

SPEED POST



F. No. 196/04/ST/2021—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.. 25/1/22

Order No. 05/22-ST dated 25-01-2022 of the Government of India, passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994.

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994 against the Order-in-Appeal No. 24/HAL/ST/2020-21 dated 16.12.2020 passed by the Commissioner (Appeals-II), CGST & Central Excise, Kolkata.

Applicant : M/s. Rashmi Metaliks Ltd., Kolkata.

Respondent : The Commissioner of CGST, Haldia, Kolkata.

ORDER

A Revision Application No. 196/04/ST/2021-R.A. dated 02.03.2021 has been filed by M/s. Rashmi Metaliks Ltd., Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 24/HAL/ST/2020-21 dated 16.12.2020 passed by the Commissioner (Appeals-II), CGST & Central Excise, Kolkata. The Commissioner (Appeals) has rejected the appeal of the Applicants herein against the Order-in-Original No. R/07/ST/Rebate/KGP/CGST/2019-20 dated 23.05.2019 passed by the Assistant Commissioner, Kharagpur CGST & Central Excise Division.

2. Briefly stated, the Applicants herein were registered manufacturer exporter who had filed a rebate claim of Service Tax, on 16.03.2018, under Notification No. 41/2012-ST dated 29.06.2012 read with Section 93A of the Finance Act, 1994, for the goods exported, on 17.03.2017 (Let Export Order Date), for an amount of Rs. 7,19,982/-. Subsequently, in response to the Deficiency Memo, the Applicants, vide letter dated 31.12.2018 revised the claim from Rs. 7,19,982/- to Rs. 7,45,695/-. After following the principles of natural justice, the original authority sanctioned Rs. 42,000/- out of the revised claim amount of Rs. 7,45,695/- and rejected the rest of refund claim for the following reasons:

- (i) Claim of Rs. 6,75,533/- in respect of service tax paid on Railway Freight was rejected as the Railway Receipt (RR) had been issued prior to corresponding ARE-1s.
- (ii) The claim for rebate in respect of Swachh Bharat Cess (SBC), submitted for inclusion at the time of reply to the deficiency memo, for Rs. 25,713/-, was rejected as barred by limitation of time; and
- (iii) Rejection of claim of Rs. 2,450/- for non-submission of original Invoices.

The appeal filed by the Applicants has been rejected by the Commissioner (Appeals), vide the impugned Order-in-Appeal.

3. The revision application has been filed, mainly, on the grounds that the refund claim has been rejected on technical grounds; that the Railway Receipts in respect of Rs. 6,75,533/- were issued prior to the date of ARE-1s as the Applicants herein have

aggregated the goods in port to load the ship of goods as per availability and, hence, point to point co-relation was not possible; that the amount of Swachh Bharat Cess (SBC) of Rs. 25,713/- which has been rejected on the grounds of time bar, was included in the revised claim as a rectification of mistake; that the claim of Rs. 2,450/- was rejected on the basis of failure to produce original copies of the invoice issued by the service provider but these were shown and as advised certified true copy was submitted. Therefore, the balance rebate claim of Rs. 7,03,695/- may be allowed.

4. Personal hearings in the matter were fixed on 29.12.2021, 10.01.2022 & 24.01.2022. No one appeared for either of the parties. The Applicant herein had, vide letter (received on 24.01.2022) issued authorization for attending hearing on 24.01.2022. However, the authorised representative did not appear. Since sufficient opportunities have been granted, the matter is taken up for disposal based on records.

5.1 The Government has carefully considered the matter. The first issue relates to rejection of rebate claim, amounting to Rs. 6,75,533/-, in respect of service tax paid on transportation of iron ore pellets by Railways. The aforesaid claim has been rejected on the grounds that the relevant Railway Receipts were issued prior to the date of ARE-1s and, hence, the Service Tax paid has no correlation to the export of goods in the subject case. The Government agrees with the view taken by the lower authorities as the Railway Receipts/Invoices have been issued prior to the date of first ARE-1 and, hence, these are not related to the transport of goods in respect whereof subject rebate has been claimed. The correlation of services with the goods exported, in respect of which the rebate is being claimed, is not a technical matter rather it is a substantive issue at the core of admissibility of the refund claim.

5.2 The amount of Rs. 25,713/- paid as Swachh Bharat Cess has also been rejected as this amount was included in the claim, admittedly, on 30.12.2018, when the time limit of one year for filing the claim was already over and that too in

compliance of Deficiency Memo issued by the department. The Applicants have submitted that they did not include this amount in the original claim by mistake and have rectified the same in the revised claim. The judgments of Hon'ble Gujarat High Court, in the case of *Apar Industries (Polymer Division) vs. UOI* {2016 (333) ELT 246 (Guj.)} and that of Tribunal in the case of *Banco Products India Ltd.* {2016 (42) STR 535 (Tri-Ahmedabad)} have been relied upon. As correctly pointed out by the Commissioner (Appeals), the judgment in the Apar Industries case relates to a refund claim under Rule 57F of the Central Excise Rules, 1944 where the refund sanctioning authority had initially returned the refund claim due to non-submission of claim in proper format and after re-submission, the claim was rejected on the grounds of time bar. In the instant case, on the other hand, the Applicants herein have revised their claim subsequently, to include a completely new item of claim. Therefore, the judgment in Apar Industries is not applicable in the facts of the present case. The judgment of Tribunal in the case of Banco Products India Ltd. is in respect of a case where the original refund claim of Rs. 5,45,657/- was revised downwards to Rs. 4,96,486/- whereas in the present case the claim has been revised upwards by including a totally new item for claim. Therefore, the decision in Banco Products India Ltd. is also not applicable in the facts of the present case. Further, the Government is not persuaded by the contention of the Applicants that they had not filed claim of this amount due to mistake or oversight and, therefore, claim should be allowed. It is observed that the Applicants themselves had calculated the amount of refund and are entirely responsible for the same. Tribunal has taken a similar view in the case of *Ravi Paints and Chemicals vs. Commissioner of Central Excise, Chennai* {2004 (177) ELT 1074 (Tri-Chennai)}.

5.3 As regards the last item, i.e., rejection of Rs. 2450/- for non-submission of original invoice, the Commissioner (Appeals) has recorded that only a certified true copy was produced before him whereas the contention of the Applicants herein is that the original copy was shown. This contention is not acceptable in as much as the original copy of the invoice is required to be produced alongwith refund claim which has admittedly not been done. Further, as recorded by the Commissioner

(Appeals), the original invoice was not produced even at the stage of appeal. Therefore, the Government does not find any infirmity on this count as well.

6. In view of the above, the revision application is rejected.


—(Sandeep Prakash)
Additional Secretary to the Government of India


M/s Rashmi Metaliks Limited,
39, Shakespeare Sarani, Premlata
Building, 6th Floor, Kolkata – 700017.

G.O.I. Order No. 05/22-ST dated 25-01-2022

Copy to:-

1. The Commissioner of CGST, Haldia, 15/1 Strand Road, MS Building, Customs House, Kolkata – 700001.
2. The Commissioner (Appeals-II), CGST & Central Excise, 3rd & 4th Floor, Bamboovilla, 169, A.J. Chandra Bose Road, Kolkata – 700014.
3. Sh. S.P. Siddhanta, Authorised Representative,
4. PA to AS (Revision Application).
5. Spare Copy.
6. Guard File.

ATTESTED


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