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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. NO. 195/12/WZ/2021 /6413

Date of Issue: 31 .08.2023

ORDER NO. 344 /2023-CX (WZ) /ASRA/MUMBAI DATED 29 .08.2023 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

- Applicant : M/s Ratnamani Metals and Tubes Limited,
Survey No.769 Village, Indrad,
Ahmedabad – Mehsana Highway,
Tal – Kadi, Distt. Mehsana, Gujarat.
- Respondent : Commissioner of CGST & Central Excise,
Gandhi Nagar Commissionerate,
RRA Section, 5th floor, Mridul Towers, Ashram Road,
Navrangpura, Ahmedabad – 380 009.
- Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
NGP-EXCUS-003-APPL-0208-17-18 dated 12.02.2018
passed by the Commissioner (Appeals), Central Tax,
Ahmedabad.

ORDER

The subject Revision Application has been filed by M/s Ratnamani Metals & Tubes Limited, Ahmedabad (here-in-after referred to as 'the applicant') against the impugned Order-in-Appeal dated 12.02.2018 passed by the Commissioner (Appeals), Central Tax, Ahmedabad. The said Order-in-Appeal disposed of an appeal against several Orders-in-Original, all dated 12.07.2017, passed by the Assistant Commissioner, Central Excise, Kadi, Ahmedabad – III, which in turn decided rebate claims filed by the applicant.

2. Brief facts of the case are that the applicant filed several rebate claims for the Central Excise duty paid on the goods exported in terms of Rule 18 of the Central Excise Rules, 2002 and notification no.19/2004-CE(NT) dated 06.09.2004. The original authority found that FOB value of the goods was lesser than the invoice value and hence allowed rebate in cash to the extent of the FOB value and allowed the differential amount paid, to be taken as re-credit in the Cenvat credit account of the applicant. The request of the applicant to refund the differential amount in cash in light of Section 142(3) of the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) was turned down by the original authority vide letter dated 08.11.2017.

3. Aggrieved, the applicant filed appeal against the said Orders-in-Original before the Commissioner (Appeals) on the grounds that the original authority had erred in interpreting Section 142(3) of CGST Act, 2017 inasmuch as the amount found to have been paid in excess should have been paid to them in cash. The Commissioner (Appeals) vide the impugned Order-in-Appeal dated 12.02.2018 rejected the appeal without going into the merits of the case as he found the applicant had failed to file separate appeals in respect of all the Orders-in-Original and also that the appeal was time barred.

4. Aggrieved, the applicant has filed the subject Revision Application against the impugned Order-in-Appeal on the following grounds:-

(a) That the Commissioner (Appeals) had erroneously held their appeal to be time barred as they had vide letter dated 11.10.2017 requested the original authority to issue corrigendum to the Orders-in-Original all dated 12.07.2017, as the order allowing the amounts to be taken as re-credit in their Cenvat account was contradictory to the mandate of Section 142(3) of the CGST Act, 2017; that the original authority had rejected this request vide letter dated 08.11.2017 against which they had filed the appeal before Commissioner (Appeals) on 01.12.2017 and hence the appeal filed by them was well within the prescribed time limit;

(b) That the Commissioner (Appeals) erred in holding that the letter dated 08.11.2017 of the original authority was not an appealable order and relied upon several decisions in support of their contention;

(c) That the Commissioner (Appeals) had failed to appreciate the fact that their claim for refund of the differential amount in cash was rejected vide a common letter dated 08.11.2017 and hence filing of a single appeal was legal and proper; they relied upon the decision of the Hon'ble Tribunal in the case of Eicher Motors Ltd. vs CCE, Indore [2000 (116) ELT 306 (Tri-Del)] in support of their contention.

In light of the above, the applicant requested that the impugned Order-in-Appeal be set aside with consequential relief.

5. Personal hearing in the matter was granted to the applicant and the Department. Shri Rahul Gajera, Advocate, appeared online on behalf of the applicant and submitted that Commissioner (Appeals) had incorrectly rejected their appeal as time barred. He further submitted that the letter dated 08.11.2017 was an Order disallowing their request to allow Cenvat

credit in cash. He contended that appeal was within time from the date this communication was received. He also submitted that their application deserves consideration on merit and requested to pass denovo order to Commissioner (Appeals) to consider it on merits. Ms Sujata Rajarajan, Assistant Commissioner, Kadi Division, Gandhinagar Commissionerate appeared online for the personal hearing on 22.06.2023. She reiterated the earlier points and requested to maintain Commissioner (Appeals) order as the appeal was time barred.

6. Government has carefully gone through the records available in case file, the written and oral submissions and also perused the relevant Orders-in-Original and the impugned Order-in-Appeal.

7. Government observes that that the issue involved is whether the applicant is eligible for refund of the amount paid by them in excess of the FOB values, in cash, as per Section 142 of the CGST Act, 2017. The original authority has ruled against the applicant and the Commissioner (Appeals) has dismissed the appeal of the applicant as being time barred. Government notes that at this juncture it is pertinent to examine Section 35EE and Section 35B of the Central Excise Act, 1944, which provide for Revision by the Central Government and specifies the nature of cases that would lie before the Central Government, respectively. Relevant portions of the same are reproduced below:-

(i) Section 35EE - Revision by Central Government -

*(1) The Central Government may, on the application of any person aggrieved by any order passed under section 35A, where the order is of the nature referred to in the **first proviso to sub-section (1) of section 35B**, annul or modify such order :*

[Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.]...

(ii) Section 35B - Appeals to the Appellate Tribunal

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -

(a) a decision or order passed by the ¹[Principal Commissioner of Central Excise or Commissioner of Central Excise] as an adjudicating authority;

(b) an order passed by the ²[Commissioner (Appeals)] under section 35A;

....

... [Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, -

(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;

(d) credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No. 2) Act, 1998:

[emphasis supplied]

On examining the first proviso to Section 35B of the Central Excise Act, 1944, Government notes that it does not include disputes relating to the refund of such disputed amount under the CGST Act, 2017, which is the issue involved in the present case. Given the above, Government notes that the issue for decision in the instant case is not covered under the clauses (a) to (d) of the first proviso to Section 35B of the Central Excise Act, 1944. Thus, Government finds that in terms of Section 35B and Section 35EE of

the Central Excise Act, 1944, it does not have jurisdiction over the dispute involved in the present *lis*.

8. In view of the above, Government dismisses the subject Revision Application as the same is non-maintainable due to lack of jurisdiction.

Shrawan
29/8/23

(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 344/2023-CX (WZ) /ASRA/Mumbai dated 19.08.2023

To

M/s Ratnamani Metals and Tubes Limited,
Survey No.769 Village, Indrad,
Ahmedabad – Mehsana Highway,
Tal – Kadi, Distt. Mehsana, Gujarat.

Copy to:

1. The Commissioner of CGST & Central Excise, Gandhinagar Commissionerate, RRA Section, 5th floor, Mridul Towers, Ashram Road, Navrangpura, Ahmedabad – 380 009.
2. The Commissioner (Appeals), Central Tax, GST Building, 7th floor, Near Polytechnic, Ambavadi, Ahmedabad – 380 015.
3. Shri Rahul Gajera, Advocate, 2-A, Shitalbaug Society, Near Girish Coldrinks, C.G. Road, Ahmedabad – 380 006.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.