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SPEED POST

F.NO. 198/196-200/12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue.....12.2.14

ORDER NO. 17-21/2014-CX DATED 11.02.2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D P SINGH, JOINT 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.61-64/Kol-III/12 dated 14.05.2012 passed by Commissioner of Central Excise (Appeals), Kolkata
APPLICANT	:	Commissioner of Central Excise, Kolkata –III Commissionerate
RESPONDENT	:	M/s Ess Dee Aluminium Ltd., 1, Sagar Dutta Ghat Road, Kamarhati, Kolkata – 700058

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ORDER

These revision applications are filed by Commissioner of Central Excise, Kolkata-III Commissionerate, Kolkata, against the orders-in-appeal No. 61-64/Kol-III/12 dated 14.05.2012 passed by Commissioner of Central Excise (Appeals), Kolkata.

2. Briefly stated that M/s Ess Dee Aluminium Ltd., 1, Sagar Dutta Ghat Road, Kamarhati, Kolkata – 700058 submitted 4 rebate claims aggregating to Rs.12,33,486/- to the Assistant Commissioner, Central Excise, Khardah-II Division.

2.1 The said rebate claims were filed by the said exporter due to exportation of goods under Notification No. 19/2004-CE (NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944.

2.2 Assistant Commissioner, Central Excise, Khardah-II Division under his order-in-original No.s 49(R)/CE/KDH-II/AC/11-12 to 52(R)/CE/KDH-II/AC/11-12 all dated 08.12.2011 sanctioned all the rebate claims on the grounds that (i) the conditions of Notifiction No. 19/2004-CE(NT) were fulfilled and (ii) no unjust enrichment was there.

2.3 The said O-I-Os were examined and Review Order Nos. 06-09/Kol-III/2012 dated 07.03.2012 were issued. Appeals were filed against the said O-I-Os before the Commissioner (Appeals-I), Central Excise, Kolkata on the grounds that (i) the said exporter paid Central Excise duty considering CIF value as assessable value instead of FOB value and (ii) the Assistant Commissioner while passing the said O-I-Os dated 08.12.2011 granted excess cash refunds (Rs. 35,636/-, Rs.21,686/-, Rs.18,760/- & Rs.18,911/- i.e totaling to Rs.94,993/-) erroneously.

2.4 The Commissioner (Appeals) in his order-in-appeal NO(S) 61-64/KOL-III/2012 dated 14.05.2012 has allowed the Departmental appeal, but held that if the said exporter repay back the excess rebate sanctioned voluntarily in cash within 45 days from the date of issue of the said O-I-A dated 14.05.2012, no interest should be payable, otherwise interest should be payable on the erroneously refunded amount as specified in Section 11AA of the Central Excise Act, 1944. Appeal was allowed with

modification of rebate sanctioned earlier through the said O-I-A. The said exporter paid the said excess amounts (erroneously sanctioned) aggregating to Rs.94,993/- on 27.06.12 i.e. within 45 days.

3. Being aggrieved by the impugned orders-in-appeal, the applicant department has filed these revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds :

3.1 That the Appellate Authority erred in invoking Section 37B read with Section 11AB (1) of the Central Excise Act, 1944. Section 37B deals with orders, instructions & directions issued by CBEC to Central Excise Officers with respect to uniformity in classification of excisable goods or with respect to levy of duties of excise. But, in the instant case, the erroneous refund cannot be considered to have become payable consequent to order or instructions issued under Section 37B (i.e. by CBEC). Thus the said section is not applicable.

3.2 That the Commissioner (Appeals) erred in not considering Section 11AA of Central Excise Act, 1944 which clearly states that "the person, who is liable to pay duty, shall, in addition to the duty, be liable to pay interest at the rate specified in sub-section (2), whether such payment is made voluntarily" or otherwise.

4. A show cause notice was issued to the respondent under Section 35 EE of Central Excise Act, 1944 to file their counter reply. They have not filed any written counter reply.

5. Personal hearing was scheduled in this case on 25.07.2013 and 06.02.14. Hearing held on 25.07.2013 was attended by Shri Raj Kumar, Commissioner, Central Excise, Kolkatta-III who reiterated the grounds of revision application. Personal hearing held on 6.2.2014 was attended by Smt. Gargi Banerjee, Head-HR, Shri S.P. Majumdar, Advocate and Shri Joydeepdutta Gupta on behalf of the respondent party. They have stated during hearing that excess rebate claim of Rs.94,993/- is already repaid by them to the department and they are ready to pay the interest amount also.

6. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned orders-in-original and orders-in-appeal.

7. The department has mainly pleaded that Commissioner (Appeals) ought to have ordered for payment of interest in terms of section 11AA of Central Excise Act, 1944. Respondent party has repaid the amount of Rs.94,993/- to department and they are ready to pay the interest also as leviable under section 11AA ibid. Government notes that as per section 11AA, the person who is liable to pay duty shall in addition to the duty be liable to pay interest at the rate specified in sub-section (2). These statutory provisions are quite clear and interest is payable automatically. The respondent has already accepted their interest liability. As such, Government orders that in this case interest is payable in terms of section 11AA of Central Excise Act, 1944. The impugned order-in-appeal is modified to this extent.

8. The revision application succeed in terms of above.

9. So ordered.

(D.P. Singh)
Joint Secretary (Revision Application)

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Kolkata-III Commissionerate,
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(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली / New Delhi

G.O.I. Order No. 17-21 /2014-Cx dated 11.02.2014

Copy to:

1. The Commissioner of Central Excise (Appeals-I), Kolkata, 169, A.J.C. Bose Road, Bomboo Villa, 4th Floor, Kolkata - 700014
2. The Assistant Commissioner of Central Excise, Kharda-II Division, 4, Brabourne Road, Kolkata – 700001.
3. M/s Ess Dee Aluminium Ltd., 1, Sagar Dutta Ghat Road, Kamarhati, Kolkata – 700058
4. PA to JS(RA)
5. Guard File.
6. Spare Copy

(B.P. SHARMA)
OSD (Revision Application)