

SPEED POST



F.No. 195/02/2022-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. 30/6/22

Order No. 23/2022-CX dated 30-6-2022 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 Application filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. NOI/EXCUS-002-APP-725-2021-22 dated 18.10.2021 passed by the Commissioner, CGST (Appeals), Noida.

Applicant : M/s Agtec Industries Pvt. Ltd., Greater Noida

Respondent : The Commissioner of CGST, Gautam Budh Nagar.

ORDER

A revision application no. 195/02/2022-R.A. dated 27.01.2022 has been filed by M/s Agtech Industries Pvt. Ltd., Greater Noida (hereinafter referred to as the Applicant) against the Order-in-Appeal no. NOI/EXCUS-002-APP-725-2021-22 dated 18.10.2021 passed by the Commissioner (Appeals), CGST, Noida. The Commissioner (Appeals), vide the impugned Order-in-Appeal, has upheld the Order-in-Original No. 03-ADC/G.B. Nagar/2020-21 dated 23.06.2020, passed by the Additional Commissioner of CGST and Central Excise, Gautam Budh Nagar.

2. Briefly stated, the Applicants herein are engaged in manufacture of Log Splitters and parts thereof. During the relevant period, the Applicants used to classify the said goods, under sub heading No. 82019000 & 84369900 of the First Schedule to the Central Excise Tariff Act, 1985. The said product was described as "Timber wedge, Log Splitter and other tools of a kind used in forestry" by the Applicants in their records and export documents. The Applicants were also availing CENVAT credit facility under the CENVAT Credit Rules, 2004 and exporting the said product on payment of duty under claim of rebate as per Rule 18 of the Central Excise Rules, 2002, utilising such credit availed by them. During the period July 2015 to July 2016, the rebate claims, totally amounting to Rs. 54,58,338/-, were sanctioned to the Applicants, in respect of the Central Excise Duty so paid on the goods exported. Subsequently, the department observed that the goods described as "Timber wedge, Log Splitter and other tools of a kind used in forestry" are being classified under sub heading No. 82019000 or 84369900 of the Central Excise Tariff in the export documents, which attract NIL rate of duty and are, therefore, exempted from payment of duty. As such, no duty was payable on the export of the said goods (being exempted goods) and, consequently, no rebate was admissible. Therefore, a show cause notice dated 22.12.2016 was issued to the Applicants proposing recovery of the said amount of Rs. 54,58,338/- being erroneously refunded. The amount so demanded was confirmed by the original authority, vide the aforesaid Order-in-Original dated 31.08.2020, by observing

that the issue involved had been settled by the Commissioner (Appeals), Noida vide Order-in-Appeal No. NOI-EXCUS-001-APP-924-942-19-20 dated 09.09.2019. Aggrieved, the Applicants herein filed an appeal before the Commissioner (Appeals) who, following the aforesaid Order dated 09.09.2019 passed by his predecessor and the Government of India's Order No. 702-707/2018-CX dated 24.12.2018, rejected the appeal.

3. The Revision Application has been filed, mainly, on the grounds that the decision of the Commissioner (Appeals) is based on the sole proposition that since the Applicants themselves have classified the subject goods under sub-heading No. 82019000 - 84369900 of the Central Excise Tariff, which attracts NIL rate of duty, therefore, no rebate was admissible to them; that the Commissioner (Appeals) has held that the export goods were self-assessed and by virtue of such self-assessment no claim rebate was available; that, the law is that actual classification as per Central Excise Tariff shall prevail and not the self-assessed and self-classification as made by the assessee; that the Applicants during the period under dispute had mistakenly classified their goods under sub-heading no. 82019000-84369900 instead of sub-heading no. 84669200 and 84659600; and that, therefore, the order of Commissioner (Appeals) cannot be sustained.

4. Personal hearing in the matter was fixed on 15.06.2022 and 29.06.2022. In the personal hearing held on 29.06.2022, in virtual mode, Shri Ram Awtar Singh, Advocate appeared for the Applicants and reiterated the contents of RA. He fairly admitted that the previous cases of the Applicants on the same issue have been decided against them by the Government, which have been challenged before the Hon'ble Allahabad High Court. Upon being asked, Shri Singh stated that no stay has been granted by the Hon'ble High Court till date. Shri Singh further stated that the judgment in the case of ITC Ltd. {2019(368) ELT 216(SC)} which has been relied upon by the Government to hold against them in the past is not applicable in Central Excise matters as held by the Tribunal in the case reported as 2021 (50) GSTL 205 (Tri-Ahmd.). Shri Singh also stated that he would

be filing additional submissions. No one appeared for the department nor any request for adjournment has been received. It is, therefore, presumed that the department has nothing to add in the matter. Additional submissions have been received from the Applicants by email dated 29.06.2022 after the hearing.

