

REGISTERED
SPEED POST



F.No.195/193/2018-RA
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...15/4/21

ORDER NO. 89/21CX dated 15-4-2021 OF THE GOVERNMENT OF INDIA, PASSED BY Sh. Sandeep Prakash, Additional Secretary to the Government of India under section 35EE of Central Excise Act, 1944.

SUBJECT : Revision Applications filed under Section 35EE of Central Excise Act, 1944, against the Order-in-Appeal No. 22/CE/BBSR-GST/2018 dated 20.02.2018, passed by the Commissioner (Appeals) CGST, Central Excise and Customs, Bhubaneswar.

APPLICANT : M/s BRG Iron & Steel Co. Pvt. Ltd

RESPONDENT : Commissioner of Central Goods & Service Tax, Bhubaneswar

ORDER

A Revision Application No. 195/193/2018-RA dated 29.06.2018 has been filed by M/s BRG Iron & Steel Co. Pvt. Ltd., Dhenkanal (hereinafter referred to as the applicant) against the Order-in-Appeal No. 22/CE/BBSR-GST/2018 dated 20.02.2018, passed by the Commissioner (Appeals) CGST, Central Excise and Customs, Bhubaneswar, whereby the order of the original adjudicating authority sanctioning the rebate claim of the applicant has been set aside.

2. Brief facts of the case are that that the applicant had filed rebate claim for an amount of Rs. 17,73,951/- which was sanctioned by the Jurisdictional Assistant Commissioner of Central Excise, Customs & Service Tax. Aggrieved, the respondent department filed an appeal before the Commissioner (Appeals) on the ground that the original authority had erred in sanctioning the rebate claim taking the date of export as date of Bill of Lading. Commissioner (Appeals), vide the above mentioned Order-in-Appeal dated 20.02.2018, set aside the Order-in-Original dated 12.01.2017 on the ground that the date of filing of the Shipping Bill is to be taken as the date of export instead of date issuance of Bill of Lading. The instant revision application has been filed mainly on the ground that date of Let Export Order as per Shipping Bills is 06.05.2016 to 12.05.2016 and not the date of filing of Shipping Bills from 26.04.2016 to 12.05.2016.

3. Personal hearing was held on 07.04.2021 and 15.04.2021. Sh. Amitava Chatterjee, Assistant Commissioner, appeared on behalf of the respondent. Sh. Chatterjee, supported the impugned Order-in-Appeal. He also mentioned that the applicant is under liquidation as per NCLT order dated 03.02.2020. Upon being asked, Sh. Chatterjee, Assistant Commissioner confirmed the dates mentioned in

the impugned Order-in-Appeal as correct with reference to the records. None appeared on behalf of the applicant on both the dates nor any request for adjournment was received. Therefore the case is being taken up for final decision on the basis of record.

4. The Government has examined the matter. As per Explanation (B) Section 11 B of Central excise Act, 1944, the 'relevant date' in case of goods exported by sea or air is the date on which the ship or aircraft in which such goods are loaded, leaves India. As per Section 2(18) of the Customs Act, 1962 the 'export' is defined as taking out of India to a place outside India. As per Section 2 (27), India includes the territorial waters of India. Section 50 of the Customs Act requires the exporter of any goods to make entry thereof ⁱⁿ in the case of goods to be exported ⁱⁿ in a vessel or aircraft, i.e., to file a Shipping Bill. Section 51 provides that where proper officer is satisfied that any goods entered for export are not prohibited goods and exporter has paid duty, if any, etc., the proper officer may make an order permitting clearance and loading of goods for exportation ('Let Export Order'). Thus, on a combined reading of the aforesaid provisions of the Central Excise Act and the Customs Act, it is clear that the date on which the ship or aircraft leaves India is the relevant date for the purpose of rebate and that such date cannot be the date of filing of Shipping Bill, since the shipping Bill is to be filed and Let Export order is to be issued before the goods are loaded on board the vessel. As such, the original authority was correct in ascertaining the date of export with reference to the date when the goods were placed on board the ship and the mate receipt/Bill of Lading was issued by the Shipper. Therefore, the Government does not agree with the Commissioner (Appeals)'s observation that the date of filing of Shipping bill is the

date of export of goods for the purpose of rebate under Rule 18. Government also observes that, in this case, the Shipping Bills were filed between 26.04.2016 to 11.05.2016 whereas the Bills of Lading were issued between 03.05.2016 to 12.05.2016, and the rebate claim was filed by the applicant on 23.08.2016. These dates are confirmed by the respondent department, with reference to records, during the personal hearing. Therefore, irrespective of whether the date of Shipping Bill or the date of Bill of Lading is taken as the relevant date, the subject rebate claim was filed well within the prescribed period of one year from the relevant date. As such, the impugned OIA cannot be sustained.

5. In view of the above, the impugned OIA is set aside and the Revision Application is allowed, with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India

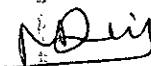
M/s BRG iron & Steel Co. Pvt. Ltd,
NH-42, Kurunti, PO-Mountunga,
District Dhenkanal 759122
Odisha.

ORDER NO 89/21-CX dated 15-4-2021

Copy to:-

1. The Commissioner of Goods & Service Tax, Central Excise House, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751007.
2. The Commissioner of CGST, Central Excise and Customs (Appeals), , C.R. Building, Rajaswa Vihar,, Bhubaneswar – 751007.
3. The Assistant Commissioner of Central Excise & Customs, , Dhenakanal Division, Tulasi Palace, Gopabandhu Bazar, Dhenkanal 759013.
4. P.S. to A.S.
5. Guard File
6. Spare Copy

ATTESTED



(Nirmla Devi)

Section Officer(R.A. Unit)