

SPEED POST



F.No. 198/36/2018-R.A. (CX)  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue.....19/3/21

Order No. 62/21-Cx dated 19-3-2021 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India; under Section 35EE of the Central Excise Act, 1944.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.104-105/HAL/CE/2017-18 dated 11.01.2018, passed by the Commissioner of CGST & Central Excise (Appeals), Kolkata-II.

Applicant : The Commissioner of CGST & Central Excise, Haldia Commissionerate

Respondent : M/s Ruchi Soya Industries Ltd.

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**ORDER**

A Revision Application No. 198/36/2018-R.A. (CX) dated 28.05.2018 has been filed by the Commissioner of CGST & Central Excise, Haldia Commissionerate, (hereinafter referred to as the applicant) against the Order-in-Appeal No. 104-105/HAL/CE/2017-18 dated 11.01.2018, passed by the Commissioner of CGST & Central Excise (Appeals), Kolkata-II. Commissioner (Appeals) allowed the appeal of M/s Ruchi Soya Industries Limited (hereinafter called the respondent) against the Orders-in-Original Nos. 121/ CE/Tech/Rebate/Hal-I/2014 and 120/ CE/Tech/Rebate/Hal-I/2014 both dated 15.09.2014 passed by the Deputy Commissioner of Central Excise & Service Tax, Haldia-I Division, Haldia Commissionerate [ Now, Haldia – I division, Haldia CGST & C. Ex Commissionerate].

2. The brief facts of the case are that the respondent filed two rebate claims of the Central Excise duty paid on exported goods. The said rebate claims were duly sanctioned by the jurisdictional Dy. Commissioner of Central Excise & service Tax, Haldia-I Division, vide the above mentioned Orders-in-Original, but in terms of Board's Circular No. 967/1/2013/Cx dated 01.01.2013, the sanctioned claims were adjusted towards the duty amount of Rs. 73,63,861/- recoverable (in terms of Order-in-Original No. 17/Additional Commissioner/CE/Haldia/Adjn/2011 dated 30.06.2011) from the applicant as arrears of Government revenue. Being aggrieved, the respondent appealed against these orders before the Commissioner (Appeals), who set aside the impugned Orders-in-Original on the ground that the

Circular dated 01.01.2013, on the basis of which the jurisdictional Central Excise authority had initiated recovery of demand of duty confirmed (under OIO dated 30.06.2011) by way of adjustment(s) from the sanctioned amounts of rebate, has been rescinded vide Circular dated 04.07.2016.

3. The revision application has been filed on the grounds that the adjustment was made in terms of Board's Circular dated 01.01.2013. Though, this Circular dated 01.01.2013 has been rescinded by another Circular dated 04.07.2016, it was valid as on the date of issuance of the Orders-in-Original dated 15.09.2014. Hence, the action of the applicant in adjusting the sanctioned amount against the confirmed demand is valid.

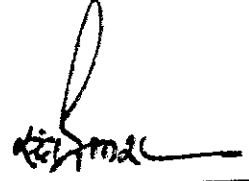
4. Personal hearing was held on 24.02.2021. Sh. Somak Basu, Advocate, appeared on behalf of the respondent. Sh. Basu stated that the rebate sanctioned could not have been appropriated towards the demands against which the stay application was pending with the Commissioner (Appeals). He supported the Commissioner (Appeals)'s order and stated that the insolvency proceedings do not place a bar on appropriate amount being released to the respondent. He undertook to submit a copy of the order passed by the National Company Law Tribunal for records. Vide email dated 17.03.2021, respondent submitted the copy of NCLT order. Another hearing was granted on 18.03.2021. Sh. Basu, Advocate appeared on behalf of the respondent. Sh. Basu, highlighted that it is settled by decision reported in 2002(144)ELT650 (Tri-Del) that the amount due cannot be adjusted

against refund/rebate if stay application was pending. Further, the Board's Circular No. 1035/23/2016-Cx relied upon by the Commissioner (Appeals) in their favour clearly states that where stay application is pending before Commissioner (Appeals) or CESTAT for the periods prior to 06.08.2014, no recovery shall be made during the pendency of the stay application. Hence, there is no merit in the revision application. None appeared for the applicant nor any request for adjournment has been received. Sufficient opportunities for PH have been granted on 08.01.2020, 27.01.2021, 24.02.2021 and 18.03.2021. Hence, the matter is taken up for decision based on records.

5. On examination of the relevant case records, the Commissioner (Appeals)'s order, counter-reply, additional submissions and the Revision application, it is observed that the entire case of the applicant is based on the grounds that the Board's Circular dated 01.01.2013 was valid on the date of issuance of OsIO dated 15.09.2014. Government observes that this Circular dated 01.01.2013 has been rescinded vide Board's Circular No. 1035/23/2016-CX dated 04.07.2016. It is clearly stated in para 4.2 of the Board's Circular dated 04.07.2016 that in cases where stay application is pending before Commissioner (Appeals) or CESTAT for period prior to 06.08.2014, no recovery shall be made during the pendency of the stay application. In the instant case the recovery relates to demand of duty confirmed vide OIO dated 30.06.2011 against which the stay application was pending before the Commissioner (Appeals), as on 06.08.2014. Thus, no recovery proceeding could have been initiated, relating to the OIO dated 30.06.2011. Commissioner (Appeals) has

elaborately and eloquently narrated others reasons as well for setting aside the Orders of the lower authority. Therefore, the Government do not find any reason to interfere with the impugned OIA.

6. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of CGST, Haldia , 15/1, Strand Road,  
7<sup>th</sup> Floor, MS Building,  
Customs House, Kolkata-700001.

Order No. 62/21-Cx dated 19-3-2021

Copy to:

1. Ruchi Soya Industries Ltd., Bijoyramchak, Durgachak, Haldia, East  
Midnapore-721602
2. Commissioner of Central Excise (Appeals-I), 4, Kiran Sankar Roy Road, Raja  
Chamber (3<sup>rd</sup> Floor), Kolkata-700001.
3. PA to AS(RA)
4. Guard File.
5. Spare Copy

ATTESTED

(Nirmala Devi)  
S.O (Revision Application)