

SPEED POST



**F. No. 195/65/18—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....16/2/21....

Order No. 29/2021-CX dated 12-02-2021 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 Orders-in-Appeal No. 361/CE/Appl/Knp/2008 dated 30.09.2008 passed by Commissioner of Central Excise (Appeals), Kanpur.

Applicant: M/s. Johnson Matthey Chemicals India Pvt. Ltd., Kanpur

Respondent: The Commissioner of Central Excise & CGST, Kanpur

ORDER

A Revision Application No. 195/65/2018—R.A. dated 04.04.2018 is filed by M/s. Johnson Matthey Chemicals India Pvt. Ltd., Kanpur (hereinafter referred to as applicant) against Order-in-Appeal No. 361/CE/Appl/Knp/2008 dated 30.09.2008 passed by Commissioner of Central Excise (Appeals), Kanpur wherein the appeal against Order-in-Original No. 02/R/ACK-1/08 dated 18.07.2008, passed by the Assistant Commissioner, Central Excise, Division I, Kanpur, has been rejected.

2. The brief facts leading to the present proceedings are that the respondent had filed 18 rebate claims, totally amounting to Rs. 1,86,92,731/-. The entire amount of rebate was sanctioned by the original authority by 18 separate Orders passed in November, 2006 but the same was appropriated against the outstanding dues of M/s ICI (India) Ltd. Aggrieved, the applicant filed appeal against these Orders before Commissioner (Appeals) who remanded the matter to the original authority to decide the issue afresh by passing a speaking order. The Assistant Commissioner thereafter decided the matter afresh, vide Order-in-Original No. 96/Refund/ACK-I/o6 dated 29.03.2007, which was upheld vide Order-in-Appeal dated 29.06.2007. The applicant filed an appeal against the Order-in-Appeal dated 29.06.2007 before CESTAT, which was decided by the CESTAT, vide Final Order No. 135/08—CX dated 27.03.2008 in favour of the applicant with consequential relief. It was held by the Tribunal that the dues of M/s ICI (India) Ltd., which is a separate legal entity, cannot be adjusted from the amount due to the applicant merely because the applicant happens to be the

merchant exporter of M/s. ICI (India) Ltd. The appropriated amount of Rs. 1,86,92,731/- was paid to the applicant, consequently. The applicant, vide their letter dated 29.07.2008, requested for payment of interest for late payment of rebate claim. The said application was decided, vide the Order-in-Original No. 02/R/ACK-I/08 dated 18.07.2008, wherein the claim for interest was rejected in light of the Explanation under Section 11BB of the Central Excise Act, 1944 as well as on the grounds that the CESTAT had not ordered payment of interest. The applicant approached Commissioner (Appeals) with an appeal against this order and their appeal was rejected vide the impugned Order-in-Appeal. The applicant thereafter challenged the Order-in-Appeal dated 30.09.2008 before CESTAT. The CESTAT, Allahabad Bench, vide Final Order No. 70242/2018 dated 18.01.2018, rejected the appeal, as non-maintainable, as in the present case claim of interest of rebate is a matter of dispute. Hence, the instant revision application.

3. Personal hearing was held on 27.01.2021 and 08.02.2021, in virtual mode. Sh. R. Santhanam, Advocate, appeared for the applicant on 27.01.2021 and reiterated the contents of the revision application and the written submissions dated 25.01.2021. Upon being asked whether Government can, in its revisionary jurisdiction, interpret the orders of CESTAT to assess whether such order has been implemented or not, he requested for adjournment and submitted additional averments on 05.02.2021. A virtual personal hearing was again held on 11.02.2021. Sh. Santhanam drew attention to the additional submissions filed on 05.02.2021. He drew analogy from the Section 264 of the Income Tax Act to plead that the revisionary jurisdiction can be exercised

to give effect to the Orders of the Tribunal. Besides, the interest is payable in terms of Section 11BB of the Central Excise Act as the original order granting rebate but appropriating it against outstanding dues has been set aside and it is the second order by which the appropriated amount has been released that stands. None appeared for the respondent and no request for adjournment has been received from them. Hence, the matter is being taken up for disposal on the basis of records and facts available.

