

SPEED POST



F.No. 195/195/2018-R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue...10/5/21.

Order No. 95/2021-CX dated 10-5-2021 of the Government of India, passed by **Sh. Sandeep Prakash**, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Applications filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal Nos. 642-644/HWH/CE/2017-18 dated 12.03.2018 passed by the Commissioner of CGST and Central Excise (Appeals-II), Kolkata.

Applicants : M/s. Jindal (I) Ltd., Howrah.

Respondent : The Commissioner of CGST, Howrah

ORDER

A revision application no. 195/195/2018-RA dated 25.07.2018 has been filed by M/s Jindal (I) Ltd., Howrah (hereinafter referred to as the applicant) against Order-in-Appeal No. 642-644/HWH/CE/2017-18 dated 12.03.2018, passed by the Commissioner of CGST & Central Excise (Appeals-II) wherein the appeals filed by the respondent department against the three Orders-in-Original Nos. 367/Jindal/Rebate/HWH-IV/16-17, 368/Jindal/Rebate/HWH-IV/16-17 & 369/Jindal/Rebate/HWH-IV/16-17, all dated 16.11.2016, passed by the Deputy Commissioner of Central Excise of the then Howrah-IV Division, Kolkata-II Commissionerate have been set aside.

2. Briefly stated, the applicant submitted three rebate claims amounting to Rs. 1,40,524/-, 1,25,271/- & 1,25,397/-, under Rule 18 of the Central Excise Rules, 2002, in respect of the excisable goods exported by them. The original authority sanctioned the claims. However, upon review, the department was of the view that the orders sanctioning rebate were not legal and proper as the rebate sanctioning authority had not considered that the entire export sales proceeds had been realised by the exporter within period allowed under FEMA, 1999. The department contended that BRC is a mandatory document evidencing realisation of export proceeds having direct link with eligibility of rebate for export under notification no. 19/2004-CE (NT) dated 06.09.2004. Appeals filed by the department were allowed by the Commissioner (Appeals) who while examining the matter also observed that though copies of the BRC had been submitted by the applicant (respondent therein) as evidence that export sales proceeds had been realised by them and tabulated the details as under:-

Sl. No.	O-in-O No. & date	Rebate claimed & Sanctioned	ARE 1 No. & Date	Invoice No. & Date	Shipping Bill No. & Date	BRC No. & date	Value involved as per Shipping Bill	Value realised as per BRC
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	368/Jindal/Rebate/HW H-IV/16-17 dated 16.11.2016	1,40,52 4	016/EXP/J IL/2016-17 dt. 11.04.16	190016 dt. 11.04.2016	0316/EXP /CUS/CB D/16-17 dt. 18.04.16	PUNB 054300 000092 3324 dt. 14.06.16	USD 17085	USD 16945
2.	367/Jindal/Rebate/HW H-IV/16-17 dated 16.11.2016	1,25,27 1	674/EXP/J IL/2015-16 dt. 27.01.16	190799 dt. 27.01.16	0013/EXP /CUS/CB D/15-16 dt. 02.02.16	PUNB 054300 000085 8286 dt. 17.02.16	USD 14880	USD 14740
3.	369/Jindal/Rebate/HW H-IV/16-17 dated 16.11.2016	1,25,39 7	675/EXP/J IL/2015-16 dt. 28.01.16	190800 dt. 28.01.16	0316/EXP /CUS/CB D/15-16 dt. 02.02.16	PUNB 054300 000085 8287 dt. 17.02.16	USD 14895	USD 14746.22

Comparing columns 8 & 9 of the above table, Commissioner (Appeals) observed that in all the cases the entire export sales proceeds had not been realised which is a mandatory condition for grant of rebate, and, accordingly allowed the appeals filed by the department.

3. The revision application has been filed mainly on the ground that the BRCs evidencing realisation of export proceeds had been produced; that foreign buyer's bankers deducted a very small amount in foreign currency and, thus, the amount indicated in export bill in foreign currency is reduced to the extent of the deduction; that the shortfall amounts equivalent to \$140, \$140 and \$ 148.78 cannot be the reason for denying the rebate.

