

**SPEED POST**



F.No. 198/21/2019-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. 25/10/21

Order No. 218/2021-CX dated 25-10-2021 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 Application filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 171/CE/CGST-APPEAL-GGN/SG/2017 dated 30.11.2017 passed by the Commissioner (Appeals), CGST & Central Excise, Gurgaon.

Applicant : The Commissioner of CGST & Central Excise, Gurgaon.

Respondent : M/s Frigoglass India Pvt. Ltd., Gurgaon.

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**ORDER**

A revision application no. 198/21/2019-R.A. dated 02.12.2019 has been filed by the Commissioner of CGST & Central Excise, Gurgaon (hereinafter referred to as the Applicant) against the Order-in-Appeal no. 171/CE/CGST-APPEAL-GGN/SG/2017 dated 30.11.2017 passed by the Commissioner (Appeals), CGST & Central Excise, Gurgaon whereby the Commissioner (Appeals) has set aside the Order-in-Original No. 57/C.E./2017-18/R dated 16.06.2017 of the Assistant Commissioner, CGST, Division West - II, Gurgaon in the matter of M/s Frigoglass India Pvt. Ltd., Gurgaon (hereinafter referred to as the Respondent).

2. Briefly stated, the Respondent were registered with Central Excise department for manufacture of "Commercial Refrigerators" falling under Chapter 84 of the First Schedule of the Central Excise Tariff Act, 1985. The Respondent had filed a rebate claim for a total amount of Rs. 1,17,54,033/- under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004, in respect of the Central Excise Duty paid on finished goods manufactured and exported by them. Upon verification, several discrepancies were noticed by the office of original authority with respect to wrong entry in the duty payment particulars, invoice no. as well as difference in destination address in the Shipping Bill viz a viz invoice and the ARE-1s. Accordingly, a show cause notice dated 08.05.2017 was issued by the original authority listing out discrepancies in respect of exports covered by the 47 ARE-1s. The original authority, thereafter, vide aforesaid Order-in-Original dated 16.06.2017, rejected the rebate claim. On an appeal filed by the Respondent herein, the Commissioner (Appeals) observed that the subject rebate claim pertains to goods removed for export under 47 ARE-1s, out of which in respect of 30 ARE-1s, there is a mismatch of delivery address between ARE-1s and Commercial Invoices/Tax Invoices; in 14 cases, there is a mismatch in duty debit entries; and in 15 cases, there is mismatch in description of goods in ARE-1s and Excise Invoices. However, based upon detailed submissions made by the Respondent in this behalf, the Commissioner (Appeals) held that statutory and procedural conditions were met and, accordingly, allowed the appeal with consequential relief including interest. The Applicant herein challenged the Order-in-Appeal

dated 30.11.2017 before the CESTAT, Chandigarh which was rejected by the CESTAT as not maintainable, vide Final Order No. A/60388/2019-EX(DB) dated 04.04.2019. Thereafter, the present revision application has been filed on 02.12.2019. While the revision application was pending for consideration of the Government, the original authority sanctioned the rebate claim of Rs. 1,17,54,032/-, vide Order-in-Original dated 13.08.2020 and issued a protective demand as the matter was subjudice before the Government. Since the interest on delayed rebate was not paid, on an appeal filed by the Respondent herein, the Commissioner (Appeals) passed an OIA No. 48/CE/CGST/Appeal/Gurugram/SG/2020-21 dated 13.11.2020 holding that the Respondent is eligible for interest on the delayed payment of rebate claims. The department once again preferred an appeal before CESTAT, Chandigarh, on 25.02.2021, impugning the Order-in-Appeal dated 13.11.2020.

3. The revision application has been filed, mainly, on the grounds that the Respondent had not fulfilled mandatory conditions of Rule 18 as some discrepancies are found in ARE-1s filed by the assessee; and that the conditions prescribed in Notification No. 19/2004-CE (NT) dated 06.09.2004 are mandatory in nature and are not just procedural. The Respondent filed detailed cross objections on 24.02.2020.

