

SPEED POST
REGISTERED POST



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, Cuff Parade,
Mumbai- 400 005

F.No. 195/13/WZ/2021-RA

17726

Date of Issue: 02.11.23

ORDER No. 379 /2023-CX (WZ) /ASRA/Mumbai DATED 30.10.2023 OF THE
GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Hindalco Industries Ltd. (Unit Birla Copper),
Village Lakhigam, PO - Dahej,
District Bharuch,
Gujarat 392130.

Respondent : Commissioner CGST & CEx., Belapur.

Subject : Revision Applications filed, under section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal
No. AJV/258/RGD APP/2020-21 dated 4.3.2021
passed by the Commissioner, Central Tax, Central
Excise & Service Tax, (Appeals)Raigad.

ORDER

This revision application has been filed by M/s. Hindalco Industries Ltd. (Unit Birla Copper), Village Lakhigam, PO – Dahej, District Bharuch, Gujarat 392130 (hereinafter referred to as “applicant” against the Order-in-Appeal No. AJV/258/RGD APP/2020-21 dated 4.3.2021 passed by the Commissioner, Central Tax, Central Excise & Service Tax, (Appeals)Raigad setting aside Orders-in-Original No. 07-14/TK/JC/ GST/Bel/2020 dated 31.8.2020 passed by the Joint Commissioner CGST & CEx., Belapur Commissionerate.

2.1 The facts, in brief, of the case are that the applicants had filed rebate claims with the Deputy Commissioner (Rebate), Central Excise, Raigad Commissionerate, under Rule 18 of the Central Excise 2002, along with Notification No. 19/2004-CE(NT) dated 06.09.2004, as amended, for goods cleared for export. The total rebate claims amounted to Rs. 2,57,71,03,037/- out of which Rs. 33,10,877/- were rejected due to a difference between FOB value and CIF value.

2.2 The department reviewed the rejected claims and filed appeals before the Commissioner (Appeals) seeking recovery of the excess rebate amounting to Rs. 5,07,59,409/-. The excess rebate had been sanctioned based on the difference between FOB value and CIF value, as seen from supplementary invoices.

2.3 Simultaneously, the Additional Commissioner Raigad issued eight protective demand cum show cause notices to recover the excess rebate of Rs. 5,07,59,409/- that had been sanctioned to the respondent. These protective demands were confirmed by the Additional Commissioner through three separate orders.

2.4 The applicants appealed these orders before the Commissioner (Appeals), but the appeals were rejected. Subsequently, the applicants filed Revision Applications against the Orders in Appeal.

2.5 The Revisionary Authority, in an order No.374-376/2018-CX(WX)ASRA/MUMBAI dated 31.10.2018, remanded the case back to the original adjudicating authority for fresh adjudication. It was stated that the sample copies of documents submitted by the respondent revealed merit in their contention, but each of these documents needed to be verified by the original authority to determine their authenticity and veracity.

2.6 The adjudicating authority, vide Orders-in-Original No. 07-14/TK/JC/GST/Bel/2020 dated 31.8.2020 dropped the proceedings initiated through the eight show cause cum demand notices. On the grounds that the Deputy Commissioner mentioned that the assessment for invoices was done provisionally based on LME prices, which were finalized at the end of the respective months. The final duty was paid through supplementary invoices to account for the LME price fluctuations. This was corroborated by remarks on the shipping bills, indicating the finalization of values based on LME prices. The differential duty paid through the supplementary invoices was due to the finalization of LME prices and not because of freight and insurance, as alleged in the show cause notices. Therefore, the amount of Rs. 5,07,59,409/- which had already been sanctioned and paid to the respondent in cash, was deemed part of the eligible rebate claims based on the finalization of LME prices.

2.7 the respondent department contested the order dated 31.8.2020, primarily on the grounds of incomplete verification of documents, a lack of clarity regarding the inclusion of insurance and freight in the assessable value, and the absence of discussions on interest and penalty in the Order-in-Original.