4. Personal hearing in the matter was held on 06.05.2021. Shri Arun Kanti Bhattacharya, Consultant made the submissions on behalf of applicant and reiterated the contents of the RA and the written submissions filed on 19.04.2021. He highlighted that:

- i. There is no requirement under Rule 18 to make the rebate conditional upon realization of export proceeds.
- ii. Notwithstanding, the export proceeds have been realized. The small amount (less than 1%) not realized is on account of service charges deducted by the foreign bank, which is a normal commercial practice recognized by the department vide TN No. 20/13-14-ST I dated 10.02.2014 of Mumbai ST-I Commissionerate.


No one appeared for the respondent department. However, a letter dated 03.05.2021 has been received from the department stating that it has nothing more to add to the observations of the Commissioner (Appeals). Hence the matter is taken up for disposal.

5. The Government has carefully examined the matter and finds that the impugned Order-in-Appeal cannot be sustained for the following reasons: -

- (i) Rule 18 of the Central Excise Rules, 2002 and the relevant notification no. 19/2004-CE (NT) do not prescribe realization of export proceeds and submission of BRCs to evidence the same, as a condition precedent to the sanction of rebate claim. Hence, denial of rebate to the applicant solely on this count is not sustainable. This view is also supported by the decision of Hon'ble Allahabad High Court in the case of Jubilant Life Sciences Ltd. vs. Union of India {2016 (341) ELT 44 (ALL)}. Identical view has also been taken by the Government earlier in the case of M/s. Salasar Techno Engineering Pvt. Ltd. {2018 (264) ELT 1143 (GOI)}, and recently in the Order no. 66/2021-CE dated 31.03.2021 in the case of M/s Taurus Agile Technology Corporation Pvt. Ltd., Delhi.
- (ii) In any case, the applicant has produced BRCs evidencing realization of export proceeds. Only ground taken by Commissioner (Appeals) to discard the BRCs is that the value realized does not exactly match the value declared on the Shipping Bills. However, as rightly contended by

the applicant, the difference in the proceeds realized vis-à-vis the billed amount is less than 1% in each case which is ascribed to the administrative charges deducted by the bank of the foreign buyer. This appears to have been a practice duly recognized by the department at the relevant time, as evident from the Trade Notice No. 20/13-14-ST-I dated 10.02.2014 issued by the then Service Tax-I Commissionerate, Mumbai. The Trade Notice specifically stated that *"During verification of the records of some of the banks, it has been noticed that, in the case of export and import transactions, where foreign exchange is required to be received in the country or to be remitted, the foreign banks charges a commission/fee from the bank in India, but no Service Tax is being paid thereon. These foreign banks are those with whom the importer or exporter in the foreign country holds a bank account or the said foreign bank is providing some services in relation to forwarding of documents and realization of proceeds by way of remittances of money."*

6. In view of the above, the impugned Order-in-Appeal is set aside and the revision application is allowed with consequential relief.



(Sandeep Prakash)
Additional Secretary to the Government of India

M/s Jindal (I) Ltd.,
NH-6, Village- Jangalpur, P.O. Argori,
GP-Andul, PS-Sankrail,
Distt.- Howrah-711 302.

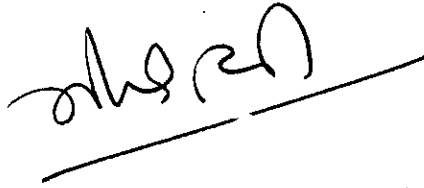
G.O.I. Order No. 95/21-CX dated 10-5-2021

Copy to: -

1. The Commissioner of CGST, Howrah.
2. The Commissioner, Central Goods & Service Tax and Central Excise, (Appeal-II), Kolkata.
3. Sh. A.K. Bhattacharya, Consultant, 468, Jessore Road, Kolkata- 700 074.
4. P.S. to A.S. (Revision Application).
5. Guard File. ,
6. Spare Copy.

ATTESTED

Section Officer, RA Unit
Department of Revenue



आशीष तिवारी / ASHISH TIWARI
सहायक आयुक्त / Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क
CGST, Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
नई दिल्ली / New Delhi