

SPEED POST



F.No. 195/197/2018-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. 23/7/21

Order No. 169 / 2021-CX dated 23-7-2021 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. 65/KOL-III/2018 dated 11.05.2018 passed by the Commissioner (Appeals-I), CGST & CX, Kolkata.

Applicants : M/s Anish Industrial Corporation, Kolkata.

Respondent : The Commissioner of CGST, Kolkata North.

ORDER

A revision application, bearing no. 195/197/2018-R.A. dated 21.08.2018, has been filed by M/s Anish Industrial Corporation, Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal no. 65/KOL-III/2018 dated 11.05.2018 passed by the Commissioner (Appeals-I), CGST & CX, Kolkata. The Commissioner (Appeals) has modified the Order-in-Original No. CE/KDH/AC-398(R)/14-15 dated 07.01.2015, passed by the Assistant Commissioner of Central Excise, Khardah Division, Kolkata-III Commissionerate, vide which the original authority had sanctioned the rebate claim of Rs. 1,79,445/- in cash out of total claim of Rs. 1,79,618/- and allowed the equal amount of Rs. 1,79,445/- to be re-credited to the CENVAT account of the Applicant from which the duty was paid.

2. Brief facts of the case are that the Applicant had filed a rebate claim of Rs. 1,79,618/-, under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004, in respect of duty paid on goods exported vide ARE-1 No. 20/2014-15 dated 09.09.2014. The original authority sanctioned the rebate amount of Rs. 1,79,445/- but erroneously also sanctioned an amount of Rs. 1,79,445/- to be taken as re-credit in the Cenvat credit account, instead of the amount of Rs. 173/- which was the balance amount not sanctioned out of the total claim. On an appeal filed by the department, the Commissioner (Appeals) modified the Order-in-Original dated 07.01.2015 and restricted the Cenvat re-credit to the extent of Rs. 173/- only with directions that in case excess Cenvat re-credit of Rs. 1,79,272/- (Rs. 1,79,445 - Rs. 173 = Rs. 1,79,272/-) had been availed, the same should be recovered from the Applicant.

3. The revision application has been filed on the ground that pursuant to the Order-in-Original dated 07.01.2015, the Applicant had taken re-credit of Rs. 173/- only and informed the same to the

department; that since they had taken re-credit of Rs. 173/- only, the impugned Order-in-Appeal directing them to reverse the amount of Rs. 1,79,272/- was infructuous; and that the order had been passed by the Commissioner (Appeals) without hearing them.

4. Personal hearing in the matter was held, in virtual mode, on 22.07.2021. Sh. Saurav Sarkar, Consultant appeared for the Applicant and reiterated the contents of the RA and additional submissions dated 17.07.2021. Upon being asked he confirmed that they had not availed excess credit over and above the admissible amount, i.e., Rs. 173/-. He further confirmed that pursuant to the Commissioner (Appeals)'s order, no demand for recovery had been made by the department. None appeared for the respondent department nor any request for adjournment has been received. Hence, the case is taken up for disposal based on records.

5. The Government has carefully examined the matter. It appears from record that out of total duty paid amounting to Rs. 1,79,618/- on the exported goods, the original authority sanctioned the rebate amount of Rs. 1,79,445/- only, in cash, under Rule 18 but erroneously allowed an equal amount of Rs. 1,79,445/- as re-credit in the Cenvat account instead of the balance amount of Rs. 173/-. The Commissioner (Appeals) has modified the order correcting this mistake of the original authority by restricting the re-credit amount to Rs. 173/- only and has directed that in case excess Cenvat re-credit of Rs. 1,79,272/- had been availed the same should be recovered from the Applicant. It has been confirmed by the Applicant that they had not availed the excess credit over and above the admissible amount of Rs. 173/- and the department had also made no demand for recovery in respect of re-credit erroneously mentioned as Rs. 1,79,445/- by the original authority. The rebate was sanctioned in January, 2015 and the limitation period for raising demand, if any, for recovering excess re-credit is long over. Since no such demand has been raised by the department, it is evident that the department has accepted the contention of the Applicant that they never took excess re-credit over and above the admissible amount of Rs.

173/-. As such, no dispute survives for consideration in this revision application.

7. In view of the above, the revision application is rejected as infructuous.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Anish Industrial Corporation,
212, Raja Ramchand Ghat Road, Panihati,
24 Parganas (N), Kolkata (W.B.) – 700114.

G.O.I. Order No. 169 /21-CX dated 23-7-2021

Copy to: -

1. The Commissioner of CGST & Central Tax, Kolkata North, 2nd Floor, GST Bhavan, 180 Shanti Pally, R.B. Connector, Kolkata-700107.
2. The Commissioner of CGST & Cx (Appeal-I), Kolkata, GST Bhawan, 8th Floor, 180 Shanti Pally, Kolkata – 700107.
3. Sh. Saurav Sarkar, Consultant, Block A, 1st Floor, Flat No. D 134/1, Panchanantala 4th Bye Lane, Near Panchanantala Mandir Checkpost Bakultala, Howrah (M.Corp) West Bengal- 711109.
4. P.S. to A.S. (Revision Application).
5. Guard File.

6. Spare Copy,

ATTESTED

G. Bhatia
23/7/2021

GULSHAN BHATIA
Superintendent