

SPEED POST



F.No. 195/206-209/SZ/2018-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. 05/01/23

Order No. 22-25/2023-CX dated 05-01-2023 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Applications filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal Nos. 250-253/2018 CT dated 30.05.2018, passed by the Commissioner of Central Tax (Appeals-II), Bengaluru.

Applicant : M/s Indo MIM Pvt. Ltd., Bengaluru.

Respondent : The Pr. Commissioner of CGST & Central Excise , Bengaluru North.

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ORDER

Four Revision Applications, bearing Nos. 195/206/SZ/2018-RA, 195/207/SZ/2018-RA, 195/208/SZ/2018-RA & 195/209/SZ/2018-RA, all dated 19.09.2018, have been filed by M/s Indo MIM Pvt. Ltd., Bengaluru (hereinafter referred to as the Applicants) against the Order-in-Appeal Nos. 250-253/2018 CT dated 30.05.2018, passed by the Commissioner of Central Tax (Appeals-II), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, allowed the appeals filed by the department (hereinafter referred to as the Respondents) against four separate Orders-in-Original passed by the Deputy Commissioner of Central Taxes, Central Tax Division-9, Bengaluru North Commissionerate.

2 Briefly stated, the Applicants herein were engaged in the manufacture of excisable goods falling under chapter 8207, 8301, 8410, 8411 etc. of the Central Excise Tariff Act,1985. The Applicants had filed 4 rebate claims, in respect of duty paid on goods exported by them, under Rule 18 of the Central Excise Rules, 2002 read with notification no.19/2004-CE (NT) dated 06.09.2004. The details of the claims and the orders passed by the original authority are as under:

S.No	RA No.	Amount involved in the claims (in Rs.)	OIO No & date	Amt. sanctioned in cash (Rs.)	Amt. found to be paid in excess but also ordered to be paid in cash in terms of Section 142(3) of CGST Act,2017
1.	195/206/SZ/2018	1,43,86,513/-	18/2017 dt. 26.10.2017	1,24,82,191/-	19,04,322/-
2.	195/207/SZ/2018	25,91,393/-	19/2017 dt. 27.10.2017	18,67,569/-	7,23,824/-
3.	195/208/SZ/2018	1,47,589/-	24/2017 dt. 10.11.2017	1,23,050/-	24,539/-
4.	195/209/SZ/2018	7,82,195/-	35/2017 dt. 20.12.2017	6,50,216/-	1,31,979/-

During the processing of the refund claims, the original authority found that the Applicants had paid central excise duty on the export goods on CIF value basis whereas it ought to have been paid on FOB value basis. In this light, the original authority restricted the refund claim in cash to the duty payable on FOB value basis and allowed balance amount by way of re-credit in CENVAT Credit account. Further, the original authority also allowed the amount payable by way re-credit in CENVAT Credit account, to be paid in cash, in terms of Section 142(3) of CGST Act, 2017. The Department, Respondent herein, preferred appeals against the aforementioned 4 OsIO on the ground that in respect of the amounts found eligible to be re-credited in CENVAT Credit account and thereafter ordered to be paid in cash in terms of section 142(3) of CGST Act, 2017 by the original authority, proviso to Section 142(3) shall apply and instead of payment in cash, such amounts shall lapse and such sanctions were erroneous. Vide the impugned OIA, Commissioner (Appeals) allowed the departmental appeals and held that the claims corresponding to the amounts allowed to be re-credited were, in effect, rejected and, therefore, these amounts are to be treated to have lapsed.

3. The revision applications have been filed, mainly, on the grounds that non-sanction of rebate pertaining to exported goods amounts to export of domestic duties to international market which is bad in law; that Deputy Commissioner's granting of CENVAT credit in cash is as per the GST law 2017 in as much as the CENVAT credit cannot be availed post GST law from 01.07.2017; and that the Government cannot retain the Applicant's money without any authority of law. Further in their written submissions dated 04.01.2023, the Applicants submitted that the Commissioner (Appeals) has gone beyond the scope of the issue in hand and the grounds under which the appeal memo was filed before him and has given unreasoned findings which were not alleged or arose in the course of the adjudication proceedings. It has been further submitted that rebate claim was not rejected either fully or partially; and that no show cause notice was issued as to why a part of the rebate claim should be rejected.

4. Personal hearing, in virtual mode, was held on 04.01.2023. Sh. Ramesh Ananthan, Advocate made submissions on behalf of the Applicant and requested that the Written Submissions emailed on 04.01.2023 may be taken on record. He reiterated the submissions made in the RA and the Written Submissions dated 04.01.2023. No one appeared for the Respondent department nor any request for adjournment has been received. Hence, it is presumed that the department has nothing to add in the matter.

