

**SPEED POST**



F.No. 195/02/2019-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...05/8/21..

Order No. 173/2021-CX dated 04-08-2021 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. 487-488/HWH/CE/2018-19 dated 16.11.2018 passed by the Commissioner of CGST & Central Excise (Appeals), Kolkata-II.

Applicants : M/s Skipper Ltd., Howrah.

Respondent : The Commissioner of CGST & Central Excise,  
Howrah.

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**ORDER**

A revision application no. 195/02/2019-R.A. dated 12.02.2019, has been filed by M/s Skipper Ltd., Howrah (hereinafter referred to as the Applicant) against the Order-in-Appeal no. 487-488/HWH/CE/2018-19 dated 16.11.2018 passed by the Commissioner of CGST & Central Excise (Appeals), Kolkata-II, whereby the Commissioner (Appeals) has modified the Orders of the Assistant Commissioner of CGST & Central Excise, Uluberia Division, Howrah Commissionerate to the extent rebate sanctioned in excess of the claim has been denied in appeal.

2. Briefly stated, the Applicant herein, filed two claims of rebate of the duty paid on goods exported, against 15 ARE-1s, before the original authority. The original authority, vide two separate Orders-in-Original, sanctioned the rebate in excess of the amount claimed by the Applicant. The details are tabulated hereunder:

S.I. No.	ARE-1(s) against which Rebate Claimed	Amount of Rebate Claimed (in Rs.)	O-in-O No. & Dated Sanctioning Rebate	Amount of Rebate Sanctioned (in Rs.)
(1)	(2)	(3)	(4)	(5)
1.	SL-ULB/EXPO/491/16-17 dt. 28.03.2017	1,18,400	R 137/AC/Rebate/ ULUBERIA/Tech./ HOWRAH/2017-18 dated 25.01.2018	
2.	SL-ULB/EXPO/494/16-17 dt. 28.03.2017	1,15,532		
3.	SL-ULB/EXPO/495/16-17 dt. 28.03.2017	1,22,431		
4.	SL-ULB/EXPO/496/16-17 dt. 28.03.2017	1,23,461		
5.	SL-ULB/EXPO/497/16-17 dt. 28.03.2017	1,06,744		
6.	SL-ULB/EXPO/498/16-17 dt. 28.03.2017	1,13,202		
7.	SL-ULB/EXPO/499/16-17 dt. 28.03.2017	1,13,581		
8.	SL-ULB/EXPO/500/16-17 dt. 28.03.2017	1,22,190		
9.	SL-ULB/EXPO/501/16-17 dt. 28.03.2017	1,13,497		
	Total	10,49,038		11,51,540
10.	SL-ULB/EXPO/492/16-17 dt. 28.03.2017	1,11,038	R 140 to 145/ AC / Rebate/ ULUBERIA/	1,23,504

11.	SL-ULB/EXPO/493/16-17 dt. 28.03.2017	1,18,029	Tech. / HOWRAH/2017-18 dated 31.01.2018	1,31,272
12.	SL-ULB/EXPO/504/16-17 dt. 28.03.2017	1,14,098		1,26,899
13.	SL-ULB/EXPO/506/16-17 dt. 28.03.2017	1,16,656		1,28,987
14.	SL-ULB/EXPO/514/16-17 dt. 28.03.2017	1,13,497		1,26,231
15.	SL-ULB/EXPO/516/16-17 dt. 28.03.2017	1,25,737		1,39,754
	Total	6,99,055		7,76,647

Upon appeal by the department, the Commissioner (Appeals) held that on a cojo

int reading of sub-section (1) with sub-section (2) of section 11B, submission of a claim is mandatory for sanction by the competent authority and that the authority can sanction only either whole or part of the amount claimed under the application for refund/rebate. Accordingly, the Commissioner (Appeals) modified the Orders of the original authority and held that the excess paid amounts of Rs. 1,02,502/- and Rs. 77,592/- are recoverable from the Applicant.

3. The revision application has been filed, mainly, on the grounds that the Government cannot retain any part of the duty upon exportation of the goods; and that the refund cannot be nullified on the pretext of a procedure. The department, vide C.No. V(30)30/SCN/Skipper/CGST & CEX/Tech/Uluberia/2018/651 dated 30.04.2019, submitted its reply to the revision application stating that it had nothing more to add and that it did not require any personal hearing.

4. Personal hearing in the matter was held on 03.08.2021, in virtual mode. Sh. A.K. Das, Consultant appeared for the Applicant and reiterated the contents of the RA and the synopsis dated 30.07.2021.

5. The Government has carefully examined the matter. The issue involved in the instant RA is whether the rebate sanctioning authority could have sanctioned amount of rebate in excess of that claimed by the exporter Applicant. The Commissioner (Appeals) has pointed out that in terms of the provisions of sub-section (1) and sub-section (2)

of section 11B, a claim is a pre-requisite for sanction. Therefore, sanction of an amount in excess of the claim is not contemplated in law. The Applicant has sought to rebutt this finding of the Commissioner (Appeals) by taking resort to Section 21 of the General Clauses Act, 1897 which provides that a power to issue orders includes power to add, to amend, vary or rescind such order. However, Government is not persuaded by this argument in as much as the original authority has not amended or added to an order, which he had earlier passed, rather the original authority has sanctioned an amount which is not claimed by the Applicant and has thereby sought to add to what was claimed. In other words, the action of the original authority amounts to adding to the claim filed by the Applicant and not adding to an order passed by it earlier. It is also relevant to notice here that if the contention of the Applicant that the original authority can sanction any amount in excess of what was claimed, were to be accepted, it would amount to giving a authority to the rebate sanctioning authority not only to add to the claim, but also negate the provisions of the Section 11B including in respect of limitation within which a claim is to be filed. Obviously, such a position cannot be contemplated in law. Therefore, the Government does not find any infirmity in the impugned Order-in-Appeal.

6. The revision application is rejected.

  
 (Sandeep Prakash)

Additional Secretary to the Government of India

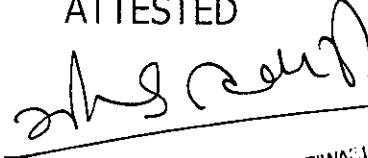
M/s Skipper Ltd., Unit-Uluberia,  
 N.H. -6. Vill. Madhabpur, District-Howrah,  
 West Bengal - 711 303.

G.O.I. Order No. 173/21-CX dated 4-8-2021

Copy to: -

1. The Commissioner of CGST & Central Excise, Howrah Commissionerate, M.S. Building, 15/1, Strand Road, Kolkata-700001.
2. The Commissioner of CGST & Cx (Appeals) Kolkata-II, Bamboo Villa, 3<sup>rd</sup> Floor, 169, A.J.C. Bose Road, Kolkata- 700 014.
3. Sh. A.K. Das, Consultant
4. P.S. to A.S. (Revision Application).
5. Guard File.
- ✓ 6. Spare Copy

ATTESTED



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

20/07/19