

REGISTERED

SPEED POST



F.No. 198/65/2018-RA
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. 27/7/21....

Order No. 170/21-CX dated 26/07/2021 of the Government of India passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under Section 35EE of the Central Excise Act, 1944.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 108/HWH/XAP-98/2017-18 dated 23.04.2018 passed by the Commissioner Central Excise (Appeals-II)/ Commissioner, CGST & CX, Kolkata-North, Kolkata.

Applicant :- Commissioner of CGST & CE, Howrah.

Respondent : M/s CMG Ductiles Ltd., Hooghly.

ORDER


A Revision Application No. 198/65/2018-R.A. (CX) dated 19.09.2018 has been filed by the Commissioner of CGST & CE, Howrah (hereinafter referred to as the Applicant) against Order-in-Appeal No. 108/HWH/XAP-98/2017-18 dated 23.04.2018, passed by the Commissioner Central Excise (Appeals-II)/Commissioner, CGST & CX, Kolkata-North, wherein the Orders-in-Original No. 28/CGR/2014-15/Rebate, 30/CGR/2014-15/Rebate and 31/CGR/2014-15/Rebate, all dated 04.12.2014, passed by the Assistant Commissioner of Central Excise, Chandannagar Division, Kolkata-IV, have been upheld.

2. The brief facts of the case are that the Respondents, M/s CMG Ductiles, Hooghly, had filed rebate claims of Rs. 3,73,744/-, Rs 3,93,296/- and Rs 3,91,390/- in respect of central excise duty paid on export goods, i.e., Cast Articles of Iron & Steel of Non-Malleable Cast Iron falling under CETH 73251000, under Rule 18 of Central Excise Rules, 2002. The original authority sanctioned the said rebate claims. Being aggrieved with the Orders-in-Original dated 04.12.2014, the Applicants herein filed appeal before the Commissioner (Appeals) on the ground that the FOB value was less than the ARE-1 value and, hence, the rebate ought to have been restricted to the duty payable corresponding to the FOB value. The Commissioner (Appeals) rejected the appeal of the Department. The instant revision application has been filed, mainly, on the grounds that the rebate had been wrongly sanctioned by the sanctioning authority to the extent of the duty paid on that portion of value which does not form part of transaction value and, thus, the same was not admissible under Rule 18 of Central Excise Rules, 2002 as rebate is admissible on the value of exported goods determined under Section 4 of the Central Excise Act, 1944.

3. Personal hearing in the matter was fixed on 05.07.2021, 13.07.2021 and 23.07.2021. Sh. Apurba Swarnakar, AC, and Sh. Sushanto Ghosh, Superintendent, attended the hearing held on 23.07.2021, in virtual mode, on behalf of the Applicant and reiterated the contents of the revision application. None attended the hearing for the Respondents and no request for adjournment has been also received. Hence the matter is taken up for disposal on the basis of records available.

4. The Government has examined the matter. It is observed that the Respondents had paid duty corresponding to the CIF value of the exported goods from the CENVAT credit account. The original authority has sanctioned the rebate corresponding to the ARE-1 value of the exported goods which is higher than the FOB value. There is no dispute that the FOB value corresponds to the value for the purposes of Section 4 of the Central Excise Act, 1944. CBIC has also, vide circular no. 203/ 37/ 96-CX dated 26.04.96, stated that ARE-1 value of excisable goods should be determined under Section 4 of Central Excise Act, 1944. Thus, it cannot be disputed that by paying duty in excess of the FOB value, the Respondents had paid an amount in excess of the duty payable. The Government observes that any amount paid in excess of duty liability, on one's own volition, cannot be treated as duty in as much as 'duty', as defined under Rule 2(e) of the Central Excise Rules, 2002, is the duty payable under Section 3 of the Central Excise Act, 1944. The Hon'ble Punjab and Haryana High Court has, in the case of M/s Nahar Industrial Enterprises Ltd. Vs UOI [2009(235) ELT 22 (P&H)], held that only the duty payable and ultimately paid on exported goods is refundable in cash by way of rebate claim. Thus, in the present case, the sanction of rebate, in excess of the FOB value, is not tenable and the order of the Commissioner (Appeals), granting the rebate of the excess amount paid by the Respondents on their own volition, merits revision.

5. In view of the above, the revision application is allowed, and the impugned Order-in-Appeal is set aside.


(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of CGST & CE, Howrah
Commissionerate, MS Building, 15/1,
Strand Road, Kolkata- 700 001.

Order No. _ 170 /21-Cx dated 26/07/ 2021

Copy to:

1. M/s CMG Ductiles Ltd., G.T.Road, P.O. Bandel, Distt. Hooghly-712 405.
2. Commissioner Central Excise (Appeals-II), Kolkata.
3. The Principal Commissioner, CGST & CX, Kolkata-North, GST Bhawan, Room No. 254, 180 Shantipally, Rajdanga Main Road, Kolkata-700 107.
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

Attested


(Ashish Tiwari)

Assistant Commissioner (Revision Application)

आशीष तिवारी / ASHISH TIWARI
सहायक आयुक्त / Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क
CGST, Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
नई दिल्ली / New Delhi