5. The Government has carefully examined the matter. The instant case relates to demand of erroneous refund of Central Excise duty, paid on export goods, which demand has been confirmed by the original authority by following the Order-in-Appeal No. NOI-EXCUS-001-APP-924-937-19-20 dated 09.09.2019 passed by the Commissioner (Appeals). The Commissioner (Appeals) in the impugned Order-in-Appeal has also followed the said order dated 09.09.2019 of his predecessor. The Government observes that this Order dated 09.09.2019 of the Commissioner (Appeals) has been upheld by the Government vide GOI Order no. 231-247/2021-CX dated 15.11.2021. Though, during the personal hearing, it has been stated that the Government's Order dated 15.11.2021 has been challenged before the Hon'ble Allahabad High Court, it has also been fairly admitted that the Hon'ble High Court has not granted any stay in the matter. Therefore, the Order dated 15.11.2021 holds the field and the present revision application is liable to be rejected on this ground itself.

6. However, it has been pointed out that the Government has relied upon the judgment of the Hon'ble Supreme Court in the case of ITC Ltd. Vs. CCE Kolkata-IV {2019(368) ELT 216(SC)} to decide the case against them, vide Order dated 15.11.2021. It is contended that the judgment of the Apex Court in ITC Ltd (supra) relates to self-assessment under Customs Act, 1962 and is not applicable to the Central Excise matters. A decision of the Tribunal in the case of Cadila Healthcare Ltd. Vs. Commissioner of Service Tax (Ahmedabad) {2021 (50) GSTL 205 (Tri - Ahmd.)} has been cited in support. The Government observes that in the case of ITC Ltd. (supra), the Hon'ble Supreme Court has held that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the

appropriate proceedings. No doubt, this judgment relates to self-assessment under Customs Act, 1962. However, the Government is not persuaded to accept the contention that ITC Ltd. (supra) has no application in Central Excise matters. It is observed that, in terms of Section 2(2) of the Customs Act, 1962, "assessment" includes provisional assessment, self-assessment, re-assessment and non-assessment in which the duty assessed is NIL. In the present case, the Applicants were, at the relevant time, operating under the Central Excise Rules, 2002 and have claimed the rebate accordingly under Rule 18 of the Rules ibid. As per Rule 2 (b) of the Central Excise Rules, 2002, ""assessment" includes self-assessment of duty made by the assessee and provisional assessment under rule 7;". Therefore, both under the Customs Act, 1962 and under the applicable Central Excise Rules, the self-assessment is also an assessment of duty and, there is no difference statutorily in respect of self-assessment under the Customs Act, 1962 and the Central Excise Rules, 2002. Further, the decision of the Tribunal in Cadila Healthcare Ltd. (supra) is related to assessment under Service Tax and there was no occasion therein for the Tribunal to consider the applicability of ITC Ltd. (supra) in respect of refunds/rebate under Central Excise Act/Rules.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s AGTECH Industries Pvt. Ltd.,
(Formerly, M/s ANG Automotive Components Pvt. Ltd.)
A-3/4, Kasna Site-5,
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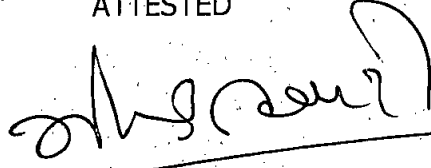
G.O.I. Order No. 23/21-CX dated 30-6-2021

Copy to: -

1. The Commissioner of CGST, Gautam Budh Nagar Commissionerate, 3rd Floor, Wegmans Business Park, K.P.-III, Greater Noida -201 306.

2. The Commissioner (Appeals), CGST & Central Excise, 4th Floor, C-56/42, Renu Tower, Noida-201 301.
3. Shri Ram Awatar Singh, Advocate, SE-149, Shastri Nagar, Ghaziabad – 201 002.
4. PS to AS (RA).
5. Guard File.
6. Spare Copy

ATTESTED



आशीष तिवारी / ASHISH TIWARI
सहायक आयुक्त / Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क
CGST, Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
नई दिल्ली / New Delhi