4. Personal hearing, in virtual mode, was held on 24.06.2021. Sh. Mukesh Kumar, Supdt. appeared for the Applicant department. He reiterated the contents of the RA. Sh. Mukesh Kumar also informed that consequent to the impugned OIA, the rebate was granted to the Applicant subject to the outcome of R.A. However, the interest was not granted. Therefore, the Respondents herein took the matter in appeal to the Commissioner (Appeals) who following his earlier Order, which is impugned herein, ordered payment of interest. The department has challenged the second OIA before CESTAT which is pending. In view of the above, the issue of grant of rebate on merits and that of interest thereon is pending before the Government in RA whereas the issue of interest is also pending before CESTAT. Thus, the issue of interest is pending revision before Central Govt. and also in second appeal before CESTAT. In the

circumstances, the Govt. did not find it appropriate to decide the matter presently. The matter was, therefore, adjourned for department's representative to take instructions in the matter. Thereafter, department filed a status report, vide letters dated 23.09.2021 and 12.10.2021. The matter was heard again on 14.10.2021, in virtual mode. Sh. Baiju Daniel, AC appeared for the Applicant department. His attention was drawn to the records of personal hearing held on 24.06.2021 and the department's status note dated 12.10.2021. Based upon the same, he was asked to clarify whether in a case where the original issue of admissibility of rebate is pending before the Govt. after being held as not maintainable by CESTAT, the department should have bonafide approached the CESTAT again on the consequential issue of interest. Sh. Baiju replied that this was the bonafide belief of the department. Upon being asked as to how the department can err twice in the same matter and claim it to be bonafide, Sh. Baiju was unable to answer. He requested for one last opportunity to take instructions. Ms. Anshika Agrawal, Advocate stated that the department has had sufficient opportunity to consider the matter. Keeping in view the nature of the case, last and final opportunity was granted. Pursuant to the personal hearing held on 14.10.2021, the department placed on record a copy of miscellaneous application filed before CESTAT, Chandigarh on 21.10.2021 seeking to withdraw the appeal filed against the aforesaid Order-in-Appeal dated 13.11.2020. The matter was heard once again on 21.10.2021, in virtual mode. Sh. Baiju Daniel, AC appeared for the Applicant and submitted that the department has filed a MA on 21.10.2021 to withdraw the appeal filed before CESTAT against the OIA No. 48/CE/CGST/Appeal/Gurugram/SG/2020-21 dated 13.11.2020 whereby the Commissioner (Appeals) had granted interest on the rebate arising out of the OIA impugned herein. On merits, Sh. Baiju submitted that there were several discrepancies in the documents submitted to support the rebate claim and the impugned OIA does not bring out as to how the Commissioner (Appeals) had arrived at the satisfaction that these discrepancies were reconciled. Accordingly, he submitted that OIA may be set aside. Ms. Anshika Agarwal, Advocate appeared for the Respondent and reiterated the contents of cross objections filed on 24.02.2020. She highlighted that:

- (i) As per COD application the department claims to have received the Order dated 04.04.2019 of CESTAT on 08.11.2019 which is factually incorrect. In fact the Respondents had vide letters dated 16.04.2019 and 07.08.2019 placed a copy of CESTAT Order on the department's record. A receipted copy of letter dated 07.08.2019 is filed with the cross objections. Hence, the RA has been filed beyond the limitation period prescribed under Section 35EE, even after removing the time taken in the proceedings before the CESTAT.
- (ii) On merits, they had made a detailed submission reconciling the discrepancies before the Commissioner (Appeals), which he has carefully considered and thereafter recorded his satisfaction that the discrepancies are reconciled. She drew attention to para 5 of the impugned OIA in this regard.

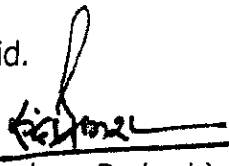
5. The Government has examined the matter carefully. Preliminary issue that is required to be decided is whether delay in filing of the instant RA merits to be condoned. As per Condonation of Delay application filed by the department, the department had first approached the CESTAT against the impugned Order-in-Appeal dated 30.11.2017, which was rejected by the CESTAT, vide final Order dated 04.04.2019, as not maintainable. It is further claimed that a copy of this Order dated 04.04.2019 was received by the department only on 08.11.2019 and, therefore, delay in filing is requested to be condoned. At the outset, the Government is constrained to observe that the department which is entrusted with the function of administering the Central Excise Act, 1944 cannot be pleading ignorance of the appropriate forum for challenging the Order of Commissioner (Appeals) in a case relating to rebate of excise duty provided under the very same Central Excise Act, 1944. Nonetheless, even if this first mistake was to be treated as bonafide, the department compounded the mistake by once again approaching CESTAT challenging the Order dated 13.11.2020 granting the interest even though the appeal against the earlier order dated 30.11.2017 which also, inter-alia, granted interest had been held to be not maintainable by the CESTAT. Further, the Respondents have pointed out with reference to records that they had placed a copy of the subject Order dated

