

F. No. 195/195-197/2017-R.A.(C.X.)
195/275/2017-R.A.(C.X.)

REGISTERED
SPEED POST



F. No. 195/195-197/2017-R.A.(C.X.)
195/275/2017-R.A.(C.X.)
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: 27.01.18

Order No. 696-699/2018-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 35EE of the Central Excise Act, 1944.

Subject : Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. 450-452/CE/AppI-II/Delhi/2016 dated 17.02.2017 and 14-15/CE/AppI-II/Delhi/2017 dated 19.05.2017, passed by the Commissioner of Central Excise (Appeal-II), Delhi.

Applicant : M/s Jindal Stainless (Hisar) Ltd., Hisar

Respondent : The Commissioner of Central Excise, Rohtak

ORDER

Four Revision Applications No. 195/195-197/2017-R.A.(C.X.) dt. 17.05.2017 and 195/275/2017-R.A.(C.X.) dt. 17.08.2017 are filed by M/s Jindal Stainless (Hisar) Ltd., Hisar (hereinafter referred to as the applicant) against the Orders-In-Appeal No. 450-452/CE/AppI-II/Delhi/2016 dated 17.02.2017 and 14-15/CE/AppI-II/Delhi/2017 dated 19.05.2017, passed by the Commissioner of Central Excise (Appeal-II), Delhi, whereby the appeals of the applicant have been rejected.

2. The Revision Applications are filed mainly on the ground that the Commissioner (Appeals) has not appreciated their submission that the BRC is not a relevant document for the purpose of granting rebate of duty and has committed legal error by upholding the Orders-in-Original rejecting their rebate claims for non-submission of BRCs and for furnishing of BRCs for lesser amount.

3. A personal hearing was held on 13.12.2018 which was availed by three employees of the applicant, Sh. Subhasish Ghosh, G.M., Sh. Sanjeev Mishra, G.M., and Sh. Rajesh, A.G.M. They mainly emphasized that the order for recovery of Rs. 5.26 crore out of earlier sanctioned rebate claims of Rs. 18.24 crore is not legally maintainable as BRC is not an essential document for granting rebate of duty and placed reliance on Government of India's earlier Order no. 510/2018-CE dt. 06.08.2018 passed in their own case. Further they furnished written reply dt. 11.12.2018 during the hearing 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 dt. 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 Hon'ble Allahabad High Court has clearly held in the case of M/s Polyplex Corporation Ltd. Vs Joint Secretary, Ministry of Finance, {2014(306) E.L.T. 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 applicant's own case vide Order-in-Original no. 84-86-CE/COMMR/HG/RTK/2016-17 dt. 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 in Rule 18 of Central Excise Rules, 2002 and Notification no. 19/2004-C.E.(N.T.) dt. 06.09.2004 it is nowhere stipulated that BRC will have to be produced either before or after grant of rebate of duty to the exporter of the goods. Even Excise Manual of Supplementary Instruction, 2005 also does not envisage any such condition and thus it is evident that the condition regarding production of BRC within 160 days from the date of sanction of rebate as specified in Circular no. 354/70/97-CX dt. 13.11.1997 is not backed by any statutory provision. Even Hon'ble Allahabad High Court in its two decisions in the cases of M/s Polyplex Corporation Ltd. Vs Joint Secretary, Finance {2014(306) E.L.T. 24(All.)} and M/s Jubilant Life Sciences Ltd. {Order dt. 11.08.2016 Writ Tax no. 1484 of 2011} has held that the rebate claim cannot be denied or restricted by applying the Circular no. 354/70/97-CX dt. 13.11.1997 and an executive direction contained in the said Circular cannot prevail over the statutory provisions embodied in Rule 18 of Central Excise Rules, 2002 and Notification no. 19/2004-C.E.(N.T.) dt. 06.09.2004. Above all, the jurisdictional Commissioner of Central Excise, Rohtak has subsequently ordered vide Order-in-Original dt. 31.03.2017 in the case of the applicant itself that the rebate of duty cannot be denied or recovered on the basis of CBEC circular no. 354/70/97-CX dt. 13.11.1997. Accordingly, the Government agrees with the contention of the applicant that the Commissioner (Appeals) has committed an error by dismissing the applicant's appeals and by upholding the Orders-in-Original rejecting the rebate claims for non-submission of BRCs etc.

F. No. 195/195-197/2017-R.A.(C.X.)
195/275/2017-R.A.(C.X.)

5. In view of the above discussions, the Orders-in-Appeal are set aside and the Revision Applications are allowed.

R.P. Sharma
24.12.18

(R.P. Sharma)

Additional Secretary to the Government of India

M/s Jindal Stainless (Hisar) Ltd.,
O.P. Jindal Marg, Hisar- 125005,
Haryana.

Order No. 696-698 /2018-Cx dated 24-12-18

Copy to:

1. The Commissioner of Central Excise, Rohtak, S.C.O.-6, Sector-1, Rohtak 124001.
2. The Commissioner (Appeals), Central Excise and Service Tax, S.C.O. no. 407-408, Sector 8, Panchkula 134109, Haryana.
3. The Additional Commissioner of Central Excise, S.C.O.-6, Sector-1, Rohtak 124001.
4. P.A. to A.S.(R.A.)
5. Guard File
6. Spare copy

*Received
original GOI order
[Signature]
03/01/19*

ATTESTED

[Signature]

(Ravi Prakash)
O.S.D.(R.A.)

*(VIPINKUMAR)
C/o Jindal Stainless
Hisar LTD.*