

REGISTERED SPEED POST AD



**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. 195/189/14-RA / 206

Date of Issue: 28.01.2021

ORDER NO. 51/2021-CX(SZ) /ASRA/MUMBAI DATED 21.01.2021 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 ITC Ltd.
SBU Packaging & Printing,
Post Box No. 2277,
Tiruvottiyur, Chennai - 600 019

Respondent : Commissioner
GST & Central Tax,
Chennai Outer Commissionerate

Subject : Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against OIA No. 30/2014 and 09/2014(M-I)(D) dated 12.03.2014 passed by the Commissioner of Central Excise(Appeals), Chennai.

ORDER

This revision application has been filed by M/s ITC Ltd. SBU Packaging & Printing, Post Box No. 2277, Tiruvottiyur, Chennai – 600 019 (hereinafter referred to as “the applicant”) against OIA No. 30/2014 and 09/2014(M-I)(D) dated 12.03.2014 passed by the Commissioner of Central Excise(Appeals), Chennai.

2. The applicant is engaged in the manufacture of printed cartons, corrugated cartons falling under chapter sub-heading no. 48191010. The present case originates from a refund claim filed by the applicant for an amount of Rs. 14,16,906/-. Thereafter, there has been a series of orders culminating in the instant revision application. The chronology of events is as detailed in the table detailed hereinafter.

Sr. No.	Order No. & date	Decision taken in order
1	OIO No. 16/2005 dated 31.05.2005 passed by the AC, C.Ex., Div. ‘D’, Chennai-I against refund claimed for an amount of Rs. 14,16,906/-.	Refund claim for Rs. 14,16,906/- sanctioned and adjusted against a sum of Rs. 12,48,292/- being duty and interest allegedly payable during the period from 1982 to 1986. As per this order, a sum of Rs. 1,68,614/- was payable to the applicant. However, the said sum of Rs. 1,68,614/- was not refunded to the applicant.
2	OIO No. 21/08-RF dated 09.09.2008	Refund claim filed by the applicant for the amount of Rs. 1,68,614/- was rejected as time barred.
3	OIA No. 30/2010(M-I) dated 29.03.2010	On appeal by the applicant against the OIO dated 09.09.2008, the Commissioner(Appeals) upheld the OIO dated 09.09.2008.

4	CESTAT Final Order No. 1264/10 dated 13.12.2010	CESTAT held that since the applicant had already been sanctioned the amount of Rs. 1,68,614/- towards a rebate claim which had been filed within the prescribed time limit, there was no need to file a separate refund claim. The CESTAT therefore ordered that the amount of Rs. 1,68,614/- sanctioned under order of the Assistant Commissioner dated 31.05.2005 be refunded to the applicant alongwith interest on delayed refund.
5	OIO No. 02/2012 dated 16.01.2012 passed by the DC, 'D' Div., Chennai-I	The DC sanctioned the amount of Rs. 1,68,614/- alongwith interest amounting to Rs. 67,076/- for the period from 31.05.2005 to 15.01.2012. However, the DC adjusted the amount against the demand of Rs. 56,95,626/- which was due from the applicant as per OIO No. 22/2010 dated 12.11.2010.
6	OIA No. 30/2014(M-I) and 09/2014(M-I)(D) dated 12.03.2014	Both the applicant as well as the Dept. were in appeal against the OIO dated 16.01.2012. The applicant was in appeal against recovery of the amount of Rs. 56,95,626/- which had already been stayed by CESTAT till pendency of the appeal. The Dept. was in appeal on the ground that interest liability would commence 3 months from the date of Tribunal Order dated 13.12.2010.

		<p>Commissioner(Appeals) allowed the applicants appeal as the demand for the amount of Rs. 56,95,626/- had been stayed by the CESTAT and held that the appropriation of sanctioned refund was not in order.</p> <p>Commissioner(Appeals) also allowed the Dept.'s appeal holding that the relevant date for computation of interest would commence three months from the date of receipt of Tribunal Order dated 13.12.2010.</p>
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3. The applicant is aggrieved by the OIA No. 30/2014(M-I) and 09/2014(M-I)(D) dated 12.03.2014 passed by the Commissioner(Appeals) and has filed revision application on the grounds that the Tribunal Order dated 13.12.2010 held that refund was admissible with interest; that the said Tribunal Order dated 13.12.2010 had been accepted by the Department; that they were eligible for interest three months from the date of filing refund/rebate claim; they placed reliance upon the judgment of the Hon'ble Supreme Court in the case of Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd. vs. UOI[2011(273)ELT 3(SC)]; adverted to the judgments/decisions in the case of In Re: Reliance Industries Ltd.[2012(281)ELT 132(GOI)], Salem Cylinders Pvt. Ltd. vs. CCE, Salem[2011(274)ELT 566(Tri-Chen)], Gujarat Paraffins Pvt. Ltd. vs. Joint Secretary, M.F., Govt. of India[2004(178)ELT 125(Guj)], Sandvik Asia Ltd. vs. CIT[2006(196)ELT 257(SC)], PRG International[1999(113)ELT 751(GOI)] and claimed that the rate of interest calculated by the Deputy Commissioner was far less than the prescribed rate.

4. The applicant was granted a personal hearing on 10.12.2020. On behalf of the applicant, Ms. L. Maithili, Advocate attended personal hearing online. She reiterated submissions made in the revision application and stated that

in view of the judgment in Ranbaxy's case and other subsequent judgments, interest was payable to them three months after the date of receipt of refund application.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Appeal and Order-in-Original. The issue involved is the claim of the applicant to interest on delayed refund.

6.1 It is observed that the instant revision application is the outcome of prolonged litigation which has its genus in a refund claim filed in year 2005. The amount of Rs. 1,68,614/- on which the applicant is claiming interest was part of a bigger refund claim for an amount of Rs. 14,16,906/-. Government observes that the powers to appropriate arrears from the amount of refunds due to the applicant emanate from Section 11 of the CEA, 1944.

6.2 Government observes that during the traverse of the case from the refund sanctioning authority to the CESTAT and again from the refund sanctioning authority to the instant revision application, there was no dispute regarding the sanction of the refund. The amount has already been sanctioned. As it stands today, the dispute is limited to payment of the amount of Rs. 1,68,614/- alongwith interest and the determination of date for calculation of such interest. Therefore, Government infers that the case involved in the present revision application and the impugned order issued under Section 35A of the CEA, 1944 does not relate to rebate of duty of excise on goods or excisable materials used in the manufacture of goods exported to any country and is therefore beyond the ambit of Section 35EE of the CEA, 1944 and the revisionary powers vested thereunder in the Central Government.

6.3 The preamble of the impugned OIA No. 30/2014(M-I) and 09/2014(M-I)(D) dated 12.03.2014 also clearly mentions that the assessee aggrieved by the order is required to file an appeal under Section 35B of the Act before the

CESTAT, Southern Regional Bench, Chennai. Therefore, the proper forum for the applicant to seek relief in this case would be the CESTAT.

7. Government therefore holds that the revision application filed by the applicant is not maintainable.

Shrawan
21/01/2021
(SHRAWAN KUMAR)

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

ORDER No. 5 \ /2021-CX (SZ)/ASRA/Mumbai DATED 21.01.2021.

To,

M/s ITC Ltd.
SBU Packaging & Printing,
Post Box No. 2277,
Tiruvottiyur, Chennai - 600 019

Copy to :-

1. The Commissioner of GST & Central Tax, Chennai Outer Commissionerate
2. The Commissioner(Appeals-II), GST & Central Tax, Chennai
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy