

SPEED POST



**F. No. 195/66/18—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.. 11/2/21.....

Order No. 28/2021-CX dated 9-02-2021 of the Government of India, passed by Shri Sandeep Prakash, Principal Commissioner & 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 Orders-in-Appeal No. 607-609(SM)CE/JPR/2017 dated 11.01.2018 passed by Commissioner (Appeals), Central Excise, Jaipur.

Applicant: M/s Gravita India Ltd., Jaipur

Respondent: Commissioner CGST, Jaipur.

ORDER

A Revision Application No. 195/66/18—R.A. dated 20.04.2018 has been filed by M/s Gravita India Ltd., Jaipur (hereinafter referred to as applicant) against Order-in-Appeal No 607-609(SM)CE/JPR/2017 dated 11.01.2018 passed by Commissioner, Central Excise & CGST (Appeals), Jaipur wherein the respondent-department's appeal, against Order-in-Original No. 217-219/Reb/2013 dated 21.11.2013 sanctioning the rebate to the applicant, has been allowed.

2. The brief facts leading to the present proceedings are that the applicant had filed three rebate claims totally amounting to Rs. 9,80,345/- in the office of Assistant Commissioner, Central Excise, Division II, Jaipur for rebate of central excise duty paid on exported goods, under Rule 18 of Central Excise Rule, 2002. The said rebate claims were sanctioned by the original authority, vide three separate Orders-in-Original all dated 21.11.2013. The department filed an appeal against these Orders-in-Original before the Commissioner (Appeals) who vide the impugned Order-in-Appeal, allowed the appeals of the department on the ground that the applicant was not eligible to get the rebate as the exports were made under the Advance Licence Scheme and the duty paid on the export goods was deliberately paid to encash the accumulated CENVAT Credit. Aggrieved, the applicant has filed the subject revision application against the Commissioner (Appeals)'s order on the grounds that the

Commissioner (Appeals)'s order is arbitrary and deserves to be revised as facts of the case have not been appreciated.

3. Personal hearing was held on 04.02.2021, in virtual mode. Sh. Ankit Totuka, Advocate, made submissions on behalf of the applicant and reiterated the contents of the revision application. He clarified that the final products exported (under Advance Authorization) were made out of domestically procured duty paid inputs and the imports were made duty free subsequently. Sh. Totuka highlighted that the rebate has been claimed after payment of duty and if it is denied it would amount to taxing of export goods which is not permissible. No one appeared for the respondent and no request for adjournment has also been received. Hence, the matter is taken up for decision on the basis of facts and records available.

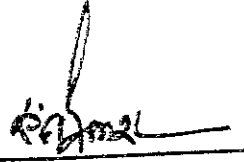
4. The Government has examined the matter. The fact of export of goods on payment of duty has not been disputed. Commissioner (Appeals) has observed that for implementing the advance authorization scheme the government has issued notification no. 96/2009- Customs dated 11.09.2009 and notification no. 44/2001-CE (NT) dated 26.06.2001 read with Foreign Trade Policy. As per all these provisions an advance licence holder is mandatorily required to export goods without payment of duty and if the duty is paid, it cannot be rebated.

~~5. The Government is not persuaded by the findings of the Commission.~~

(Appeals) for the following reasons:

- (i) Subject rebate claims have been filed under Rule 18 of the Central Excise Rules, 2002. There is no allegation that the applicant does not fulfill the terms and conditions prescribed under Rule 18 read with relevant notifications or that the procedure prescribed in this behalf has not been followed.
- (ii) The subject exports have been made in fulfillment of export obligations under Advance Authorization Scheme. The notification no. 96/2009-Cus dated 11.09.2009 governing the duty free imports under the Advance Authorization Scheme does not contain any condition that the exports should be made without payment of central excise duty thereon.
- (iii) The notification no. 44/2001-CE(NT) dated 26.06.2001 has been issued under Sub-Rule (3) read with Sub-Rule (2) of Rule 19 for removal of "intermediate products" without payment of duty, to be used in manufacture of resultant articles to be exported under Advance Licence. One of the conditions of the notification is that goods shall be exported following the procedure prescribed under notification 42/2001-CE (NT). Notification 42/2001-CE (NT) relates to exports under Rule 19. The exports, in the present case, have been made under Rule 18.

6. In view of the above, the Government finds that the impugned Order-in-Appeal cannot be sustained. The revision application is allowed.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Gravita India Ltd.,
Chittora Road, Harsulia Mod,
Diggi – Malpura Road, Teh: - Phagi,
Jaipur – 303 904 (Raj).

G.O.I. Order No. 28/21-Cx dated 9-2-2021

Copy to:-

1. Commissioner of CGST, Jaipur
2. Commissioner of CGST & Central Excise (Appeals), Jaipur.
3. PA to AS (Revision Application)
5. Spare Copy
6. Guard File



ATTESTED

(Ashish Tiwari)

Assistant Commissioner (R.A.)