

REGISTERED
SPEED POST



F.No.195/87-92/2018-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...7/12/18

Order No. 639-644/2018-CX dated 5-12-2018 of the Government of India, passed by Shri R. P. Sharma, Principal Commissioner & 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-000-APP-227-232-18 dated 07.02.2018, passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh

Applicant : M/s JCT Limited

Respondent : Commissioner of Central Excise, Jalandhar

ORDER

Six Revision Applications Nos. 195/87-92/2018-R.A. dated 04/09/2015 have been filed by the M/s JCT Ltd, Phagwara, (hereinafter referred to as the applicant) against the Order-in-Appeal No. LUD-EXCUS-000-APP-227-232-18 dated 07.02.2018, passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh, whereby the applicant's appeals filed against Orders-in-Originals have been rejected.

2. The brief facts leading to the present proceeding before the Government are that the applicant M/s JCT Ltd., Phagwara, had filed rebate claims for duty of excise paid on exported goods. But the same were rejected by the original adjudicating authority on the ground that the applicant was not required to make payment of duty on the goods exported against advance licences and the applicant had voluntarily deposited the duty. Consequently rebate of duty in cash was not permissible and only the cenvat credit was to be restored to the extent of duty was paid on the exported goods from cenvat credit account. Being aggrieved, the applicant filed appeals the orders of the original adjudicating authority before Commissioner (Appeals). But these were also rejected by the Commissioner (Appeals) vide the above said order-in-appeal. The applicant has now filed the present revision application mainly on the ground that they had correctly paid duty on the exported goods and the rebate of duty in cash is admissible to them under Rule 18 of Central Excise Rules, 2002.

3. A personal hearing was held on 25/10/2018 which was attended by Mr. Joy Kumar, Advocate, for the applicant and reiterated the grounds of

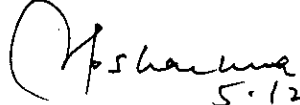
revision already pleaded in their application. However, no one appeared on behalf of the respondent and no request for any other date of hearing was also received from them.

4. It is observed that while Commissioner (Appeals) has rejected the applicant's appeal on the ground that they were not required to pay any duty on the export of goods under Advance Licence scheme, no specific Para of the advance licence scheme or any notification issued under Central Excise Act has been mentioned to support their claim that the applicant was not required to pay duty on the exported goods. On the contrary, under Section 3 of the Central Excise Act duty of excise is to be paid on manufacturing of all the excisable goods unless it is specially exempted under a notification issued by the Central Government under section 5A of the Central Excise Act. The notification no. 18/2015-Cus dated 01.04.2015 regarding advance license facilitating procurement of duty free inputs is also issued under Customs Act and it has nothing to do with the payment or exemption of Central Excise duty on the finally manufactured goods. But no such notification is mentioned in the Order-in-Appeal which provide for exemption from duty on the exported goods. Even department's case is also not that the applicant had procured duty free material under notification No. 43/2001-CE dated 26.06.2001 because of which they were required to export under bond only. Hence, Government does not find any basis for arriving at a conclusion by the lower authorities that the applicant was not required to pay duty on the exported goods and had unnecessarily paid duty thereon. Since the applicant has correctly paid duty on the exported goods and fulfilled all other conditions stipulated under Rule 18 of Central Excise Rules, 2002 and

Notification No. 19/2004-CE(NT) dated 06.09.2004, the rebate of duty is admissible to the applicant in this case.

5. As regard the applicant's claim that the rebate is admissible in cash, the relevant legal provisions under Rule 18 of Central Excise Rules, 2002 and Notification No. 19/2004-CE(NT) dated 06.09.2004 for this matter do not provide anywhere that if the duty of Central Excise is paid from CENVAT credit for exported goods then rebate of duty is to be granted in CENVAT credit account only. These two provisions talk of granting of rebate of duty only and the same can be possible only in cash and not in form of CENVAT credit as CENVAT credit can be availed and allowed only under CENVAT credit Rules, 2004 and there is no provision for availing or allowing CENVAT credit under Rule 18 of Central Excise Rules, 2002. Even the Central Board of Excise and Customs, an apex body to regulate the working of Central Excise related affairs, has clarified, vide its Circular No. 687/3/2003-cx dated 03.01.2003 issued from File No. 267/57/20020/cx-8, that there is no discretion with the sanctioning authority to give the refund of duty paid on the goods exported and duty paid through cenvat credit must be refunded in cash only. Even earlier the CBEC had clarified vide its Circular No. 153/64/95-cx dated 12.10.95, 262/96/96-cx dated 06.11.1996, 407/40/98-cx dated 15.07.1988 and 408/41/98-cx dated 20.07.1998 that the rebate of duty paid through MODVAT credit is to be paid in cash only. Hence, the applicant is eligible for rebate of duty in cash only.

6. Accordingly, the revision applications filed by the applicant are allowed.


5.12.18
(R. P. Sharma)

Additional Secretary to the Government of India

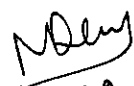
NIRMALA DEVI
(Section officer)
(Revision Application unit)

M/s JCT Ltd., G.T. Road,
Phagwara- 144401 (Punjab).

G.O.I. Order No. 639-644/18-Cx dated 5-12-2018

Copy to:-

1. Commissioner of Central Goods & Service Tax, Jalandhar (Hq. at Ludhiana), CGST House, 'F' block, Rishi Nagar, Ludhiana 141001
2. The Commissioner (Appeals), Customs & Central Excise, Plot No. 19 Sector 17C, Chandigarh.
3. The Assistant Commissioner, Central Excise Division, Hargobind Nagar, Phagwara, Punjab.
4. Mr. Joy Kumar, Advocate, Flat No. 261/1, Sector 45 A, Chandigarh.
5. PS to AS (Revision Application)
6. Guard File
7. Spare Copy.


5-12-18

(निर्मला देवी/NIRMALA DEVI)
अनुभाग अधिकारी/Section Officer
वित्त मंत्रालय (रोलव्य विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi