

SPEED POST



**F. No. 195/44/2019—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...11/11/21....

Order No. 230/2021-CX dated 11-11-2021 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 the Order-in-Appeal No. 14/CE/RKL-GST/2019 dated 26.04.2019 passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Bhubaneswar.

Applicant: M/s Apar Industries Ltd., Mumbai.

Respondent: Commissioner of CGST & CE, Rourkela.

ORDER

A Revision Application No. 195/44/2019-R.A. dated 01.07.2019 has been filed by M/s Apar Industries Ltd., Mumbai (hereinafter referred to as the Applicants) against the Order-in-Appeal No14/CE/RKL-GST/2019 dated 26.04.2019 passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Bhubaneswar, wherein the appeal filed by the respondent department against the Order-in-Original No. R-9/C.Ex./Rebate/JSG/2017 dated 11.12.2017 passed by the Assistant Commissioner, CGST, Central Excise, Customs & Service Tax, Jharsuguda Division, Odisha, has been allowed.

2. The brief facts leading to the present proceedings are that the Applicants were engaged in the manufacture of excisable goods, namely, ACSR MOOSE Conductor falling under CETH 76141000 of the Central Excise Tariff Act, 1985. They exported the said goods on payment of duty under Rule 18 of the Central Excise Rules, 2002 to Nepal via Raxaul during the month of June, 2017 and filed a rebate claim of Rs 67,30,782/- for the central excise duty paid on the goods exported. The original authority sanctioned the rebate claim, vide the abovesaid Order-in-Original dated 11.12.2017. This order, however, was reviewed on the ground that the rebate was admissible only to the extent of FOB value. Consequently, an appeal was filed by the department before the Commissioner (Appeals), who, vide the impugned Order-in-Appeal, allowed the appeal and held the rebate claim inadmissible to the extent of Rs. 2,38,847/-.

3. The instant revision application has been filed, mainly, on the grounds that the goods had been sold on ex-factory price which is nothing but FOB value in their case and since duty has been paid on

this value only, the original authority had correctly sanctioned the rebate claim.

4. Personal hearing was held on 10.11.2021, in virtual mode. Sh. I.C. Thakur, GM (Indirect Taxation) appeared for the Applicants and stated that written submissions emailed on 09.11.2021 may be taken on record. He reiterated the contents of the revision application and written submissions. Sh. Thakur highlighted that for the subsequent period the Commissioner (Appeals) has held the matter in their favour, vide Order-in-Appeal No. 52/C EX/RKL-GST/2020 dated 29.12.2020. He, accordingly, requested that revision application may be allowed. None appeared for the respondent department nor any request for adjournment has been received. Hence, the matter is taken up for disposal on the basis of the records available.

5. The Government has carefully examined the matter. The Applicant has stressed that they have cleared goods at the factory gate to the merchant exporter and have annexed a sample Invoice No. 958727002 dated 02.06.2017, which shows that the goods have been cleared to the merchant exporter who has exported the subject goods. The freight has been shown as "To Pay" basis in this invoice that indicates that the freight will be borne by the buyer of the goods, i.e., the merchant exporter in this case. The corresponding Purchase Order N. SBU-TRD (Transmission Distribution), 220 KV DANA-KUSHMA TL/1432 dated 20.03.2017 clearly mentions that the freight and insurance cost will be incurred by the merchant exporter. Hence, the contention of the Applicant that there is no question of adding the freight and insurance cost to the value at which they have paid duty, appears to be well founded. Further, the Commissioner (Appeals), vide Order-in-Appeal No. 52/CEX/RKL-GST/2020 dated 29.12.2020, passed in an identical case of the Applicants for the subsequent period, has decided the matter in Applicants' favour. Hence, the Government

considers it judicious to remand the case to the Commissioner (Appeals) to consider the present case de-novo, after due verification of all the requisite documents.

6. The revision application is disposed of, by way of remand to the Commissioner (Appeals), with directions as above.


(Sandeep Prakash)

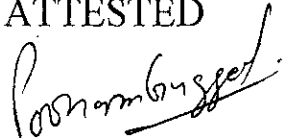
Additional Secretary to the Government of India

M/s. Apar Industries Ltd.,
A-201/202, Bezzola Complex, 2nd Floor,
Sion-Trombay road, Chembur,
Mumbai-400 071.

G.O.I. Order No. 230 /21-CX dated 11-11-2021

Copy to:-

1. The Commissioner of CGST & Central Excise, Rourkela, KK42, Civil Township, Rourkela-769 012.
2. The Commissioner (Appeals), Central Excise, CGST and Customs, CR Building, Rajaswa Vihar, Bhubaneswar-7.
3. PA to AS (Revision Application)
4. Spare Copy
5. Guard File

for ATTESTED


(Ashish Tiwari)
Assistant Commissioner (R.A.)