

REGISTEREDSPEED POST

F.No. 198/66/2018-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 27/7/21.....

Order No. 171/21-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. 579-581/HWH/CE/2017-18 dated 21.02.2018 passed by the Commissioner Central Excise (Appeals-II), Kolkata.

Applicant : Commissioner of CGST & CE, Howrah.

Respondent : M/s Shanti International, Howrah.

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**ORDER**

A Revision Application No. 198/66/2018-R.A. 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. 579-581/HWH/CE/2017-18 dated 21.02.2018 read with the Corrigendum dated 03.07.2018, passed by the Commissioner Central Excise (Appeals-II), Kolkata, wherein the Orders-in-Original No. 30/R/Rebate//HD-1/2016-17, 31/R/Rebate/HD-1/2016-17 and 32/R/Rebate/HD-1/2016-17, all dated 24.11.2016, passed by the Deputy Commissioner of Central Excise, Howrah-I Division, Kolkata, have been upheld.

2. The brief facts of the case are that the Respondents, M/s Shanti International, Howrah, had filed rebate claims of Rs. 1,67,212/-, Rs. 1,35,632/- and Rs. 1,87,492/-, in respect of central excise duty paid on export goods, i.e., "Hangers of different sizes" falling under CETH 39269069, 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 appeals 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, hence, 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 virtual mode, was held on 05.07.2021. None appeared for the Applicant department. However, a letter dated 12.07.2021 has been received indicating that the department has nothing further to add. Sh. S. K. Ghosh, Consultant, attended the hearing on behalf of the Respondents and reiterated the contents of the Written Submissions dated 23.07.2021.

4. The Government has carefully examined the matter. It is observed that the Respondents had paid duty at a value higher than the FOB 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, 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, cannot be sustained.

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. \_ 171\_/21-Cx dated 26/07/2021

Copy to:

1. M/s Shanti International, 5/1, Height Road, Liluah, Howrah-711 204.
2. Commissioner Central Excise (Appeals-II), Kolkata.
3. Sh. S.K. Ghosh, Consultant, 58/11, Thakur Ramakrishna Lane, Haora Corporation, Santragachi, Haora, West Bengal- 711 104
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