

SPEED POST



F. Nos. 195/179/2018-R.A., 195/181/2018-R.A.,
195/198/2018-R.A., 195/199/2018-R.A.,
195/200/2018-R.A. & 195/201/2018-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 7/4/21.....

Order No. 67-72/2021-CX dated 05-04-2021 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 Orders-in-Appeal No. JAL-EXCUS-001-APP-1256-18 dated 08.06.2018, JAL-EXCUS-001-APP-1255-18 dated 08-06-2018, LUD-EXCUS-001-APP-1123-26-18 dated 11.05.2018, LUD-EXCUS-001-APP-1123-26-18 dated 11.05.2018, LUD-EXCUS-001-APP-1123-26-18 dated 11.05.2018 and LUD-EXCUS-001-APP-1123-26-18 dated 11.05.2018 passed by Commissioner (Appeals), Central Goods and Service Tax Audit Commissionerate, Ludhiana.

Applicant: M/s Pallahan Industries, Jalandhar.

Respondent: Commissioner of CGST, Jalandhar.

ORDER

Six Revision Applications Nos. 195/179/2018-R.A., 195/181/2018-R.A., 195/198/2018-R.A., 195/199/2018-R.A., 195/201/2018-R.A., all dated 06.08.2018 and 195/200/2018-R.A. dated 07.08.2018 have been filed by M/s Pallahan Industries, Jalandhar (hereinafter referred to as applicant) against Orders-in-Appeal Nos. JAL-EXCUS-001-APP-1256-18 dated 08.06.2018, JAL-EXCUS-001-APP-1255-18 dated 08-06-2018, LUD-EXCUS-001-APP-1123-26-18 dated 11.05.2018, LUD-EXCUS-001-APP-1123-26-18 dated 11.05.2018, LUD-EXCUS-001-APP-1123-26-18 dated 11.05.2018 and LUD-EXCUS-001-APP-1123-26-18 dated 11.05.2018 passed by Commissioner (Appeals), Central Goods and Service Tax Audit Commissionerate, Ludhiana, wherein the appeals filed by the applicant against Orders-in-Original Nos. Rebate/227/DC/Jal-I/2017 dated 28.02.2017, Rebate/228/DC/Jal-I/2017 dated 28.02.2017, Rebate/219/DC/Jal-I/2017 dated 28.02.2017, Rebate/220/DC/Jal-I/2017 dated 28.02.2017, Rebate/225/DC/Jal-I/2017 dated 28.02.2017 & Rebate/226/DC/Jal-I/2017 dated 28.02.2017, have been rejected.

- 2. The brief facts leading to the present proceedings are that the applicant exported the excisable goods manufactured by them under claim of rebate under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004 issued. DRI, Zonal Unit, Ludhiana, conducted searches at the premises of the applicant and found that they had been exporting their goods by resorting to gross over-valuation and mis-declaration in the description of their export goods to fraudulently avail higher export incentives including the subject rebate. The rebate claims were partially rejected on account of mis-declaration of goods and a penalty of Rs. 5000/- was imposed in each case under Rule 27 of Central Excise Rules, 2002. Aggrieved, the applicant filed appeals before the Commissioner (Appeals) which, vide the impugned Order-in-Appeal, were rejected. The present revision applications have been filed, after paying a fee of Rs. 200/- for each application instead of Rs. 1000/- required in three of the six cases, i.e. revision application nos. 195/198/2018, 195/179/2018 and 195/199/2018 (where the amount of rebate is more than Rs. 1 lakh) on the following grounds:-
- (i) Only the description of the goods is under dispute. The export of goods is not disputed by the department.

(ii) They have been penalized by the Joint Commissioner of Customs for this offence and they cannot be penalized twice for the same offence.

(iii) Rebate claim is for the duty actually paid at the time of clearance and thus cannot be denied.

(iv) Penalty of Rs. 5000/- under Rule 27 of Central Excise Rules, 2002 was initially not proposed in the Show Cause Notice and was proposed by virtue of an addendum and is not maintainable.

3. Personal hearing was held on 30.03.2021 in virtual mode. Sh. Ravi Chopra, Advocate, appeared for the applicant and requested that all the six revision applications be taken up for decision together as the issue involved in all of them is same. He made the following submissions:-

(i) The fee of Rs. 200/- for each revision application has been correctly paid.

(ii) The DRI had, on the physical examination of the subject export consignments, found mis-declaration with respect to description, value and weight.

(iii) There is no case of mis-declaration of description as the description on ARE-1s and Export Invoices is the same.

- (iv) The goods have been exported on quantity basis. Therefore, the difference in weight, which may be due to weighment error, is not relevant.
- (v) A penalty of Rs. 12 lakhs has already been imposed on them under the Customs Act. Though the matter is in appeal, there is no reason to impose penalty separately in respect of rebate.
- (vi) He will submit a chart detailing the rebate claimed, rebate allowed (in cash and by re-credit in CENVAT account) and the amount rejected (bifurcated as per grounds of rejection).

Sh. Chopra submitted the detailed chart on 30.03.2021 itself.

None appeared 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 records.

4. The Government has examined the matter. It is noticed that amount of rebate rejected in three out of the six revision applications is more than Rs. 1 lakh but a fee of Rs. 200/- only has been deposited. As per Section 35EE (3)(b) of the Central Excise Act, 1944, a revision application is to be accompanied by a fee of Rs.1000/- where the amount of duty and interest demanded, fine or penalty levied by an officer of Central Excise in the

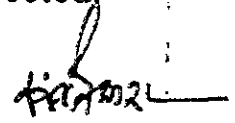
case to which the application relates is more than Rs. 1 lakh. The applicant has not deposited the balance fee of Rs. 800/- each, in these 03 cases, despite written advice. Hence these three revision applications bearing nos. 195/198/2018, 195/179/2018 and 195/199/2018 are not maintainable on this count itself.

5. On merits, the first and the foremost condition specified at Para 2(a) of Notification No. 19/2004 is that the excisable goods must be exported after payment of duty. Thus, for grant of rebate, it is necessary to establish that the goods exported are the same goods as were cleared from the factory on payment of duty. In the subject cases, upon physical examination, the description, quantity and weight of the goods did not tally. The applicant has admitted in voluntary statements recorded under Section 108 of Customs Act, 1962 that the goods were mis-declared and over-valued to gain pecuniary benefits. In these facts and circumstances, the orders of the authorities below granting rebate of duty corresponding to the correct value of the goods, as ascertained during investigations, cannot be faulted.

6. As regards the penalty imposed by the lower authorities, the Government finds that the same has been rightly imposed under Rule 27 of

the Central Excise Rules, 2002 for claiming inadmissible rebate under Rule 18 of Central Excise Rules. The penalty imposed under the Customs Act is for contravention of the provisions of the Customs Act and cannot cover the offenses/contraventions under the Central Excise Act/Rules.

7. In view of the above, the revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Pallahan Industries, Adj. Focal Point,
Backside Transport Nagar, Jalandhar
(Punjab)-144 004.

G.O.I. Order No. 67-72/21-Cx dated 5-4-2021

Copy to:-

1. The Commissioner of CGST, Jalandhar.
2. Commissioner (Appeals), Central GST Audit Commissionerate, Ludhiana.
3. Mr. Ravi Chopra, Advocate, 444, G.T.B. Nagar, Jalandhar (Punjab)-144 003
4. PA to AS (Revision Application)
5. Spare Copy
6. Guard File.

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)