

REGISTERED  
SPEED POST



F.No.198/10-B/2016-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 15/3/18

Order No. 154/2018-Cx dated 12-3-18 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 No.216/Kol-IV/2015 dated 04.11.2015 passed by the Commissioner of Central Excise (Appeals-II) Kolkata~~

Applicant : Commissioner of Central Excise, Kolkata-IV

Respondent : M/s Hindustan Engineering & Industries Ltd., Hubli

\*\*\*\*\*

**ORDER**

A Revision Application No.198/10-B/2016-RA dated 4.2.16 is filed by the Commissioner of Central Excise, Kolkata-IV (hereinafter referred to as the applicant), against Order-In-Appeal No.216/Kol-IV/2015 dated 04.11.2015, passed by the Commissioner of Central Excise (Appeals-II), Kolkata, whereby the appeal of the respondent M/s Hindustan Engineering & Industries Ltd., Hubli, has been dismissed and the OIO passed by the jurisdictional Assistant Commissioner has been upheld.

2. The revision application has been filed mainly on the grounds that the Commissioner (Appeals) has erred by issuing the aforesaid OIA by not taking into account his earlier OIA dated 30.7.15, by not verifying the date of submission of refund claim and by not verifying the documents relating to payment of central excise duty etc.

3. The personal hearing was fixed on 9.11.17 and subsequently on 6.3.18. However, no one appeared for the personal hearing on both the dates for the applicant as well as for the respondent from which it is implied that they are not interested in availing personal hearing. Hence the revision application is taken up for decision without offering any further personal hearing.

4. On examination of the revision application, the Government observes that the respondent had earlier filed an appeal before the Commissioner (Appeals) against the OIO whereby the rebate claim of Rs.83242/- was rejected by the jurisdictional Assistant Commissioner and the same was upheld by the Commissioner (Appeals). Therefore, while the respondent had reasons to be aggrieved with the Order-In-Appeal, the Revenue does not have any reason for being dissatisfied with the OIA as it is not against the Revenue by any yardstick. But still the revision application has been filed without any basis apparently by not appreciating the true nature of the OIA. Hence, the revision application is liable for rejection on this ground alone.

6. Besides above, it is also observed that the issue involved in the revision application is regarding admissibility of refund of duty under Section 11B of the Central Excise Act against excess payment of central excise duty paid by the respondent. Whereas as per 1<sup>st</sup> Proviso to Section 35B read with Section 35EE of

the Central Excise Act 1944, the revision application can be filed with the Government if the Commissioner (Appeals)'s Order involves an issue relating to rebate of duty on excise on exported goods, goods exported outside India without payment of excise duty or loss of goods. Since no such issue is involved in this case and admissibility of refund of excess payment of central excise duty under Section 11B is entirely different, the Government is of the view that it does not have jurisdiction to revise the Commissioner (Appeals)'s Order involving the issue relating to refund of excess duty.

7. Accordingly, the revision application is rejected as not maintainable.

*R.P. Sharma*  
12-3-18

(R.P.Sharma)

Additional Secretary to the Government of India

Commissioner of Central Excise, Kolkata-IV,  
15/1, Strand Road, M.S.Building,  
Customs House,  
Kolkata-700001

---

Order No. 154 /18-Cx dated 12-3-2018

Copy to:

1. M/s Hindustan Engineering & Industries Ltd., Modi Building, 27 R.N.Mukherjee Road, Kolkata-700001
2. Commissioner (Appeals-II) Central Excise, Bamboo Villa, 3<sup>rd</sup> Floor, 169 A.J.C.Bose Road, Kolkata-700014
3. The Assistant Commissioner of Central Excise, Dankuni Division, Kolkata-IV Commissionerate, Bank of Baroda Building, Station Road, Fatakgora, Chandannagar, Hooghly-712136
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED

*Debjit Banerjee*  
12-3-2018

(Debjit Banerjee)

*S.T.O=OSD* (Revision Application)