

SPEED POST



F.No. 195/01/2022-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 04/07/22

Order No. 24/2022-CX dated 4-7-2022 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. 131/Kol-South/2021 dated 06.10.2021 passed by the Commissioner, (Appeals)-I, CGST and Central Excise, Kolkata.

Applicant : M/s Landis + Gyr. Ltd., Kolkata.

Respondent : The Commissioner of CGST, Kolkata South, GST Bhawan, Kolkata.

ORDER

A revision application no. 195/01/2022-R.A. dated 12.01.2022 has been filed by M/s Landis + Gyr. Ltd., Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 131/Kol-South/2021 dated 06.10.2021 passed by the Commissioner, (Appeals)-I, CGST and Central Excise, Kolkata. The Commissioner (Appeals), vide the impugned Order-in-Appeal, has upheld the letter C.No. V(18)33/Rebate/Landis-Gyr./CGST/Joka/Kol-V/18-19/404 dated 21.01.2019 issued by the Assistant Commissioner, Joka CGST & Central Excise Division, Kolkata South Commissionerate.

2. Brief facts of the case are that the Applicants herein removed spare parts of single phase electrical Energy Meter for export, after paying central excise duty of Rs. 17,37,685/-. Subsequently, a claim for rebate of central excise duty paid was filed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E.(N.T.) dated 06.09.2016, on 26.09.2016. However, the Applicants herein requested the department, vide letter dated 28.12.2016, to hold the rebate application as some material was to get returned by the foreign party. Thereafter, vide letter No. C.No. V(18)40/Rebate/Landis Gyr/CE/Joka/Kol V/15/270 dated 06.03.2017, the department returned the rebate claim to the Applicant herein. Subsequently, based on payment received from the customer, the Applicant herein submitted a rebate claim for an amount of Rs. 3,80,076/-, on 08.05.2017. In the process, several communications have been exchanged between the Applicants and the Department, wherein, broadly, the Applicants asked the department to grant refund of excise duty already paid at the time of export or, alternatively, if the department was of the view that they could avail the same as GST credit instead of refund, then the same could be clarified by the department. The Assistant Commissioner of Joka Division, vide letter dated 21.01.2019 informed the Applicant that the export clearances were effected during July 2016 which is beyond the period of six months prior to the implementation of

GST on 01.07.2017 and, hence, the refund of central excise duty paid on the goods exported and returned subsequently shall not be admissible, in terms of Section 142(1) of CGST Act, 2017. It was also clarified that there was no transition provision enabling availment of the duty paid amount as GST credit instead of refund. Aggrieved by the letter dated 21.01.2019, the Applicant herein preferred appeal before the Commissioner (Appeals). In the appellate proceedings, the Commissioner (Appeals) observed that out of the total amount of duty paid, i.e. Rs. 17,37,685/-, a refund claim of Rs. 3,80,076 had been filed on 18.05.2017 and the unclaimed portion of the rebate of duty was Rs. 13,57,609/-. Thereafter, upon examination of the provisions made in Sections 142 & 174 of the CGST Act, the Commissioner (Appeals) upheld the letter dated 21.01.2019.

3. The Revision Application has been filed, mainly, on the grounds that the returned goods shall be cleared after reprocessing upon payment of GST, and therefore, the balance Central Excise Duty paid i.e. Rs. 13.16,608/- should be allowed as rebate; and that the provisions of Section 142(1) of the CGST Act, 2017 are not applicable, rather it is a case of claim under sub-section (3) thereof. The respondent department, vide letter no. C.No. V(30)11559/Misc Corres/T&R/KS/2018-19/15349 dated 17.03.2022 stated that the department has nothing fresh to add in the matter.

4. Personal hearing, in virtual mode, was held on 29.06.2022. Shri Pratik Shah, CA appeared for the Applicant and requested that the Written Submissions dated 29.06.2022 may be taken on record. He reiterated the contents of the RA and Written Submission dated 29.06.2022. Upon being asked, Shri Shah stated that the return of the rebate claim by the department in March, 2017 has not been challenged by them in any proceedings nor has any fresh claim been filed thereafter. Shri Inderveer Singh, DC appeared for the department and stated that, as on date, no claim is filed or pending in the matter. He supported the order of Commissioner (Appeals).

5.1 The Government has carefully examined the matter. The admitted facts are that the rebate claim for the total amount of excise duty paid, i.e., Rs. 17,37,685/-, which was originally filed on 26.09.2016, was returned by the department on 06.03.2017. The return of this claim has not been challenged in any proceedings by the Applicants and, therefore, the same has attained finality. Thereafter, based on the payments received from the foreign supplier, a rebate claim of Rs. 3,80,076/- was filed on 18.05.2017. Present dispute revolves around the rebate/refund of balance central excise duty paid, i.e., Rs. 13,57,608/-.

5.2 It is admitted in the personal hearing by the Applicants that no rebate or refund claim in respect of this amount of Rs. 13,57,608/- has ever been filed by them. However, it is the contention of the Applicants that the matter has been incorrectly decided by the lower authorities, by considering it to be covered under sub-section (1) of section 142 of the CGST Act, 2017, whereas sub-section (3) is correctly applicable in their case.

5.3 Sub-section (3) of Section 142 reads as under:

"Miscellaneous transitional provisions

142.....

(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) section 11B of the Central Excise Act: (1 of 1944).

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act. "

On a plain reading of the sub-section (3) of Section 142, it is evident that it relates to "every claim for refund filed" before, on or after the appointed day for refund of any amount of duty etc. paid under the existing law i.e. the Central Excise Act, 1994. In the present case, no claim has been filed for the amount of Rs. 13,57,608/- either before the appointed date, i.e., 01.07.2017 or thereafter. Therefore, the matter being covered under sub-section (3) of section 142 of the CGST Act does not arise. In this light, the Government does not find any merit in the revision application.

L. Revision
of
CGST

7. The revision application is, accordingly, rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Landis + Gyr. Ltd.,
Diamond Harbour Road,
Joka, Kolkata – 700104.

G.O.I. Order No. 24 /22-CX dated 4-7-2022

Copy to: -

1. The Commissioner of CGST, Kolkata South, GST Bhawan, 180, Shanti Pally R.B. Connector, Kolkata-700107.
2. The Commissioner (Appeals)-I, GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata - 700107.
3. PS to AS (RA).
4. Guard File.
5. Spare Copy

ATTESTED



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