by paying duty corresponding to the CIF value, the Respondents had paid an amount in excess of the duty payable. The Government observes that any amount paid in excess of duty liability, on one's own volition, cannot be treated as duty in as much as 'duty', as defined under Rule 2(e) of the Central Excise Rules, 2002, is the duty payable under Section 3 of the Central Excise Act, 1944. The Hon'ble Punjab and

Haryana High Court has, in the case of M/s Nahar Industrial Enterprises Ltd. Vs UOI [2009(235)ELT 22 (P&H)], held that only the duty payable and ultimately paid on exported goods is refundable in cash by way of rebate claim. Thus, in the present case, the sanction of rebate, in cash, to the extent of duty paid on value corresponding to FOB value of goods is correct in law and the order of the Commissioner (Appeals), granting the rebate of the excess amount paid by the Respondents out of their own volition, merits revision.

5. In view of the above, the revision applications are allowed and the impugned Orders-in-Appeal are set aside.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of CGST,
Opp. CCS University, Mangal Pandey Nagar,
Meerut- 250 004.

G.O.I. Order No. 147-150/21-Cx dated 16-6-2021

Copy to:-

1. M/s. Saru Cooper Alloy Semis Pvt. Ltd., Saru Nagar, Sardhana Road, Meerut- 250 004.
2. Commissioner (Appeals), CGST, Meerut.
3. Sh. Ankur Jain, Advocate, R.C. Jain & Associates, C-125, Metro Plaza, Delhi Road, Meerut- 250 002.
4. PA to AS (Revision Application)
5. Spare Copy
6. Guard File

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)