

SPEED POST



F.No. 198/09/2019-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: 17/12/21

Order No. 261/21-Cx dated 17-12-2021 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. 312-313/HAL/CE/2018-19 dated 08.03.2019, passed by the Commissioner (Appeals-II), CGST & Central Excise, Kolkata.

Applicant : The Commissioner of CGST & Central Excise, Haldia.

Respondent : M/s Bharat Petroleum Corporation Ltd., Haldia.

ORDER

A Revision Application No. 198/09/2019-RA dated 02.07.2019 has been filed by the Commissioner, CGST & Central Excise, Haldia (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 312-313/HAL/CE/2018-19 dated 08.03.2019, passed by the Commissioner (Appeals-II), CGST & Central Excise, Kolkata. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Orders-in-Original Nos. R-01/Tech/Rebate/Hal-I/2018-19 dated 10.04.2018 and R-02/Tech/Rebate/Hal-I/2018-19 dated 10.04.2018, passed by the Assistant Commissioner of CGST & Central Excise, Haldia-I Division.

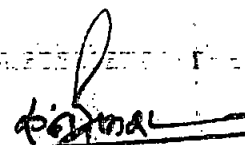
2. Briefly stated, M/s Bharat Petroleum Corporation Ltd., Haldia (hereinafter referred to as the Respondent) had submitted two rebate claims, amounting to Rs. 61,03,949/- and Rs. 11,78,485/-, in respect of Furnace Oil exported to Nepal, in terms of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004. The original authority sanctioned the rebate claims, vide aforesaid Orders-in-Original dated 10.04.2018. However, the department reviewed the aforesaid Orders-in-Original and filed appeals on the grounds that the original authority had, while granting rebate claims, not considered whether the sales proceeds in respect of export goods had been realized within the period prescribed since no collateral copies of Bank Statement or BRC had been submitted by the Respondent. The Commissioner (Appeals) rejected the appeals filed by the Applicant, vide the impugned Order-in-Appeal.

3. The revision application has been filed, mainly, on the grounds that BRC is one of the vital documents to monitor the realization of the export proceeds having a direct link with eligibility for rebate under Notification No. 19/2004-CE (NT) dated 06.09.2004; and that upon a harmonious reading of Rule 18 read with Notification No. 19/2004-CE (NT) and the relevant provisions of FEMA, Foreign Trade Policy and RBI guidelines, it may be inferred that exporter is entitled for rebate only if export realization is received.

4. Personal hearing was fixed on 10.11.2021, 01.12.2021 & 17.12.2021. No one appeared for the Applicant department nor any request for adjournment has been received. Sh. Jitendra Kumar, DGM appeared for the Respondent and filed written submissions which have been taken on record. He supported the Order of Commissioner (Appeals). Since sufficient opportunities have been granted to the Applicant department, the matter is taken up for disposal based on records.

5. The Government has carefully examined the matter. The only issue that is required to be determined for disposal of this revision application is whether realization of export proceeds and submission of proof thereof is a condition precedent for grant of rebate under Rule 18 ibid. The Government finds that there is no such requirement prescribed under Rule 18 and no such condition is specified under Notification No. 19/2004-CE (NT). Therefore, the Government finds that the Commissioner (Appeals) has correctly rejected the appeals, relying upon the judgment of the Hon'ble Allahabad High Court in the case of Jubilant Life Sciences Ltd. vs. Union of India {2016 (341) ELT 44 (All.)} and that of the Government in Salasar Techno Engineering Pvt. Ltd. {2018 (364) ELT 1143 (GOI)}. In any case, it has been verified by the lower authorities that the export proceeds had actually been realized. As such, there is no merit in the instant revision application.

6. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner, CGST & CX,
Haldia Commissionerate, M.S. Building,
5th & 7th Floor, 15/1, Strand Road, Kolkata – 700 001.

Order No: 261/21-Cx dated 17-12-2021

Copy to:

1. M/s Bharat Petroleum Corporation Ltd., Haldia Coastal Installation, Patikhali, Haldia – 721 602.

2. The Commissioner (Appeals-II), CGST & Central Excise, Kolkata, Bamboo Villa, 3rd Floor, 169, A.J.C. Bose Road, Kolkata – 700 014.
3. PA to AS(RA).
4. Guard File.
5. Spare Copy.

ATTESTED

G. Bhatia
17/12/2021
GULSHAN BHATIA
Superintendent