

SPEED POST
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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. 195/35-64/SZ/19-RA
F. NO. 195/84-116/SZ/19-RA

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Date of Issue: 13.01.22
12.2021

ORDER NO. 63 - 126 /2022-CX (SZ) /ASRA/Mumbai DATED 17.1.2022
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 India Yamaha Motor P. Limited,
Plot No.VV-I, SIPCOT Industrial Park,
Vallam Vadagal Village, Sriperumbudur Taluk,
Kanchipuram - 602 105.
- Respondent : Commissioner of CGST & Central Excise, Outer Chennai
Commissionerate.
- Subject : Revision Applications filed under Section 35EE of the
Central Excise Act, 1944 against the following Orders-in-
Appeal:-

1.	Order-in-Appeal No. 526 to 555/2018 (CTA II) dated 30.10.2018	Passed by Commissioner of GST & Central Excise, (Appeals-II), Chennai.
2.	Order-in-Appeal No. 616 to 648/2018 (CTA II) dated 31.12.2018	Passed by Commissioner of GST & Central Excise, (Appeals-II), Chennai.

ORDER

The subject Revision Applications have been filed by M/s India Yamaha Motors Pvt. Limited (here-in-after referred to as 'the applicant') against the Orders-in-Appeal dated 30.10.2018 and 31.12.2018 passed by the Commissioner of GST & Central Excise (Appeals-II), Chennai. The said Orders-in-Appeal dated 30.10.2018 and 31.12.2018 disposed of 30 and 33 appeals, respectively, all filed by the applicant. The issue in both the Orders-in-Appeal being common, the subject sixty three Revision Applications are being taken up for decision together.

2. Brief facts of the case are that the applicant was engaged in the manufacture of motor cycles, scooters, parts and accessories thereof falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985. They exported 'Automobiles & parts thereof' on payment of Basic Excise Duty (BED) @ 12.5% and National Calamity Contingent Fund (NCCD) @ 1% and had filed rebate claims under Rule 18 of Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944 and Notification No.19/2004-CE(NT) dated 06.09.2004. On verification of the rebate claims it was noticed that the applicant had utilized Cenvat credit of Basic Excise Duty (BED) for the payment of NCCD on such exported goods. Rule 3(4) of the Cenvat Credit Rules, 2004 prohibited the use of credit of BED for payment of NCCD and hence Show Cause Notices were issued to the applicant seeking to reject the rebate claims to the extent of the NCCD component. The original adjudicating authority vide a total of sixty three Orders-in-Original decided the said Show Cause Notices, wherein the rebate of BED was allowed and that pertaining to NCCD was rejected.

3. The applicant preferred appeals against the above Orders-in-Original. Thirty such appeals were decided vide Order-in-Appeal dated 30.10.2018 and thirty three appeals vide Order-in-Appeal dated 31.12.2018. The

findings of the Commissioner (Appeals) in both the cases are similar. The Commissioner (Appeals) upheld the view of the original sanctioning Authority that though the applicant had subsequently paid the NCCD in cash, they had not paid interest on such delayed payment and also that the payments were made 'Under Protest' and hence the rebate on NCCD was inadmissible. The Commissioner (Appeals) also confirmed that the quantum of rebate so rejected would lapse in terms of Section 142(4) of the CGST Act, 2017, as held by the original authority. Further, the Commissioner (Appeals) also rejected the submission of the applicant that the original authority should have refrained from deciding the rebate claim since separate Show Cause Notices seeking recovery of NCCD paid utilizing cenvat credit of BED, were pending before the Commissioner. Finally, the Commissioner (Appeals) held that since the disputed portion of the claims was rejected there would be no case for payment of interest on the same.

