

REGISTERED
SPEED POST



F.No. 198/24-25/2017-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...11/12/18

Order No. 661-662/18-CX dated 6-12-2018 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the Order-In-Appeal No.343-344/CE/Appeals-II/Delhi/2016 dated 26.12.2016, passed by the Commissioner of Central Excise (Appeals-II), Gurgaon.

Applicant : The Commissioner of CGST, Faridabad.

Respondent : M/s. CMI Limited, Faridabad.

ORDER

Two Revision Applications Nos.198/24-25/2017-RA dated 08.03.2017 have been filed by the Commissioner of CGST, Faridabad (hereinafter referred to as the applicant) against the Orders-in-appeal Nos. 343-344/CE/Appeals-II/Delhi/2016 dated 26.12.2016, passed by the Commissioner of Central Excise (Appeals-II), Gurgaon, whereby the respondent's appeals filed against the orders of the Assistant Commissioner of Central Excise, Gurgaon, have been allowed.

2. The brief facts leading to the present proceeding before the Government are that the applicant had filed rebate claims under Rule 18 of Central Excise Rules, 2002, read with notification no. 19/2004-CE (NT) dated 06/09/2004, in respect of central excise duty paid on the exported goods which were rejected by the original adjudicating authority on the grounds that the respondent could not establish the identity of the exported goods with the goods which were cleared from the factory of production and the export proceeds were not received in convertible currency. However, on filing of appeals by the respondent, the Commissioner (Appeals) has set aside the orders-in-original which are

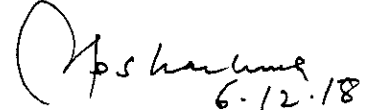
now being contested in the present revision applications on the same grounds on which the original adjudicating authority had rejected the rebate claims earlier.

3. Personal hearing in this case were fixed on 18.10.2018 and 15.11.2018. But no one appeared for the hearing for the applicant on both days. Even no reason for non availment of the said hearing was informed and no request for any other date of hearing was also received from which it implicit that the applicant is not interested in personal hearing in this matter. The respondent also did not avail hearing on any of the above two dates and finally has submitted the written submission dated 15.11.2018 expressly stating that they do not want to avail Personal Hearing and the case may be decided on the basis of the facts and evidences already available on record

4. The government has examined the matter and it is observed that the Commissioner (Appeals) has allowed rebate of duty to the respondent by accepting their appeals on the basis that the identity of the goods cleared from the factory of the respondent with the exported goods is clearly established since the clearance of the goods from the factory and export of goods at the LCS were supervised by the central excise officers and the custom officers respectively and there is no

condition under Rule 18 of Central Excise Rules, 2002 or notification no. 19/2004-CE(NT) dated 06/09/2004 that realization of export proceeds in convertible currency is essential for granting of rebate of duty on the exported goods. Further, he has clearly held in his order that the goods in question have been actually exported on payment of duty and export proceeds have been realized in this case, albeit in Indian currency, and referred to a CBEC Circular No. 961/04/2012-CX.6 dated 26/03/2012 as per which there is no condition to receive the export proceeds in freely convertible currency for grant of rebate of duty. These findings of the Commissioner (Appeals) are not effectively countered in the revision application and stress has been mainly laid on an argument that the contract regarding export of goods was with M/s IRCON and not with the respondent which is purely a technical issue and the fact regarding export of duty paid goods manufactured by the respondent cannot be denied on this point alone. Thus, the applicant has not made out any prima-facie case on the basis of which the validity of the order of the Commissioner (Appeals) can be questioned.

6. In view of the above discussions, the revision applications are rejected.


6.12.18
(R.P.Sharma)

Additional Secretary to the Government of India

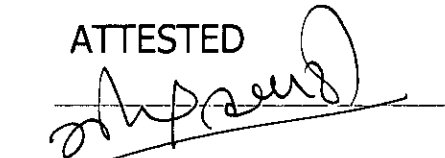
The Commissioner of Central Goods & Service Tax,
GST Bhavan, New CGO Complex, NH-IV,
Faridabad.

Order No. _ 661 - 662/18-CX dated 6-12-2018

Copy to:

1. The Commissioner of Central Goods & Service Tax(Appeals), Room No. 118, Plot No. 36-37, Sector-32, Gurgaon.122001.
2. M/s CMI Ltd., Plot No. 71 & 82, Sector-6, Faridabad-121 006.
3. PA to AS(RA)
4. Guard File

ATTESTED


(Ashish Tiwari)
Assistant Commissioner