3. Aggrieved respondent filed an appeal against the Order dated 31.08.2020. Comm(A) vide his Order-in-Appeal No. AJV/258/RGD APP/2020-21 dated 4.3.2021 set aside the Order as he found that the order is not as per the directions of the revisionary authority and allowed that appeal.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following main grounds :-

4.1 That the impugned Order in Appeal seeks to decide issue which is purely academic in nature. It is settled legal position that Revenue authorities must not waste their time in deciding issues which are academic in nature. Hence, the impugned Order-in Appeal is liable to be set aside on this ground alone,

4.2 That the affidavit of Revenue before High Court clearly said that they cannot recover any amount from the applicants. By filing the appeal before Commissioner (Appeals) and Commissioner (Appeal) deciding the appeal in favour of the department cannot make the Revenue's affidavit nullified.

4.3 That the department has conducted detailed verification while sanctioning the rebate and therefore, the same exercise should not be undertaken once again only for academic purpose.

4.4 That the Commissioner (Appeals) in the impugned Order-in-Appeal has simply relied on paragraphs 17 and 20 of the Revisionary Authority's Order which stated that documents need to be verified to arrive at a conclusion that the sanctioned rebate was not relating to duty paid on freight and insurance.

4.5 That the entire case of the department is baseless given the facts of the present case and the same appears to be based on surmises and

conjectures alone. On this count as well, the impugned Order-in-Appeal is liable to be set aside.

4.6 That the Deputy Commissioner had already rejected rebate on duty paid on freight and insurance and allowed rebate on of duty paid on FOB value finally assessed. Hence, the contention of the Revenue is contrary to the order already passed by the Deputy Commissioner.

4.7 That the adjudicating authority has correctly relied on Order dated 23.2.2012 passed by the Deputy Commissioner, Bharuch.

4.8 That the fact that the applicant did not challenge the Order dated 31.10.2018 passed by Revisionary Authority is not at all relevant to the present case. Infact, the Revenue should challenge the order of Hon'ble High Court and order of Revisionary Authority which decides the issue in favour of the applicant. The Commissioner [Appeals) has therefore passed the impugned order without application of mind and therefore the same is liable to be set aside.

4.9 The appeal filed by the Revenue before the Commissioner (Appeals) and order passed by the Commissioner (Appeals) are clearly contrary to the Government policy of Make in India and also contrary to incentivize exports from India. The aforesaid action of the Revenue is solely to trouble the diligent assesseees who are properly following the law and also paying huge taxes time to time.

5. Respondent department vide letter F. No. V/RA Matter/Hindalco/MR/04/2021-22/5389 dated 06.10.2021 contended that :-

5.1 The Revisionary Authority vide their order dated 31.10.2018 at para 20 has ordered that the case is remanded back to the original adjudicating

authority for fresh adjudication after causing necessary verification as contemplated at para 17. Para 17 of RA order date 31.10.2018 categorically mentioned that....each of such documents needs to be verified by the original authority to determine their authenticity and veracity."

5.2 The Commissioner (Appeals) vide Order dated 04.03.2021 has also directed to verify original documents and its authenticity and veracity and held that fresh order should be passed in the matter. Department has accepted the ORDER IN APPEAL NO. AJV /258/RGD APP/2020-21 dated 04.03.2021.

5.3 Hence, the Commissioner (Appeal)'s ORDER IN APPEAL No. AV /258/RGO APP/2020-21 dated 04.03.2021 should be upheld and the original authority should be allowed to pass a fresh order after strictly complying to the directions passed by Revisionary Authority as well as the Commissioner Appeals) as mentioned in detail at para 14 (i) & 14 (ii) above in the matter.

6.1 A Personal hearing was fixed on 06.06.2023 Mr. Rajesh Ostwal, Advocate appeared on behalf of the applicant and reiterated earlier submissions. He further submitted that in view of High Court order the issue is already settled. He further submitted that Commissioner(Appeals) has unnecessarily issued directions to original authority as these directions are infructuous and irrelevant. He requested to allow the application. He submitted a brief write up on the matter.