4. Aggrieved, the applicant has filed the subject Revision Applications against the said two Orders-in-Appeal on the following grounds:-

(a) The applicant submitted that when a demand of NCCD and interest thereon in a separate proceeding pending before the Commissioner was being contested by them, they should not have been prejudiced by the impugned Order-in-Appeal for payment of NCCD under protest or for non-payment of interest; that interest was not payable as NCCD was levied under Section 136 of the Finance Act, 2001, which borrowed the provisions of Excise Act only for levy, collection, refund, exemption and imposition of penalty and not that pertaining to levy of interest;

(b) The NCCD having been paid through both the modes possible, viz. Cenvat credit as well as PLA, there was no occasion to disallow the rebate claim of NCCD; they sought to rely on the judgment of the Hon'ble CESTAT, Chennai in the case of Interfit India Ltd. v. CCE, Tiruchirappalli, 2018-VIL-522-CESTAT-CHE-CU to submit that once NCCD had been paid by

utilization of Cenvat credit of excise duty, even though the same was not permissible in terms of the 5th proviso to Rule 3(4) of the Cenvat Credit Rules, 2004, it could not be said that the NCCD had not been paid. Thus, the denial of rebate claim on the ground of alleged non-payment of NCCD was per se incorrect and unsustainable;

(c) That had they cleared the goods under Bond, they would have been eligible for the refund of the Cenvat credit in respect of inputs and input services used in the manufacture of such exported goods and they could not be put in worse off position merely for the alternate method of export adopted by them viz., export under rebate; that rebate of such duty must be granted to maintain parity between exports under Bond and export under rebate;

(d) The rejection of rebate claim in the instant case, even though another Show Cause Notice for demand of NCCD had already been issued, has led to double jeopardy to the applicant; the applicant having paid the NCCD in cash, though subsequently, the rebate claim thereof, in relation to the goods exported, could not be denied to them;

(e) That denial of rebate claim on exported goods was against the policy of the Government to not export taxes; and that rejection of their rebate claim would result in the exports carrying the burden of taxes;

(f) That provisions of Section 142(4) of the CGST Act, 2017 are not applicable to the instant case as the duty was paid by them after the appointed date and that the present dispute was regarding rebate of NCCD and not refund of Cenvat credit;

(g) That they were entitled to interest on the rebate that was sanctioned after nine months of filing of their claim as well as on that portion of the rebate claim that was rejected;

In light of the above, the applicant submitted that the impugned Orders-in-Appeal deserved to be set aside and sought for directions to be issued to the original Adjudicating Authority to sanction the rebate claims with interest.

5. Personal hearing in the matter was granted to the applicant on 11.11.2021. Shri Gajendra Jain, Advocate, appeared online on behalf of the applicant. He submitted that the protest of payment of NCCD in cash stood concluded as the matter was settled under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (SVLDR Scheme). He submitted that further written submission had been mailed and requested that the rebate of NCCD be allowed in the matter. The details of the written submissions mailed were as under:-

(a) That the Show Cause Notice dated 04.04.2018 issued for recovery of the amount of NCCD paid through BED was pending adjudication when the subject Revision Applications were preferred by them; that the said Show Cause Notice was adjudicated vide Order-in-Original No.19/2019 dated 05.12.2009 wherein the amount of Rs.22,31,16,229/- paid by them in cash towards NCCD was appropriated and hence the rejection of the NCCD on the grounds of non-payment in cash was no longer sustainable;

(b) That they filed declaration under SVLDR Scheme in respect of the Order-in-Original dated 05.12.2019 and that the amount of Rs.22,31,16,229/- paid by them in cash towards NCCD had been adjusted against the duty amount payable under the SVLDR Scheme; that the said declaration had been accepted by the Department and that they have been issued the discharge certificate in Form SVLDRS-4;

(c) That since the above demand for NCCD had been settled under the SVLDR Scheme, no further demand of NCCD or interest thereon was

payable and that the rebate sanctioning authority could not take a stand that interest had not been paid.

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

7. Government notes that in the present case it is not in dispute that the applicant had failed to pay the NCCD at the time of export inasmuch as they debited the NCCD payable from the Cenvat credit of BED, which was clearly prohibited by the 5th proviso to Rule 3(4) of the Cenvat Credit Rules, 2004 and hence it amounted to non-payment of NCCD. Government notes that the applicant had subsequently paid the NCCD on the goods exported 'under protest' only after Show Cause Notice seeking to recover the same was issued by the Department and also that they had failed to pay interest on such delayed payment. Government observes that the Commissioner vide Order-in-Original dated 05.12.2019 had confirmed the demand raised, ordered for recovery of appropriate interest and imposed penalty equivalent to the amount confirmed on the applicant. Thereafter, the applicant settled the issue by opting for the SVLDR Scheme.

