

SPEED POST



**F. No. 198/67/2018—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..05/8/21....

Order No. 175/2021-CX dated 05-08-2021 of the Government of India, passed by Shri Sandeep Prakash, Additional 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 Order-in-Appeal No. 67-71/HWH/CE/2018-19 dated 08.05.2018 passed by Commissioner (Appeals), Kolkata-II.

Applicant: Commissioner, CGST & CE, Howrah.

Respondent: M/s Skipper Ltd., Howrah

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**ORDER**

A Revision Application No. 198/67/2018-R.A. dated 27.09.2018 has been filed by the Commissioner, CGST & CE, Howrah (hereinafter referred to as Applicant) against Order-in-Appeal No. 67-71/HWH/CE/2018-19 dated 08.05.2018 passed by Commissioner (Appeals), Kolkata-II, wherein the appeal filed by the Respondents, M/s Skipper Ltd., Howrah (hereinafter referred to as Respondents), has been allowed with consequential relief.

2. The brief facts leading to the present proceedings are that the Respondents had filed 5 rebate claims amounting to Rs.6,98,586/-, Rs. 6,90,748/-, Rs. 5,06,853/-, Rs. 19,46,792/- and Rs. 7,68,457/-, under Section 11B of the Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002, in respect of the duty paid on the finished goods exported by them. The original authority sanctioned the rebate claims but allowed cash rebate only to the extent of amount admissible corresponding to the FOB value of the goods exported. The remaining amount was allowed to be credited in their CENVAT account. Aggrieved, the Respondents filed an appeal before Commissioner (Appeals) on the ground that since the rebate claims had been sanctioned in the GST regime where there is no provision for taking re-credit of the rebate amount in CENVAT account and utilize the same on or before 01.07.2017, the said rebate amount may be sanctioned in cash in the light of sub-section (3) of Section 142 of the CGST Act, 2017 which stipulates that such rebate/refund to be paid in cash. Commissioner (Appeals), vide the impugned Orders-in-Appeal, allowed the appeal with consequential relief. The Applicant has filed the subject revision application on the ground that the Commissioner (Appeals) had erred by allowing the cash rebate of duty paid on the amount in excess of the FOB value as such value did not correspond to the transaction value as per Section 4 of the Central Excise

Act, 1944, and the original authority was justified in allowing re-credit of this amount in CENVAT account of the Respondents.

3. Personal hearing was held on 03.08.2021, in virtual mode. None appeared for the Applicant department. However, a letter dated 09.07.2021 has been received which is taken on record. Sh. A. K. Das, Consultant, appeared for the Respondents and reiterated the contents of the cross objections dated 06.01.2019 and the synopsis dated 30.07.2021.

4. The Government has examined the matter. It is observed that, in the present case, the original authority had, vide separate orders dated 02.08.2017, allowed rebate of the entire amount, only with a rider that the amount corresponding to the FOB value be paid in cash and the rest by way of re-credit in the CENVAT Account. The Commissioner (Appeals) has modified the original order only to the extent of allowing the amount to be re-credited, to be also paid in cash. The department has not contested the sanction of the rebate amount but has only agitated the Commissioner (Appeals)'s order granting cash rebate of the re-credit amount. Sub-section (3) of Section 142 of the CGST Act, 2017 reads as follows-

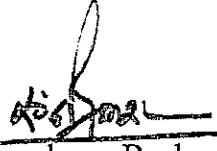
*“ Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944:*

*Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:*

*Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act."*

The rebate orders were passed in the GST regime when there is no provision for re-credit in the CENVAT Account. Therefore, in accordance with the said Section 142(3), there is no option other than to pay the re-credit amount in cash. Hence, Commissioner (Appeals)'s order does not merit revision.

5. The revision application is rejected.

  
(Sandeep Prakash)

Additional Secretary to the Government of India

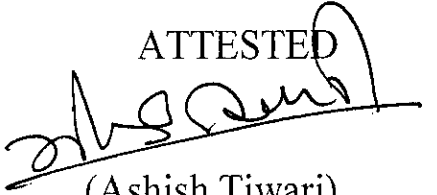
The Commissioner of CGST & Central Excise,  
Howrah Commissionerate, M.S. Building,  
15/1 Strand Road, Kolkata- 700001.

G.O.I. Order No. 175/21-Cx dated 5-7-2021

Copy to:-

1. M/s. Skipper Ltd. (Unit-Uluberia), N.H. – 6, Vill. Madhabpur, District – Howrah – 711 303 (West Bengal).
2. The Commissioner of Central Excise (Appeals), Kolkata-II, Bamboo Villa, 3<sup>rd</sup> Floor, 169, A.J.C. Bose Road, Kolkata – 700 014.
3. Sh. Ankur Jain, Advocate, R.C. Jain & Associates, C-125, Metro Plaza, Delhi Road, Meerut- 250 002.
4. PA to AS (Revision Application)
5. Spare Copy
6. Guard File

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)