

**SPEED POST**



F.No. 195/04-06/2019-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...19/8/21...

Order No. 180-182/2021-CX dated 19-8-2021 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. 102-104/CE/RKL-GST/2018 Dated 30.10.2018 passed by the Commissioner (Appeals) CGST, Central Excise & Customs, Bhubaneswar.

Applicants : M/s Vedanta Limited, Jharsuguda, Odisha

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

\*\*\*\*\*

**ORDER**

Three revision applications, bearing nos. 195/04/2019-R.A., 195/05/2019-R.A. & 195/06/2019-R.A., all dated 25.02.2019 have been filed by M/s Vedanta Ltd., Jharsuguda, Odisha (hereinafter referred to as the Applicants) against the Order-in-Appeal No. 102-104/CE/RKL-GST/2018 dated 30.10.2018 passed by the Commissioner (Appeals) CGST, Central Excise & Customs, Bhubaneswar.

2. Brief facts of the case are that the Applicants herein were registered with the Central Excise for manufacture of Aluminium Ingots and Aluminium Billets, falling under Chapter 76 & 72 of the Central Excise Tariff Act, 1985. They had exported Aluminium Ingots & Aluminium Billets during the period September, 2016 to April, 2017. The Applicants had submitted three separate rebate claims of Rs. 1,22,55,321/-, Rs. 66,69,968/- and Rs. 5,46,99,116/-, respectively, against the Excise Duty paid in respect of exported goods. The original authority, vide three separate Orders-in-Original Nos. R-02/C. Ex. Rebate/Vedant/JSG/2017 dated 28.09.2017, R-03/C. Ex. Rebate/Vedant/JSG/2017 dated 28.09.2017 & R-05/C. Ex. Rebate/Vedant/JSG/2017 dated 13.10.2017, sanctioned the rebate of Rs. 1,02,98,660/-, Rs. 49,35,819/- and Rs. 4,67,83,537/-, by restricting the rebate to a sum corresponding to the duty payable on the FOB value of the goods and ordered that the excess duty paid to the tune of Rs. 19,56,661/-, Rs. 17,34,149/- and Rs. 79,15,579/-, respectively, be taken as re-credit in the Cenvat Credit Account. The appeal filed by the Applicants herein was rejected by the Commissioner (Appeals) holding that the rebate has been correctly restricted to the extent of duty payable corresponding to the FOB value of the goods.

3. The revision applications have been filed on the grounds that Rule 18 of the Central Excise Rules, 2002 and Notification No.

19/2004-CE (NT) dated 06.09.2004 permit the rebate of whole of duty paid on the excisable goods. Hence, the rebate cannot be restricted to duty payable on the transaction value or the FOB value. A written synopsis alongwith compilation of case laws has also been filed on 18.08.2021.

4. Personal hearing, in the virtual mode, was held on 18.08.2021. Sh. Rahul Tangri, Advocate appeared for the Applicants and submitted that the Applicants have no objection to rebate in cash having been restricted to the duty payable on FOB value basis. At this stage, their only contention is that the excess duty ordered to be refunded by way of re-credit in CENVAT Account be paid in cash in terms of Section 142 (3) of CGST Act, 2017. He also drew attention to the synopsis and case laws filed on 18.08.2021 in support of his case. Sh. Deepak Meena, Superintendent reiterated the findings of the Commissioner (Appeals).

5. The Government has carefully examined the matter. The revision applications have been filed with the delay of 20 days from the date of receipt of the impugned Order-in-Appeal. It is submitted that the delay occurred as the Applicants' Unit is situated in a remote location and the impugned order got delivered to a wrong person within their organisation. Delay is condoned.

6. In view of the submissions made on behalf of the Applicants during the personal hearing, the only issue that survives for consideration is whether the excess duty paid, which was ordered to be refunded by way of re-credit in the Cenvat Account should be paid in cash, in terms of Section 142 (3) of the CGST Act, 2012. The Government observes that the original authority had sanctioned the refund of the excess duty paid by way of re-credit in the Cenvat Account vide Orders dated 28.09.2017, 28.09.2017 & 13.10.2017. By the time these orders came to be passed, GST had already been implemented on 01.07.2017. Therefore, it is rightly contended by the Applicants that the re-credit allowed cannot be taken into the Cenvat Account, maintained under the earlier Central Excise regime. This

position has been addressed in terms of the transitional provisions made under Section 142 of the CGST Act, 2017. The relevant extracts being as under:

*"142. Miscellaneous transitional provisions.*

*(3) 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 Hon'ble Gujarat High Court in the case of *Thermax Ltd. vs. Union of India* {2019 (31) GSTL 60 (Guj.)} has, in a similar case, held that:

*"10. It is thus eminently clear from the aforesaid observations made in the impugned order that the duty, which was paid by the petitioner, which was otherwise not payable on the exported goods and therefore, rebate of such duty was not admissible in terms of Rule 18 of the Central Excise Rules. However, the duty, which was paid by the petitioner is held to be treated as voluntary deposit. As per Section 142(3) of the GST Act, every claim for the refund filed by any person before, on or after the appointed day i.e. 1-7-2017 for refund of any amount of Cenvat credit, duty, tax, interest or any other amount paid under the existing law, should be disposed of in accordance with the provisions of existing law and any amount eventually accruing to such person should be paid in cash. We are of the considered opinion that in view of this clear provision, the Respondent No. 2 ought to have directed the sanctioning Authority to refund the amount of the duty refundable to the petitioner in cash instead of credit in Cenvat Account."*

In view of the above, the Government holds that the amount of excess duty paid, which is ordered to be re-credited in Cenvat Account, is to be paid in cash in terms of Section 142(3) of the CGST Act, 2017. As such, the impugned Order-in-Appeal cannot be sustained.

7. The revision applications are allowed with consequential relief.

  
\_\_\_\_\_  
(Sandeep Prakash)

Additional Secretary to the Government of India

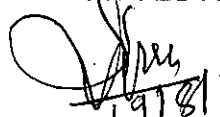
M/s Vedanta Limited, Vill.: Burkhamunda,  
P.O.: Jharsuguda, Distt: Jharsuguda,  
Odisha – 768 201.

G.O.I. Order No. 180-182/21-CX dated 19-8-2021

Copy to: -

1. The Commissioner of CGST & Central Excise, Rourkela, KK-42, Civil Township, Rourkela-769 012 (Odisha).
2. The Commissioner (Appeals), GST, Central Excise & Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar, Odisha – 751 007.
3. Sh. Rahul Tangri, Advocate, M/s Lakshmikumaran & Sridharan Attorneys, 2<sup>nd</sup> Floor, Kanak Building, Opposite Jeevan Deep Building, 11, Jawahar Lal Nehru Road (Chowringhee Road), Kolkata – 700 001, West Bengal.
4. P.S. to A.S. (Revision Application).
5. Guard File.
- ✓ 6. Spare Copy

ATTESTED

  
19/8/21  
Subal (PM)