

SPEED POST



**F. No. 195/203/2018—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. 74/21—CX dated 07/04/21 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. 30(SRM)CE/JDR/2018-19 dated 29.06.2018 passed by Commissioner (Appeals) Central Excise & CGST, Jodhpur.

Applicant: M/s. Hindustan Zinc Ltd., Rajsamand (Rajasthan).

Respondent: Commissioner of CGST, Udaipur (Rajasthan).

ORDER

A Revision Application No. 195/203/2018-R.A dated 08/10/2018 has been filed by M/s Hindustan Zinc Ltd., Rajsamand (Rajasthan) (hereinafter referred to as applicant) against Order-in-Appeal No. 30(SRM)CE/JDR/2018-19 dated 29.06.2018 passed by Commissioner (Appeals) Central Excise & CGST, Jodhpur, wherein the appeal filed by the applicant, against Order-in-Original Nos. 24/2011-CE (Dem.)-Dy. Commissioner dated 30.08.2011 passed by Deputy Commissioner, Central Excise & CGST, Jodhpur, has been dismissed.

2. The brief facts leading to the present proceedings are that the applicant had filed a rebate claim for Rs.1,98,03,243/- in terms of Notification No. 19/2004-CE (NT) dated 06.09.2004. The original authority, vide Order-in-Original No. 123/10/R-CE(Ref) dated 17.03.2010, sanctioned rebate of Rs. 77,27,260/- in cash and allowed re-credit of Rs. 1,20,76,183/-, taking into consideration an assessable value of Rs. 24,200/- per DMT on quantity of 3100 DMT. The Commissioner, Central Excise, Jaipur-II, reviewed this Order and found that an excess rebate amounting to Rs. 3,67,076/- had been sanctioned on the ground that as per ARE-1 No. 54 dated 11.02.2009, value of lead concentrate cleared for export was 22,000/- per DMT whereas rebate was sanctioned by taking into consideration a value Rs. 24,200/- per DMT, which resulted into excess sanction of rebate of Rs. 1,31,326/-. Further, in respect of ARE-1 Nos. 54 to 63 dated 11.02.2009 to 20.02.2009, a quantity of


3005.42 DMT lead concentrate was cleared for export, whereas, rebate was sanctioned considering the quantity of 3100 DMT of lead concentrate, which resulted into excess sanction of Rs. 2,35,750/-. Thus, total amount of Rs. 3,67,076/-(Rs. 1,31,326 + Rs. 2,35,750) was wrongly sanctioned and passed Order-in-Review No. 25/2010 dated 16.06.2010 with the direction to file appeal before the Commissioner (Appeals). The Commissioner (Appeals), vide Order-in-Appeal No. 24(CB) CE/JPR-II/2011 dated 17.02.2011, allowed the appeal filed by the Department. A show cause notice was also issued to the applicant for recovery of wrongly sanctioned rebate claim and the demand was confirmed vide Order-in-Original No. 24/2011-CE(Dem)-Dy. Commissioner dated 30.08.2011. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals) who, vide the impugned Order-in-Appeal) has rejected this appeal. The instant revision application has been filed mainly on the ground that Rule 18 allows rebate of duty paid and not payable and since they have paid a duty of Rs. 1,98,03,243/-, they should have been sanctioned the whole amount. Also, even if rejected, the amount of Rs. 3,67,076/- should have been allowed to them as re-credit in their CENVAT account.

3. Personal hearing was held on 22/03/2021, in virtual mode. Sh. Keshav Maloo, Chartered Accountant, attended the hearing on behalf of the applicant and submitted that presuming the amount of Rs. 3,67,076/- rejected by the Original Authority is correctly rejected, still the amount has to be refunded to them by way of re-credit in CENVAT account as the department cannot retain the excess duty paid. As per

Section 142 of the CGST Act, this amount would have to be now sanctioned in cash. Hence it is a revenue neutral exercise. Sh. L. R. Meena, AC, appeared for the respondent and submitted that original order sanctioning rebate was challenged by the department before Commissioner (Appeals) who allowed the appeal. Revision Application filed by the applicant was rejected vide Order No. 82/2015-CX dated 17.09.2015. The applicant is before Hon'ble High Court in CW No. 2981/2016. Present proceedings arise out of the protective demand issued in the same matter. Therefore, Revision Application may be rejected.

4. The Government has examined the matter. It is observed that the Government has already upheld the Order-in-Appeal dated 17.02.2011 vide Order No. 82/2015-CX dated 17.09.2015, in the case where the original authority had sanctioned the excess rebate of ^{Rs.} Rs. 3,67,106/- to the applicant which was set aside by the Commissioner (Appeals). The applicant has filed a Writ Petition CW No. 2981/2016 before Hon'ble Rajasthan High Court against the said order of the Government. No stay or interim order of Hon'ble High Court has been brought to the notice of the Government.

5. In view of the foregoing, the revision application is rejected.


(Sandeep Prakash)

Additional Secretary to the Government of India

M/s. Hindustan Zinc Ltd., Rajpura Dariba Mines,
P.O. Dariba, Distt. Rajsamand (Rajasthan)-313 211

G.O.I. Order No. 74/21-ST dated 7-4-2021

● Copy to:-

1. Commissioner of CGST and Central Excise, Udaipur.
2. Commissioner (Appeals) Central Excise & CGST, Jodhpur.
3. M/s. Keshav Maloo & Associates, Chartered Accountants, 238, 2nd Floor, Anand Plaza, Near Ayed Bridge, Udaipur (Rajasthan) – 313 001.
4. PA to AS(Revision Application)
5. Spare Copy
6. Guard File

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)