

SPEED POST



F.No. 198/64/2018-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...15/7/21.....

Order No. 166/2021-CX dated 15-7-2021 of the  
Government of India, passed by **Sh. 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  
Order-in-Appeal Nos. 07/HAL/CE/2018-19  
dated 18.04.2018, passed by the  
Commissioner of CGST & Central Excise  
(Appeals-II), Kolkata.

Applicants : Commissioner of CGST & CE, Haldia.

Respondent : M/s Uniglobal Papers Pvt. Ltd.,  
Medinipur.

\*\*\*\*\*

ORDER

A revision application no. 198/64/2018-RA dated 10.09.2018 has been filed by the Commissioner of CGST & CE, Haldia (hereinafter referred to as the Applicant) against Order-in-Appeal no. 07/HAL/CE/2018-19 dated 18.04.2018, passed by Commissioner of CGST & Central Excise (Appeals-II), Kolkata, wherein the Commissioner (Appeals) has rejected the appeal filed by the Applicant against Order-in-Original No. 64/CE/Rebate/AC/MDP/16-R dated 21.09.2016, passed by Assistant Commissioner, Central Excise, Midnapur Division, Kharagpur.

2. The Applicant has submitted an application for condonation of delay of 15 days in filing the revision application due to postal delay. The delay is condoned.

3. Briefly stated, M/s Uniglobal Papers Pvt. Ltd., Paschim Medinipur (hereinafter referred to as the Respondents), were registered with the Central Excise department and were engaged in the manufacturing and export of Duplex Board, falling under Chapter 45 of the

Central Excise Tariff. The Respondents exported the goods, without payment of duty, under LUT No. 13/LUT/Uniglobal/MDP/2011-12, valid up to 28.02.2013, availing facility under notification no. 42/2001-CE (NT) dated 26.06.2001, as amended, read with the Rule 19. It was observed by the department that the exports were affected after the expiry of the LUT and on being pointed out, the Respondents deposited the applicable duty amounting to Rs. 1,88,970/- along with interest of Rs. 10,748/- for violation of the conditions laid down under Rule 19 of the Central Excise Rules, 2002 read with the notification no. 42/2001-CE(NT) dated 26.06.2001. Thereafter a rebate claim in respect of the duty paid was filed under Rule 18 *ibid*, which was sanctioned by the original authority, vide the aforesaid Order-in-Original dated 21.09.2016. Aggrieved, the Applicant department filed an appeal before the Commissioner (Appeals), which was rejected vide the impugned Order-in-Appeal.

4. The instant revision application has been filed, mainly, on the ground that the duty was paid by the Respondents against the objections raised by the Department subsequent to export and thus, cannot be termed as "exported after

payment of duty" in terms of conditions and limitations as laid down under notification no. 19/2004-CE(NT) dated 06.09.2004. Hence, the orders of the lower authorities merit to be set aside. Detailed cross objections dated 01.01.2019 have been filed by the Respondents.

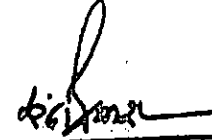
5. Personal hearing was held on 13.07.2021, in virtual mode. None appeared for the Applicant. However, a letter dated 04.07.2021 has been received, stating that the Applicant has nothing further to add to the revision application. Sh. Nilotpal Chowdhury, Advocate, appeared for the Respondents and reiterated the contents of the cross-objections dated 01.01.2019.

6.1 The Government has carefully examined the matter. The Respondents exported the goods under Letter of Undertaking, without payment of central excise duty, under Rule 19 of Central Excise Rules, 2002 but when the department pointed out default in following the terms and conditions of Rule 19 read with the notification no. 42/2001-CE (NT) dated 26.06.2001, they paid the duty due and then filed a rebate claim under Rule 18 of the said Rules. The rebate under Rule 18 is governed by the 'conditions and

limitations' prescribed under the Notification no. 19/2004-CE (NT) dated 06.09.2004. As per condition 2(a) thereof, "the excisable goods shall be exported after payment of duty". In the present case, the goods were exported under LUT and the duty was paid subsequently. Thus, the aforesaid condition 2(a) is not complied. There is nothing on record that other 'conditions and limitations' of notification no. 19/2004-CE(NT) were complied. The Government observes that the 'conditions and limitations' prescribed under the notification no. 19/2004-CE (NT) read with Rule 18 are mandatory in nature, as held by Hon'ble Bombay High Court in the case of M/s UM Cables Ltd. Vs UOI [2013(293) ELT 641 (Bom.)]. Hence, the rebate could not have been sanctioned in the instant case.

6.2 The Government further observes that if duty paid owing to default under Rule 19 was permitted to be rebated under Rule 18, as contended by the Respondents, it will amount to a position where consequences of a default under Rule 19 can be straightaway negated under Rule 18 thereby rendering Rule 19 toothless. Obviously, such a position cannot be contemplated in law. The case of the Respondents cannot be accepted for this reason as well.

7. In view of the above, the revision application is allowed and the orders of the lower authorities are set aside.



(Sandeep Prakash)

Additional Secretary to the Government of India

Commissioner of CGST & C.Ex,  
Halda Commissionerate, 15/1, Strand Road,  
MS Building, Custom House,  
Kolkata-700 001.

G.O.I. Order No. 166/21-CX dated 15-7-2021

Copy to: -

1. M/s Uniglobal Papers Pvt. Ltd., Mouza-Junglekhas, P.O. - Jhargram, Dist - Paschim Medinipur, Pin - 721 507.
2. The Commissioner of Central Excise (Appeals-II), Kolkata Bamboo Villa, 3rd Floor, 169, A.J.C. Bose Road, Kolkata - 700 014.
3. Sh. Nilotpal Chowdhury, Advocate, Hastings Chambers, Room No. B/G, (Basement) 7C, Kiran Sankar Roy Road, Kolkata - 700 001.
4. P.S. to A.S. (Revision Application).
5. Guard File.

6. Spare Copy.

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)