04.04.2019 of the CESTAT before the department, vide letters dated 16.04.2019 and 07.08.2019. A receipted copy of the letter dated 07.08.2019 showing its submission on the same date in the office of the Assistant Commissioner, West-II Division is on record. Though, a copy of the letter dated 16.04.2019 has not been submitted, the letter dated 07.08.2019 is replete with references to the said letter dated 16.04.2019. Even otherwise, the CESTAT's proceedings are held in open court and in the presence of the departmental representatives. Therefore, looked at from any perspective, the contention that the department received the copy of the Order dated 04.04.2019 of CESTAT only on 08.11.2019 is not acceptable. Treating the date of first letter written by the Respondent to the department on 16.04.2019 as the date of receipt of the CESTAT's Order, and after excluding the time taken in pursuing the remedy in a wrong forum, the revision application which has been filed on 02.12.2019 is hopelessly time barred. As per Section 35EE of the Central Excise Act, 1944, a revision application has to be filed within a period of 03 months and the Government, on sufficient cause being shown, can condone the delay of a further period of 03 months. In the present case, the RA has been filed even beyond the condonable period of 03 months. Accordingly, in the overall facts and circumstances of the case, the Government holds that the delay in filing the instant RA does not merit condonation and that even if the Government were to be inclined to condone the delay, the delay is beyond the condonable period provided under section 35 EE *ibid*.

6. Even on merits, the Government is not persuaded by the contentions of the Applicant department. It is observed that the grievance of the department is regarding the discrepancies between various documents filed in support of the rebate claim. It is further observed that the Respondent herein had presented a detailed submission in respect of these discrepancies before the Commissioner (Appeals), specifically vide letter dated 16.10.2017. As evident from para-5 of the impugned Order-in-Appeal, these submissions have been considered by the Commissioner (Appeals) and he has accepted the explanation put forward by the Respondents herein. The Government observes that while the Respondents have submitted document wise detailed explanation, the instant RA is bereft of any

specific evidence to contradict the same. Further, the department has contended that mandatory statutory conditions of Rule 18 and Notification No. 19/2004-CE (NT) have not been followed. To support the same, the discrepancies in the ARE-1s filed by the Respondent herein have been cited. It is to be observed that 'conditions and limitations' for grant of rebate are contained in para 2 of the Notification No. 19/2004-CE (NT) whereas 'procedures' are spelt out in para 3 thereof. The requirement of submitting the ARE-1s is contained in para 3 of the notification. The Hon'ble Bombay High Court has, in the case of *UM Cables Ltd. vs. Union of India* {2013 (293) ELT 641 (Bom.)}, held that "Rule 18 itself makes a distinction between conditions and limitations on the one hand subject to which a rebate can be granted and the procedure governing the grant of a rebate on the other hand. While the conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory." Further, in the case of *Zandu Chemicals Ltd. vs. Union of India* {2015 (315) ELT 520 (Bom.)}, the Hon'ble Bombay High Court has followed the judgment in *UM Cables* (supra) and held that the procedural requirements are capable of substantial compliance and there is no requirement of insisting on strict compliance therewith. Therefore, in the present case, the discrepancies in the documents cannot be treated to be in contravention of the 'conditions and limitations' of the Notification No. 19/2004-CE(NT), which are mandatory in nature rather these are matters of procedure. Further, being a matter of procedure, they are capable of substantial compliance. In the present case, the Commissioner (Appeals) has, after examining the explanation submitted by the Respondent herein, noted such compliance. Therefore, the contention of the Applicant that the discrepancies in the documents amount to non-fulfilment of the mandatory statutory conditions of Rule 18 read with Notification No. 19/2004-CE (NT) can also not be accepted.

7. The revision application is rejected for the reasons aforesaid.

  
 (Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of CGST & Central Excise,  
 GST Bhawan, Plot No. 36-37, Sector-32,  
 Gurgaon (Haryana) - 122001.

G.O.I. Order No. 2/8/21-CX dated 25-10-2021

Copy to: -

1. M/s Frigoglass India Pvt. Ltd., Plot No. 26-A, Sector - 3, IMT Manesar, Gurgaon (Haryana) - 122050.
2. The Commissioner (Appeals), CGST & Central Excise, 5<sup>th</sup> Floor, Mudit Square, Plot No. 24, Sector - 32, Gurgaon, Haryana - 122001.
3. Ms. Anshika Agarwal, Advocate, NITYA Tax Associates, B3/58, Third Floor, Safdarjung Enclave, New Delhi - 110029.
4. P.S. to A.S. (Revision Application).

5. Guard File.

6.  Spare Copy

ATTESTED



(लक्ष्मी राघवन)  
(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi