

**SPEED POST**



**F. No. 198/101/2018—R.A.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)**

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

Date of Issue. 26/3/21....

Order No. 65/2021-CX dated 26-03-2021 of the Government of India, passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject: Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. LUD-EXCUS-001-APP-317-18 dated 21.02.2018 passed by Commissioner (Appeals), Central Goods and Service Tax, Ludhiana.

Applicant: M/s Upkar International Pvt. Ltd., Phagwara.

Respondent: Commissioner of CGST, Jalandhar.

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**ORDER**

A Revision Application No. 198/101/2018-R.A. dated 22.05.2018 has been filed by M/s Upkar International Pvt. Ltd., Phagwara (hereinafter referred to as applicant) against Order-in-Appeal No. LUD-EXCUS-001-APP-317-18 dated 21.02.2018 passed by Commissioner (Appeals), Central Goods and Service Tax, Ludhiana, wherein the appeal filed by the applicant against Order-in-Original No. 01/CE/ADC/LDH/2016 dated 25.07.2016 has been rejected.

2. The brief facts leading to the present proceedings are that, during the period from 14.05.2009 to 10.04.2010, the applicant cleared the goods manufactured by them for export on payment of central excise duty under claim of rebate in terms of Rule 18 of Central Excise Rules, 2002. They mentioned the description of goods as “Diesel Engines with Centrifugal Pumps & Channel Frames” in their invoices and ARE-Is without mentioning the classification of goods. Central Excise duty @ 8% + 2% Education Cess + 1% S & H Education Cess, upto 27.02.2010 and 10% +

2% Education Cess + 1% S & H Education Cess, thereafter, was paid by the applicant. Rebate claims of Rs. 34,49,268/- were filed with the jurisdictional excise authorities which were sanctioned. A total of Rs. 30,85,231/- was sanctioned by way of cash and the rest of Rs. 3,64,037/- was allowed to be re-credited into their CENVAT account. In the course of post audit/review, the Commissioner, Central Excise, Ludhiana, did not accept the Order-in-Original and a demand for erroneous refund (rebate) was issued. The Additional Commissioner of Central Excise confirmed the demand vide Order-in-Original No. 01/CE/ADC/LDH/2016 dated 25.07.2016 on the ground that the applicant had mis-classified the export goods under CETH 84089090, attracting a duty rate of 8% + 2% Education Cess + 1% S & H Education Cess, upto 27.02.2010 and 10% + 2% Education Cess + 1% S & H Education Cess, thereafter. The appropriate classification would have been under CETH 84137010 attracting a duty of 4/6%+ 2% Education Cess + 1% S & H Education Cess in terms of Notification No. 10/2006-CE dated 01.03.2006. Hence, the differential amount of Rs. 18,42,089/-, which was paid, and rebate whereof was sanctioned and paid to the applicant was held to be recoverable in cash from the applicant along with interest and an equal

amount of penalty. The Additional Commissioner, however, held that the noticee (i.e. applicant herein) can take the credit of Rs. 18,42,089/- after paying the amount in cash. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals) who rejected the appeal on the ground that the export goods were correctly classifiable under CETH 84137010 and that rebate of only payable amount of central excise duty was admissible to the applicant. The present revision application has been filed mainly on the ground that the export on payment of duty is not in dispute and rebate of actual duty paid and not payable should be granted.

3.1 Personal hearing was held on 19.03.2021. Sh. Amardeep Singh, Advocate, appeared for the applicant and reiterated the contents of the revision application. He submitted that the exported goods were classified correctly and hence duty was also paid correctly. Consequently, rebate claim was proper. A written submission dated 16.03.2021 has also been received wherein it is stated that even if excess amount is returned back in cash then the same amount has to be credited to the account of applicant in cash only in terms of Section 142 of the CGST Act, 2017. Therefore, the whole exercise is revenue neutral.

3.2 None attended the Personal Hearing for the respondent and no request for adjournment has been received. Hence, the matter is taken up for disposal on the basis of facts available on record.

4. The Government has examined the matter. The Commissioner (Appeals) has, after reference to technical literature, found that exported goods were, in fact, "centrifugal pumps driven by diesel engine" as against the declaration by the applicant as "diesel engine with centrifugal pumps". Thereafter, taking guidance from the relevant HSN Explanatory Notes, the Commissioner (Appeals) has upheld the original authority's decision that the goods were correctly classifiable under CETH 84137010. Nothing has been brought on record to establish that these findings of the Commissioner (Appeals) are incorrect. Thus, it is clear that the applicant paid central excise duty at a higher rate than required.

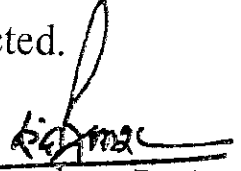
5. The Government observes that in the case of M/s Nahar Industrial Enterprises Limited Vs. Union of India [2009(235) ELT 22 (P&H)], the Honn'ble Punjab and Haryana High Court has held that the assessee is not entitled to refund, in cash, of higher duty paid regardless of mode of

payment and the refund of excess duty paid by way of credit appropriate. Though, it is claimed by the applicant with reference to [2017 (349) ELTA 216 (SC)] that the judgment in Nahar Industrial Enterprises (supra) has been stayed by the Apex Court, however, the Government, with reference to the reported matter as well as the copy of Daily Order dated 05.10.2012 available on the website of the Apex Court, finds that the Hon'ble Court has granted leave in the relevant SLPs and no interim relief/stay can be discerned therefrom. As such, there is no infirmity in the view taken by the lower authorities that the applicant should repay the excess rebate claimed in cash, and thereafter take credit in the CENVAT account.

6. Another issue raised is that even if the applicant were to now pay the excess rebate claimed in cash, they will be eligible to take credit of the same by way of cash in terms of Section 142 of the CGST Act and, therefore, the exercise will be revenue neutral. However, the Government observes that the applicant is required to not merely repay the excess amount claimed as rebate but the excess amount claimed has to be repaid with interest thereon and credit, if otherwise admissible as per Section 142

ibid, will not be admissible in respect of the interest amount. Therefore it is incorrect to claim that it is a revenue neutral exercise.

10. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Upkar International Pvt. Ltd.,

Khera Road, Basant Nagar,

Phagwara(Punjab)

G.O.I. Order No. 65/21-Cx dated 26-03-2021

Copy to:-

1. The Commissioner, Jalandhar.
2. Commissioner (Appeals), Central Excise & CGST, Ludhiana.
3. PA to AS (Revision Application)
4. Spare Copy
5. *Guarant file*

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)