6.2 Applicant submitted a brief write up dated 06.06.2023 wherein they stated:

6.2.1 That Section 11A of the Central Excise Act cannot be invoked in facts of the present case. In the present case, there was no erroneous refund of excise duty to the applicant. The same is further evident from Para 10 of the Revenue's Affidavit-in-Reply dated 1.3.2018. Thus, according to

Revenue, if the applicant fails, then the applicant is required to pay Rs.5,07,59,409/- and claim equivalent amount as credit. Due to introduction of Section 142(3) of the CGST Act, 2017, amount of Rs.5,07,59,409/- shall be paid in cash by the Revenue to the applicant.

6.2.2 That the finding of the Hon'ble Bombay High Court that issue is purely academic applies to all issues relating to the rebate claims in question. That the finding of the Hon'ble Bombay High Court relating to the issue being purely academic and thereby infructuous applies to all issues relating to the rebate claims in question. That once the Hon'ble High Court has held so, then the Hon'ble Revisionary Authority is estopped from diluting the clear and unambiguous finding of the High Court.

7. Government has carefully gone through the relevant case records available in case files, the written submissions and also perused the impugned Order-in-Original, the Order-in-Appeal and the RA. From the facts on record, the issues to be decided in the present case is whether the order of the adjudicating authority is not as per the directions of the revisionary authority recorded in the order dated 31.10.2018 which have become final, as held by the Commissioner (Appeals) or whether the department has conducted required verification while sanctioning the rebate, and thus, re-examining the same process would be an academic exercise as contended by the applicant.

8. Government observes that Commissioner(Appeals) had vide Order-in-Appeal dated 4.3.2021 upheld the appeal filed by the respondent wherein he observed that the instant case was remanded back to the original adjudicating authority by the Revisionary Authority vide order dated 31.10.2018, for giving specific findings on the issue and passing a speaking order whether the disputed amount of Rs.5,07,59,409/-was available to the respondent as rebate or otherwise. The relevant para's of the said order is as under:

“17. Government observes that the applicant in its Revision Applications have enclosed the illustrative copies of shipping bills provisionally assessed at the time of export, supplementary invoices issued by them, and shipping bills showing the finalized assessment by the Assistant Commissioner of Customs by indicating final assessable value manually and shipping bills finally assessed in support of their contention that the difference between provisional FOB value and final FOB value represents nothing but sale price of goods which varied due to finalization of LME price and not on account of freight & insurance. The sample copies of aforesaid documents revealed that there was force in the contention of the applicant, however, each of such documents needs to be verified by the original authority to determine their authenticity and veracity.

18. In view of the foregoing, Government is of the considered view that the matter is required to be remanded back to the original adjudicating authority for giving specific findings on this issue and passing a speaking order whether the disputed amount of Rs.5,07,59,409/- is available to the applicant as rebate otherwise.

19. In view of the Affidavit-in-Reply (para 10) dated 01.03.2018 filed by the Department in W. P. No. 11403 of 2016 as well as the Hon'ble Bombay High Court judgment dated 05.03.2018, the entire activity of verifying whether the difference is only on account of increase in FOB value due to change in LEME price, may turn out to be a purely academic exercise. However, the show cause cum demand notices issued in the matter are required to be adjudicated after giving due credence to the submissions made by the applicant from the very beginning to set the record straight as well as for purposes of accounting.

20. In view of the foregoing, Government sets aside impugned Orders in Appeal bearing Nos. CD/44/RGD/2014 dated 18.11.2014, CD/42/RGD/2014 dated 18.11.2014, and CD/160/RGD/2015 dated 18.03.2015 and case is remanded back to the original Nos adjudicating authority for fresh adjudication after causing necessary verification as contemplated at para 17 supra. The applicant was also directed to submit all the relevant documents for carrying out verification by the original adjudicating authority. The original adjudicating authority shall decide the impugned cases within 8 weeks from the receipt of this order”

9.1 In compliance of the directions the Adjudicating Authority vide Order dated 31.8.2020 observed :-

9.1.1 On the basis of Hon'ble High Court Order dated 05.03.2018 that this whole exercise is purely academic in nature, ignoring the remarks of the Revisionary Authority that the show cause cum demand notices should be addressed, taking into consideration the applicant's submissions from the outset to ensure accuracy and proper accounting.

