

SPEED POST



**F. No. 198/40/2018—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.. 20/7/21..

Order No. 168/2021-CX dated 20-7-2021 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 No. 695/HWH/CE/2017-18 dated 27.03.2018 passed by Commissioner (Appeals-II), Central Excise & CGST, Kolkata.

Applicant: Commissioner of CGST & CX, Howrah.

Respondent: M/s. Supreme & Co. Pvt. Ltd., Howrah.

ORDER

A revision application no. 198/40/2018-RA dated 06.08.2018 has been filed by the Commissioner, CGST & CE, Howrah (hereinafter referred to as the Applicant) against Order-in-Appeal no. 695/HWH/CE/2017-18 dated 27.03.2018, passed by the Commissioner (Appeals-II), CGST & CX, Kolkata, wherein the Commissioner (Appeals) has allowed the appeal, filed by M/s Supreme & Co. Pvt. Ltd. (hereinafter referred to as the Respondents) against the Order-in-Original No. 68/R/Rebate/HWH-II/2016-17 dated 18.01.2017 passed by the Deputy Commissioner, Howrah-II Division, by way of remand to the original authority.

2. Briefly stated, the Respondents, engaged in the manufacture of excisable goods, had initially filed on 25.05.2016, a rebate claim of Rs. 3,37,911/- in terms of Section 11B of the Central Excise Act, 1944, read with Rule 18 of the Central Excise Rules, 2002 and notification 19/2004-CE(NT) dated 06.09.2004, before the Central Excise authorities. The claim, along with other documents, was returned to the Respondents, for want of original copy of ARE-1 and self-certified copies of EP copy of the relevant Shipping Bills. The Respondents again submitted the

rebate claim complete with the deficient documents, on 20.09.2016. The original authority, vide the aforesaid Order-in-Original dated 18.01.2017, rejected the said rebate claim on the grounds of limitation taking 20.09.2016 as the date of filing. Aggrieved, the Respondents filed an appeal before the Commissioner (Appeals), who, vide the aforesaid Order-in-Appeal dated 27.03.2018, held that original date of filing, i.e., 25.05.2016 was within the period of limitation. Hence, the claim was not time-barred. Accordingly, the matter was remanded to the original authority to decide the admissibility of the rebate claim on merits after giving opportunity to the Respondents.

3. The instant revision application has been filed on the grounds that Section 35A of the Central Excise Act, 1944, as amended with effect from 11.05.2001, has withdrawn the power of remand from Commissioner (Appeals) and hence the impugned Order-in-Appeal may be set aside.

4. Personal hearing was held on 19.07.2021, in virtual mode. Sh. A. K. Das, Consultant, attended the hearing for the Respondents and reiterated the contents of the written synopsis filed on 16.07.2021. Sh. Das submitted that power to remand is inherent to the appellate jurisdiction. None appeared for the Applicants and no request for adjournment has been received

also. Hence, the matter is being taken up for decision on the basis of records available.

5. The Government has carefully examined the matter. The Department has only questioned the legality of remand, to the lower authority, by the Commissioner (Appeals), in terms of the amended Section 35A. The decision of the Commissioner (Appeals) that the claim was not barred by limitation has not been contested. In the circumstances, it is in the department's own interest that it gets an opportunity to examine the rebate claim on merits. As such, without traversing the dispute about powers of remand of the Commissioner (Appeals), the Government considers it judicious to remand the case to the original authority to decide the matter afresh, on merits.

6. The revision application is disposed of, by way of remand, in the above terms.



(Sandeep Prakash)

Additional Secretary to the Government of India


Commissioner of CGST & Central Excise,
Howrah Commissionerate, M.S. Building,
15/1, Strand Road, Kolkata – 700001.

G.O.I. Order No. 168/21-CX dated 20-7-2021

Copy to:-

1. M/s Supreme & Co. Pvt. Ltd., NH-6, South Chamrail, Howrah (West Bengal) - 711114.
2. The Commissioner of Central Excise (Appeals-II), Kolkata, Bamboo Villa, 3rd Floor, 169, A.J.C. Bose Road, Kolkata- 700014.
3. PA to AS (Revision Application)
4. Spare Copy
5. Guard File

ATTESTED


(Ashish Tiwari)

Assistant Commissioner (R.A.)