

SPEED POST



F.No. 195/172/2018-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 05/01/2022

Order No. 01/22-Cx dated 05/01/2022 of the Government of India passed by Sh. Sandeep Prakash, Principal Commissioner & Additional Secretary to the Government of India, under Section 35EE of the Central Excise Act, 1944.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 489-490(SM)CE/JPR/2017 dated 30.11.2017, passed by the Commissioner (Appeals), CGST, Jaipur.

Applicant : M/s Agrawal Metals, Jaipur.

Respondent : The Commissioner of CGST & Central Excise, Jaipur.

**ORDER**

A Revision Application No. 195/172/2018-RA dated 30.07.2018 has been filed by M/s Agrawal Metals, Jaipur (hereinafter referred to as the Applicants) in respect of the Order-in-Appeal No. 489-490(SM)CE/JPR/2017 dated 30.11.2017, passed by the Commissioner (Appeals), CGST, Jaipur. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, allowed the appeal filed by the Applicant herein against the Order-in-Original No. 10/Dem/2014 dated 30.06.2014 and rejected the appeal filed by the Respondent department against the Order-in-Original No. 113/Reb/2012 dated 18.09.2012.

2. Briefly stated, the Applicants were registered with the Central Excise department and engaged in the manufacture of Aluminium, Steel, Brass build hardware falling under chapter heading 8302, 7609, 7304, 7604 of the first schedule to the Central Excise Tariff Act, 1985. They filed a rebate claim, amounting to Rs. 2,23,022/-, on 27.06.2012, under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004. The original authority, vide the Order-in-Original dated 18.09.2012, sanctioned the rebate of Rs. 2,18,962/- in cash and permitted re-credit of balance amount of Rs. 4,060/- in the Cenvat credit account. Aggrieved by the sanction of rebate, the department filed an appeal before the Commissioner (Appeals), inter-alia, on the grounds that the description of the goods cleared under the relevant invoice and ARE-1 was not identical to those mentioned in the relevant Shipping Bill. The department also issued a show cause notice dated 03.07.2013, pursuant where to a demand of Rs. 66,400/- was confirmed by the original authorities, vide Order-in-Original No. 10/Dem/2014 dated 30.06.2014. The Applicants herein were aggrieved by the Order dated 30.06.2014 and filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals), vide the impugned Order-in-Appeal, has rejected the appeal filed by the department against the Order-in-Original dated 18.09.2012 and allowed the appeal filed by the Applicants herein against the Order-in-Original dated 30.06.2014.

3. The subject Order-in-Appeal dated 30.11.2017 was challenged in revision by the department vide RA No. 198/02/2018-RA. The instant RA has been filed by the Applicant herein with a request to dismiss the revision application filed by the department.

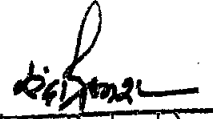
4. Personal hearings were fixed in the matter on 26.11.2021, 20.12.2021 & 05.01.2022. No one appeared for either side nor any request for adjournment has been received in respect of last opportunity granted on 05.01.2022. Since sufficient opportunities have been granted, the matter is taken up for decision based on records.

5.1 The Government has carefully examined the matter. As per Section 35EE of the Central Excise Act, 1944 "(1) *The Central Government may, on the application of any person aggrieved by any order passed under section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 35B, annul or modify such order :*". Therefore, for a revision application to be maintainable, it has to be made by any person who is aggrieved by the order passed by the Commissioner (Appeals). In the present case, the Commissioner (Appeals) has decided the matter in favour of the Applicants herein and, as such, the Applicants are not an aggrieved party. Therefore, the instant revision application is not maintainable.

5.2 The Government also observes that while the revision application was filed on 30.07.2018, no supporting documents including in respect of fee required to be deposited, as per sub-section (2) of Section 35EE, were furnished, despite letters dated 26.09.2018, 12.03.2021, 12.04.2021, 09.08.2021 & 16.11.2021. A copy of subject Order-in-Appeal itself was not furnished. It is only when the personal hearings were fixed in the matter that the Applicants, on 17.12.2021, filed the copies of the subject Order-in-Appeal, one of the Orders-in-Original, and challan dated 14.11.2018 in respect of the application fee. The Applicants have also not appeared for personal hearing despite sufficient opportunities having been granted. It is also

noteworthy that the revision application filed by the department against the subject Order-in-Appeal has already been decided by the Government and, vide GOI Order No. 01/2020-CX dated 01.01.2020, the subject Order-in-Appeal has been set aside. Even thereafter, the Applicants have neither withdrawn the instant application nor have they brought this fact on record. In the conspectus of these facts, the Government is constrained to observe that instant revision application appears to be nothing but an effort to prolong the dispute and, as such, it is an abuse of process of law.

6. The revision application is rejected, as non-maintainable.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Agrawal Metals, Jaipur,  
23<sup>rd</sup> Km Stone, Ajmer Road,  
Bagru Khurd, Jaipur – 302 019.

Order No. 01/22-Cx dated 05/01/2022

Copy to:

1. The Commissioner of CGST & Central Excise, Jaipur, New Central Revenue Building, Statue Circle, "C" Scheme, Jaipur – 302 005.
2. The Commissioner (Appeals), CGST, Jaipur, New Central Revenue Building, Statue Circle, Jaipur – 302 005.
3. Sh. Pankaj Malik, Pankaj Malik & Co., Chartered Accountant, 207-208, Shri Gopal Tower, Krishna Marg, "C" Scheme, Jaipur – 302 001.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED



(लक्ष्मी राघवन)  
(Lakhmi Raghavan)  
अभियन्ता अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt of India  
नई दिल्ली / New Delhi