5.1 The Government has carefully examined the matter. The duties in the instant cases were paid on CIF value basis and rebate was claimed. The original authority, while examining the rebate claims, found that the duties ought to have been paid on transaction value basis ,i.e., on FOB value in case of export goods. He, accordingly, allowed rebate of duties paid proportionate to that payable on FOB value basis in cash and found that duty paid in excess is allowable by way of re-credit in the CENVAT credit account. Thereafter applying the provisions of Section 142(3) of the CGST Act,2017, he held that the amount allowable by way of re-credit shall also be paid in cash. However, the orders of original authority to the extent of re-credit of amounts paid in excess have been held to be as rejection of the rebate claims, by the Commissioner (Appeals) and thereafter relying on first proviso to Section 142(3) ibid, he has held that these amounts shall lapse. He further held that the original authority has erred in holding that such amounts are also required to be paid in cash.

5.2 It is observed that the Commissioner (Appeals) in the impugned OIA has recorded "*12. I therefore find that the Lower Authority has rightly rejected the rebate claims on the components of excise duty paid on freight and insurance , under Rule 18 of Central Excise Rules and he has rightly ascertained the transaction values*". The Applicants have on the other hand, claimed that the original authority had not rejected their rebate claims, either in part or fully. On careful perusal of the orders passed by the original authority, the Government finds substance in this contention of the applicants. In para 10 of the OIO No.18/2017 dated 26.10.2017, the original authority has recorded : "Therefore, the total rebate admissible in this claim is Rs. 1,43,86,513/- out of which Rs.1,24,82,191/- is

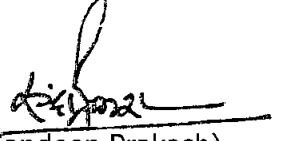
payable in cash and the remaining amount of Rs. 19,04,322/- is allowable in Cenvat Account." Thereafter, in the operative portion of the order the entire amount has been, accordingly, sanctioned. In other orders also, the original authority has recorded and ordered on the same lines. Thus, it is evident that the original authority has found the rebate claim of entire amount to be admissible and has sanctioned the same accordingly. Therefore, the extracted findings of Commissioner (Appeals) are incorrect and, consequently, the decision taken by him based on such incorrect findings is also incorrect.

5.3 On merits, indubitably the duty was paid in excess of that ought to have been paid. The excess amount paid, i.e., the difference between the duty paid on CIF value basis and the duty correctly payable on FOB value basis, has to be held to be in nature of deposit, which cannot be withheld without authority of law, and therefore, it's re-credit in the CENVAT credit account is legitimate. [Ref. Garden Silk Mills Ltd. vs. UOI {2018 (11) GSTL 272 (Guj.)}, Balkrishna Industries Ltd. {2011 (271) ELT 148 (GOI)}]. Further, the Hon'ble Gujarat High Court has, in the case of Thermax Ltd. vs. UOI {2019 (31) GSTL 60 (Guj.)}, after examining the provisions of Section 142(3)ibid, held as under:

"10. It is thus eminently clear from the aforesaid observations made in the impugned order that the duty, which was paid by the petitioner, which was otherwise not payable on the exported goods and therefore, rebate of such duty was not admissible in terms of Rule 18 of the Central Excise Rules. However, the duty, which was paid by the petitioner is held to be treated as voluntary deposit. As per Section 142(3) of the GST Act, every claim for the refund filed by any person before, on or after the appointed day i.e. 1-7-2017 for refund of any amount of Cenvat credit, duty, tax, interest or any other amount paid under the existing law, should be disposed of in accordance with the provisions of existing law and any amount eventually accruing to such person should be paid in cash. We are of the considered opinion that in view of this clear provision, the Respondent No. 2 ought to have directed the sanctioning Authority to refund the amount of duty refundable to the petitioner in cash instead of credit in Cenvat Account."

As such, even if the rebate claims are held to be not admissible to the extent of excess duty paid, the re-credit of such amounts in the CENVAT Credit account and, consequent, payment in cash cannot be faulted.

6. In view of the above, impugned OIA is set aside and the Revision Applications are allowed.



(Sandeep Prakash)

Additional Secretary to the Government of India

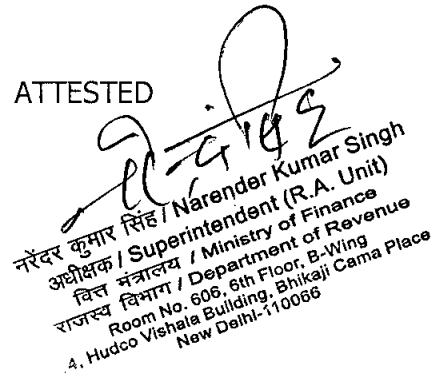
M/s Indo MIM Pvt. Ltd,
No.43,44,45(P),KIADB Industrial Area,
Dodballapur, Bangalore-562103.

G.O.I. Order No. 22-25/23-CX dated 05-01-2023

Copy to:

1. The Principal Commissioner of CGST, Bengaluru (North), No.59, HMT Bhavan , Bellary Road, Bengaluru-560032.
2. The Commissioner of CGST (Appeals-II), Bengaluru Traffic & Transit Management Centre, BMTC Bus Stand, HAL Airport Road, Domaluru, Bengaluru-560071.
3. Sh. Ramesh Ananthan, Advocate, 586, 44th Cross, Jayanagar 8th block, Bangalore-560070.
4. PS to AS (RA).
5. Notice Board.
6. Guard File.
7. ✓ Spare Copy

ATTESTED



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