

REGISTERED
SPEED POST



F.No. 198/199/15-RA (CX)
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.. 31.01.18... *de*

Order No. 695/2018-Cx dated 24-12-18 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.130-131/CE/DLH/2016 dated 12.07.2016, passed by the Commissioner of Central Excise (Appeals), Delhi.

Applicant : The Commissioner of Central Goods & Service Tax, Rohtak.

Respondent : M/s JSL Stainless Ltd., Hisar.

ORDER

A Revision Application No.198/199/15-RA dated 19.09.2016 is filed by the Commissioner of Central Goods and Service Tax, Rohtak (hereinafter referred to as the applicant) against the Order-In-Appeal No.130-131/CE/DLH/2016 dated 12.07.2016, passed by the Commissioner of Central Excise (Appeals), Delhi., whereby the appeal of the respondent, M/s Jindal Steel Limited, Hisar, has been allowed.

2. The Revision Application is filed mainly on the ground that the rebate claim of Rs. 2,86,81,585/- was erroneously granted to the respondent and hence the Commissioner (Appeal)'s Order setting aside the recovery of the said amount ordered by the Original adjudicating authority under Section 11A of the Central Excise Act is erroneous.

3. Personal hearing was held in this case on 10.10.2018. But no one appeared for the applicant. However, the respondent availed the hearing on 10.10.2018 through its three employees Shri Subhasish Ghose, GM, Shri Sanjeev Mishra, GM and Shri R. Yadav, AG Manager. They furnished written reply dated 27.04.2018 contesting the Revision Application mainly on the grounds that there is no condition under Notification No. 19/2004-CE(N.T.) that the grant of rebate is subject to realization of export proceeds, CBEC Circular No. 354/70/97-CX dated 13.11.1997 does not prescribe that receipt of lesser amount or non-receipt of realization of export proceed would mean that goods have not been exported, the Allahabad High Court has clearly held in the case of M/s Polyplex Corporation Ltd., Vs. Joint Secretary, Ministry of Finance, (2014(306) ELT-24(All)) that mere executive decision

cannot authorize the authorities to do something which is not otherwise permitted under Statutory Rules and the jurisdictional Commissioner of Central Excise, Rohtak, has subsequently held in the respondent's own case vide Order-in-Original No. 84-86-CE/COMMR/HG/RTK/2016-17 dated 31.03.2017 that the rebate of duty cannot be held to be erroneous merely because of non-submission of Bank Realization Certificates.

4. The Government has examined the matter and it is observed that the Revision Application is not sustainable as neither Rule 18 of Central Excise Rules nor Notification No. 19/2004 has any such condition that rebate of duty will not be allowed in absence of a Bank Realization Certificate and the rebate of duty will be recovered for non-submission of Bank Realization Certificate. The CBEC's above referred Circular also does not say so and the Allahabad High Court has clearly held in the case of Polyplex Corporation Ltd. that executive order cannot prevail over the Statutory Rules. Above all the jurisdictional Commissioner, Central Excise, Rohtak has subsequently ordered vide Order-in-Original dated 31.03.2017 in the case of the respondent itself that the rebate of duty cannot be denied or recovered on the basis of CBEC's Circular No. 354/70/97-CX dated 13.11.1997. Further as per the Order dated 21.11.2017 of the Superintendent, Hisar Range, issued to the respondent, the aforesaid Order of the Commissioner has been accepted by the Committee of Commissioners. Thus, the issue raised in the Revision Application is no more in dispute as per the subsequent orders of several departmental authorities.

5. Accordingly, the Revision Application is rejected.

R.P. Sharma
24.12.18

(R.P.Sharma)

Additional Secretary (Revision Application)

The Commissioner of Central Excise and Service Tax,
Rohtak, SCO-6, Sector-1,
Rohtak-124001.

G.O.I. Order No. 695 /18-Cx dated 24/12-2018

Copy to:-

1. The Commissioner of Central Excise(Appeals), Delhi-III, Plot No. 36-37, Sector-32, Opposite Medanta-Medicity, Gurgaon-122003.
2. M/s. Jindal Stainless(Hisar) Ltd., O.P.Jindal Marg, Delhi Road, Hisar, Haryana.
3. PA to AS(Revision Application)
4. Guard File

ATTESTED

(ASHISH TIWARI)
ASSISTANT COMMISSIONER(RA)

*Received original
order G.O.I*

V.Kumar

03/01/19

(VIPIN KUMAR)

c/o JSL STAINLESS LTD.