



REGISTERED  
SPEED POST

F.No. 198/111/15-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

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ORDER NO. 155/18-CX DATED 12-3-18 OF THE GOVERNMENT  
OF INDIA, PASSED BY SHRI R.P.SHARMA 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.04/Kol-I/2015 dated 27.07.2015, passed by the  
Commissioner (Appeals), Central Excise, Kolkata

Applicant : Commissioner of Central Excise, Kolkata

Respondent : M/s ITC Ltd.

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ORDER

The Revision Application No. 198/111/2015-RA dated 21.10.2015 is filed by the Commissioner of Central Excise, Kolkata-I (hereinafter referred to as the applicant) against the Order-In-Appeal No. 04/Kol-I/2015 dated 27.07.2015, passed by the Commissioner Central Excise (Appeals), Kolkata, whereby the appeal of the respondent M/s. ITC Ltd., Kolkata, has been allowed and the Assistant Commissioner's order rejecting the remission of Central Excise duty of Rs.38426/- has been set aside.

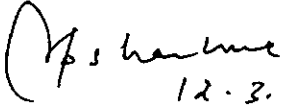
2. The brief facts leading to the filing of the Revision application by the Revenue are that the respondent requested for remission of duty in respect of 70,000/ sticks of cigarettes which were stolen from the factory of the respondent. However, the Assistant Commissioner of the Division allowed remission of Central Excise duty of Rs.31439/- only attributable to the 31500 sticks of cigarettes which had been recovered by the police and which had been destroyed as per order of the court due to its perishable nature. The respondent filed an appeal against the Assistant Commissioner's order whereby remission of duty of Rs.38426/- had been rejected in respect of non-recovered stolen cigarettes and the same has been allowed vide aforesaid O-I-A against which the applicant has now filed the present Revision application.

3. The Revision Application has been filed mainly on the grounds that the remission of duty has been considered wrongly under old Rules, 1944, Commissioner(Appeals) has ignored Rule 21 of the Central Excise Rules, 2001 which was relevant for the present case and all relied upon case laws were decided in reference to the old central Excise Rules, 1944 only.

4. Personal hearings were offered in this case on 09.11.2017 and thereafter on 06.03.2018. However, no one attended personal hearing on these two dates and even no request for any other date of hearing is also received from which it is implied that they are not interested in availing the personal hearing in this case. Hence, Revision Application is taken up for decision without offering any other personal hearing.

5. The Government has examined the matter and it is found that the issue involved in the Revision application is undisputedly regarding remission of duty on the stolen cigarettes. Whereas, as per first proviso to section 35B read with section 35 EE of the Central Excise Act, 1944, the Revision Application can be filed with the Government against the O-I-A only if the order relates to a case of loss of goods, a rebate of duty of Excise on exported goods and goods exported outside India without payment of duty. Further the Government's Jurisdiction with regard to loss of goods is also restricted in as much as under the aforesaid legal provisions the Revision application can be filed with the Government only when the Order -in - Appeal relates to the transit loss or processing loss occurring while transporting the goods from a factory to a warehouse or from factory to factory or from one warehouse to another warehouse or during the course of processing of the goods in a warehouse or in storage or in the factory. The theft of the cigarettes has been committed in this case while the goods were lying in the factory in fully finished condition and, therefore, it cannot be covered in the ambit of "processing loss" as envisaged in clause (a) of the first proviso to Section 35B which can cover only leakage and burning loss etc. and post manufacturing losses such as storage loss on account of any accident or theft etc. are not covered. Therefore, the Government considers that it does not have jurisdiction to deal with the above stated Commissioner (Appeals)'s order which does not involve any issue relating to transit loss or processing loss.

6. In view of the above discussion, the Revision application is not found maintainable before the Government and hence it is rejected.

  
12.3.18

(R. P. SHARMA)

(Additional Secretary to the Government of India)

Commissioner of Central Excise  
Kolkata-I, Kendriya Utpad Shulk Bhawan  
Central Excise Building 1 st floor 180,  
Shantipally Kolkata-700-107

Order No. 155/18-Cx dated 12-3-2018

Copy to:-

1. M/s ITC Ltd. Khidderpore Unit, 93/1 Kari Marks Sarani Kolkata-700-043
2. The Commissioner, Customs & Central Excise, (Appeals) Kolkata-II, Kendriya Utpad Shulk Bhawan 180, Shantipally 6<sup>th</sup> Floor, R.B.Connector Kolkata-700-107
3. The Assistant Commissioner, Central Excise, Taratala-I Division Kolkata-I Commissionerate Kendriya Utpad Shulk Bhawan 180, Shantipally, Rajdanga Main road Kolkata-700107
4. PS to AS (Revision Application)
- ✓ 5. Guard File
6. Spare Copy.

ATTESTED

*12-3-2018*

(Debjit Banerjee)  
STO (RA)