4. The revision applications have been filed on the grounds that the interest on refund of moneys "illegally recovered" ought to be granted to assessee even without the assessee having to ask for the same expressly.

5. In the instant case the impugned Order-in-Appeal was passed on 30.09.2008. The revision application has been filed on 04.04.2018. The applicant had initially appealed against the impugned Order-in-Appeal before the CESTAT. The CESTAT, vide Final Order No. 70242/2018 dated 18.01.2018, dismissed the appeal as non-maintainable. The revision application has been filed within three months from the order of CESTAT. Hence, it is admitted.

6.1 The Government has examined the matter. Rebate amount was released to the applicant in compliance to the CESTAT's Final Order No. 135/08 dated 29.03.2008 granting consequential relief. It is observed that, in the first instance itself, the matter being related to rebate, under Rule 18 of the Central Excise Rules, 2002, ought to have been agitated before the Government in revision under Section 35EE of the Central Excise Act, 1944. Nevertheless the appeal was decided in favour of the applicant herein with consequential relief. In compliance thereof, the respondent

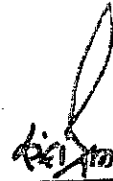
département has released the rebate amount that was earlier appropriated against the dues of M/s ICI Ltd. The only point of contention is whether interest should be paid on the amount which was appropriated and has, since, been released. The lower authorities have denied the same as neither being available under Section 11BB nor as having been ordered to be paid by the CESTAT.

6.2 One of the grounds taken is that the payment of interest on the amount of rebate (that was earlier appropriated), which has been paid, is nothing but the part of “consequential relief” ordered by the CESTAT vide Order dated 27.03.2008. Thus, in order to decide the instant revision application, the Government has to interpret the orders of CESTAT to assess whether the order has been implemented or not. It has been urged that the scope of revision is wide. However, there is nothing in Section 35EE of the Central Excise Act, 1944 to suggest that the Government, in exercise of its revisionary jurisdiction, can do so. Analogy has been drawn with Section 264 of Income Tax Act to support the contention that the Government should use its revisionary jurisdiction to get the order of CESTAT implemented. However, there is no provision parallel to Section 264 of the Income Tax act under the Central Excise Act. Hence, the Government finds that this contention of the applicant is not acceptable.

6.3 It has been further contended that the order, vide which the rebate was sanctioned but appropriated towards the outstanding demand, has been set aside by the Tribunal vide Order dated 29.03.2008. Therefore, the rebate has been actually paid to them, vide Order-in-Original dated 18.07.2008. As such, interest is payable as

per section 11BB of Central Excise Act, 1944. The Government observes that the original authority had sanctioned rebate but, vide Order dated 29.03.2007, appropriated the sanctioned amount towards outstanding dues. CESTAT, vide Final Order dated 27.03.2008, has set aside only the Order appropriating the amount towards outstanding dues and the original orders sanctioning rebate stand. Therefore, it is not correct to say that the rebate was sanctioned only vide the Order dated 18.07.2008. In these facts and circumstances, interest is not liable to be paid to the applicant, in terms of Section 11BB.

7. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s. Johnson Matthey Chemicals India Pvt. Ltd.,
Plot No. 2-A, Site – II B, Panki Industrial Estate,
Kanpur.

G.O.I. Order No. 29 /21-Cx dated 12-2-2021

Copy to:-

1. Commissioner of CGST & Central Excise, Kanpur.
2. Commissioner of CGST & Central Excise (Appeals), Kanpur.
3. Sh. R Santhanam, Advocate.
4. PA to AS (Revision Application)
5. Spare Copy
6. Guard File



(Ashish Tiwari)

Assistant Commissioner (R.A.)