

SPEED POST



**F. No. 195/194/2018—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..14.7.24.....

Order No. 165/2021-ST dated 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 Applications filed under Section 35 EE of the Central
Excise Act, 1944 against the Orders-in-Appeal Nos. 83/KOL-
I/2018 dated 02.05.2018 passed by Commissioner (Appeals-I),
Central Excise & CGST, Kolkata.

Applicant: M/s. Alufoil Products Pvt. Ltd., Howrah.

Respondent: Commissioner of CGST & CX, Howrah.

ORDER

A revision application no. 195/194/2018-RA dated 13.07.2018 has been filed by M/s Alufoil Products Pvt. Ltd., Kolkata (hereinafter referred to as the Applicants) against Order-in-Appeal no. 83/KOL-I/2018 dated 02.05.2018, passed by the Commissioner (Appeals-I), CGST & CX, Kolkata, wherein the Commissioner (Appeals) has rejected the appeal filed by the Applicants against the Order-in-Original No. MC/ET/KOL-I/12 dated 31.03.2013 passed by the Maritime Commissioner of the then Central Excise, Kolkata-I Commissionerate.

2. Briefly stated, the Respondents were engaged in the export of "Aluminised Foil Board Lids", falling under Sub Heading No. 76072090 of the Central Excise Tariff Act, 1985. The Respondents filed rebate claim of Central Excise duty amounting to Rs. 2,83,773/-, paid on the goods cleared for export, under Rule 18 of the Central Excise Rules, 2002. The original authority, vide the aforesaid Order-in-Original dated 31.03.2013, rejected the said rebate claim on the grounds of limitation, having been filed beyond the stipulated period of one year. In appeal, the Commissioner (Appeals) upheld the aforesaid Order-in-Original dated 31.03.2013.

3. The instant revision application has been filed on the grounds that the delay in filing the refund claim occurred due to non-endorsement of related ARE-1s, in time, by the Customs authorities without which the said claim could not have been filed. Since the foreign exchange remittance against the said exports had been received in full and the late filing of the rebate claim lies due to delay at the end of Customs, they are entitled for rebate which has been unjustly denied to them by the lower authorities.

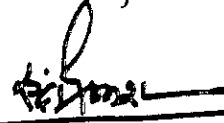
4. Personal hearing was granted on 06.05.2021, 27.05.2021, 18.06.2021 and 09.07.2021. None appeared for the Applicants as well as for the Respondent. The respondent department has, vide letter dated 08.07.2021, stated that the matter may be decided on the basis of records. Since sufficient opportunities for personal hearing have been granted, the matter is taken up for disposal on the basis of records.

5. The Government has carefully examined the matter. It is an admitted fact that the rebate claim in dispute was filed more than one year after the date of export, i.e., beyond the limitation provided under the Section 11B of the Central Excise Act, 1944.

The Applicants have vehemently averred that the delay in filing the rebate claim is attributed to the non-receipt of duly endorsed ARE-1 from the Customs department. The Commissioner (Appeals) has observed that no document or evidence was submitted before him to establish that the delay in filing of rebate claim was solely due to the negligence of the Customs Department, which was beyond the Applicants' control. Further, the original authority has also recorded that the exporter failed to adduce any evidence or submit any copies of correspondence with the Customs department seeking for the signed copy of the ARE-1 etc. so that they could file the rebate claim within stipulated time. Irrespective of the merits of this contention, the Government observes that the limitation provided under Section 11B is mandatory and cannot be relaxed. In fact, a similar plea was taken before the Hon'ble Delhi High Court in the case of M/s Orient Micro Abrasives Ltd. vs. Union of India [2020 (371) ELT 380 (Del.)], which was turned down by Hon'ble High Court in the following terms:

"20. Section 11B (1) of the Act read with Explanation thereto, clearly requires any claim for rebate to be submitted within one year of export of goods, where against rebate is claimed. There is no provision which permits relaxation of this stipulated one year time-limit."

6. In view of the above, the impugned Order-in-Appeal does not merit any revision and the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Alufoil Products Pvt. Ltd.,
208, Mukti Chambers, 4, Clive Row,
2nd Floor, Kolkata-700 001.

G.O.I. Order No. 165/21-ST dated 14-7-2021

Copy to:-

1. The Commissioner of CGST, Howrah.
2. The Commissioner (Appeals-I), Central Excise & CGST, Kolkata.
3. PA to AS (Revision Application)
4. Spare Copy
5. Guard File
6. Spare copy.

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)