9.1.2 That in the Revision Applications dated 31.10.2018, the applicant had provided sample copies of shipping bills provisionally assessed at the time of export, supplementary invoices issued by them, and shipping bills indicating the finalized assessment by the Assistant Commissioner of Customs, with manually indicated final assessable values. They also submitted shipping bills that were finally assessed to support their argument that the difference between provisional FOB values and final FOB values is primarily due to changes in the sale price of goods resulting from the finalization of LME prices, and not due to freight and insurance costs. These sample documents indeed suggested the validity of the applicant's argument.

However, it was emphasized that these were sample documents, and to draw proper conclusions, all relevant documents should be thoroughly examined as directed by the Revisionary Authority. Whereas Adjudicating Authority relied on the Deputy Commissioner's order dated 23.2.2012 that the applicant had initially cleared Copper Cathode rods and copper cathodes at provisional prices. That the finalization of these assessments took place through the issuance of supplementary invoices in December 2011, in accordance with Rule 7 of the Central Excise Rule, 2002. Without thoroughly examining the documents as directed by the Revisionary Authority.

10. The Commissioner(Appeals) in the impugned Order observed that :-

10.1 That the adjudicating authority did not record that the applicant had submitted relevant documents for verification, and he did not conduct an examination to verify the authenticity and accuracy of these documents. These documents supported the applicant's argument that the difference between provisional FOB values and final FOB values was a result of changes in the sale price of goods due to the finalization of LME prices, and not due to freight and insurance costs. Instead, the adjudicating authority solely relied on the report from the Deputy Commissioner of Central Excise & Customs, Division Bharuch, and subsequently terminated the proceedings that were initiated through eight show cause cum demand notices. These notices had been issued to the respondent as protective demands for the recovery of an excess refund amount in cash totaling Rs. 5,07,59,409/-. The adjudicating authority did not adhere to the directions of the revisionary authority, as outlined in the order dated 31.10.2018, which mandated a fresh adjudication after conducting the necessary verification process. The conclusions arrived at in the impugned Order-in-Appeal in this regard are just and proper.

10.2 That the applicant had argued that the issue in the current appeal is essentially an academic one, and it is unnecessary for the Revenue authorities to spend time deciding such academic matters. They assert that detailed verification was already conducted by the department during the rebate process, and therefore, there is no need to repeat the same exercise. However, it is important to note that the revisionary authority, in their order dated 31.10.2018, provided explicit directions to verify all relevant documents when remanding the issue back to the original adjudicating authority. The applicant was specifically instructed to submit the necessary documents for this verification. The adjudicating authority's was simply to follow the directions outlined by the revision authority in the order dated 31.10.2018. If the applicant had any objections regarding the re-verification of relevant documents, they should have contested the revision authority's order at a higher legal forum. The conclusions arrived at in the impugned Order-in-Appeal in this regard were just and proper.

11. In view of the above discussion and findings, Government, upholds Order-in-Appeal No. AJV/258/RGD APP/2020-21 dated 4.3.2021 passed by the Commissioner (Appeals) and rejects Revision Application as devoid of merits.

Shrawan
30/10/23

(SHRAWAN KUMAR)

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

ORDER No. *379* /2023-CX (WZ) /ASRA/Mumbai Dated: *30/10/23*

To,
M/s. Hindalco Industries Ltd. (Unit Birla Copper),
Village Lakhigam, PO – Dahej,
District Bharuch,
Gujarat 392130.

Copy to:

1. Commissioner CGST & CEx., Belapur. 1st Floor, CGO Complex, CBD Belapur, Navi Mumbai-400 614.
2. Commissioner, Central Tax, Central Excise & Service Tax, (Appeals) Raigad. 5th Floor, CGO Complex, CBD Belapur, Navi Mumbai-400 614.
3. Lakshmikumaran & Sridharan, Attorneys, 2nd Floor, B&C Wing, Energy IT Park, Appa Saheb Mhatre Marg, Prabhadevi, Mumbai – 400 025.
4. Sr. P.S. to AS (RA), Mumbai.
5. Spare Copy.