8. Government finds the submission of the applicant that the Commissioner (Appeals) should not have held the non-payment of interest against them as there was a separate proceeding pending before the Commissioner, to be incorrect. The issue before the Commissioner (Appeals) was that of admissibility of rebate claims filed by the applicant and as held him, the same had to be decided as per the legal provisions governing the same. Given this fact, the decision of the Commissioner (Appeals) to take into account the non-payment of interest by the applicant on such delayed payment is proper and legal. This decision of the Commissioner (Appeals) is further supported by the fact that the

Commissioner in the Order-in-Original dated 05.12.2019 had confirmed the recovery of interest on such delayed payment. Thus, the Government finds no merit in this particular submission of the applicant.

9. As regard the submission of the applicant that they were at a disadvantage for having followed the procedure for export under claim for rebate vis-à-vis export under Bond, Government finds that the applicant had voluntarily followed the procedure for export under claim for rebate and having failed to pay the proper duties at the time of export, would be liable to its consequences as provided for by the law. Government finds that the submission of the applicant on this count too would not hold good. Further, Government finds the submission of the applicant with regard to the inapplicability of the provisions of Section 142(4) of the CGST Act, 2017 to the present case to be incorrect for the reason that the rebate sought by them was of debits made, albeit incorrectly, through the Cenvat credit account. The proviso to Section 142(4) of the CGST Act, 2017 clearly states – *“Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse..”*. Thus, Government holds that the rebate claims that had been rejected in this case, have to be treated as lapsed.

10. Government finds that the applicant did not pay NCCD on the goods when they were exported in the manner prescribed, leading to the claims for rebate of the same being rejected by the original authority. Thereafter, pursuant to a notice being issued demanding the same, they paid the amount demanded under protest, without interest. On the same being decided by the Order-in-Original dated 05.12.2019, the applicant opted to settle the case by opting for the SVLDR Scheme. Government notes that Section 130(1) of the Finance (No.2) Act, 2019 pertaining to the SVLDR Scheme, categorically states that any amount paid under this Scheme shall not be refundable under any circumstances or be taken as input tax credit. Thus, it is clear that the duties settled under the SVLDR scheme cannot be either rebated or refunded. Further, as held above, the quantum of rebate

which was rejected has lapsed in terms of Section 142(2) of the CGST Act, 2017. Government has examined the case law cited by the applicant in the case of Interfit India Ltd. v. CCE, Tiruchirappalli, [2018 (364) ELT 105 (Tri.-Chennai)] and finds that the same dealt with DFCE scripts and is not relevant to the issue on hand. The question of interest on the subject rebate claims would not arise as the rebate claims themselves have been found to be inadmissible. In view of the above, Government finds the impugned Orders-in-Appeal dated 30.10.2018 and 31.12.2018 to be legal and proper and finds no reason to annul or modify the same.

11. All the sixty three Revision Applications are dismissed on above terms.

Shrawan
17/01/22

(SHRAWAN KUMAR)

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

ORDER No. 63-126/2022-CX (WZ) /ASRA/Mumbai dated 17.01.2022
To,

M/s India Yamaha Motor P. Limited,
Plot No.VV-I, SIPCOT Industrial Park,
Vallam Vadagal Village, Sriperumbudur Taluk,
Kanchipuram – 602 105.

Copy to:

1. The Commissioner of CGST & Central Excise, Outer Chennai
Commissionerate, Newry Towers, 2054/1, II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040.
2. The Commissioner (Appeals - II), Chennai, Newry Towers, 2054/1, II
Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040.
3. The Deputy/Assistant Commissioner, Central Excise, Sriperumbudur
Division, Chennai Outer Commissionerate, C-48, TNHB Building, Anna
Nagar, Chennai – 600040.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Notice Board