

REGISTERED
SPEED POST



F.No. 198/476-497/2011-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. 20/12/21

ORDER NO. 263-284/21-CX DATED 20-12-2021 OF THE GOVERNMENT OF INDIA PASSED BY SH. SANDEEP PRAKASH, 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. 121-142/CE/LDH/2011 DATED 29.04.2011, PASSED BY THE COMMISSIONER (APPEALS), CENTRAL EXCISE, CHANDIGARH.

APPLICANT : THE COMMISSIONER, CGST & CENTRAL EXCISE, LUDHIANA.

RESPONDENT : AS MENTIONED IN COLUMN NO. 2 OF THE TABLE BELOW.

ORDER

22 revision applications bearing nos. 198/476-497/2011-RA, all dated 11.08.2011, have been filed by the Commissioner, Central Excise, Ludhiana (hereinafter referred to as the Applicant) against Orders-in-Appeal Nos.121-142/CE/LDH/2011 dated 29.04.2011 passed by the Commissioner (Appeals), Central Excise, Chandigarh, vide which the appeals filed by the Respondents (as mentioned in column no. 2 of the table below) against Orders-in-Original, listed in column no. 3 of the table given below, passed by Additional Commissioner of Central Excise, Ludhiana, confirming therein, recovery of rebate amount with penalties (as mentioned in column no. 4 and 5 of the table), have been allowed.

TABLE

SI.No./ G.O.I Order No.	Name of the Respondent	Order-in-Original No. & Date	Rebate amount ordered to be recovered (Rs.)	Penalty imposed (Rs.)
(1)	(2)	(3)	(4)	(5)
1/1782/10- CX	M/s Nandan Autotech Ltd., Kanganwal Road, Ludhiana	52- 53/CE/ADC/LDH/2006 29.12.2006	-	1,81,44,772/-
2/1783/10- CX	-do-	48- 49/CE/ADC/LDH/2006 26.12.2006	-	68,50,211/-
3/1784/10- CX	-do-	6/CE/ADC/LDH/2007 10.01.07	-	45,85,456/-
4/1785/10- CX	-do-	3/CE/ADC/LDH/2007 10.01.2007	-	23,22,308/-
5/1786/10- CX	-do-	1/CE/ADC/LDH/2007 10.01.2007	-	49,66,929/-
6/1787/10- CX	-do-	8/CE/ADC/LDH/2007 10.01.2007	-	1,31,94,578/-
7/1788/10- CX	-do-	2/CE/ADC/LDH/2007 10.01.2007	-	1,26,17,219/-
8/1789/10- CX	-do-	4/CE/ADC/LDH/2007 10.01.2007	-	1,69,58,617/-
9/1790/10- CX	-do-	5/CE/ADC/LDH/2007 10.01.2007	-	84,48,023/-

10/1791/10-CX	-do-	19/CE/ADC/LDH/2007 10.01.2007	-	17,87,427/-
11/1792/10-CX	-do-	7/CE/ADC/LDH/2007 10.01.2007	-	17,38,188/-
12/1793/10-CX	M/s National Steel Products Co., 108-R, Industrial Area-B, Ludhiana	48- 49/CE/ADC/LDH/2006 26.12.2006	68,50,211/-	68,50,211/-
13/1794/10-CX	M/s Buildex Metals, 108-R, Industrial Area-B, Ludhiana	52- 53/CE/ADC/LDH/2006 29.12.2006	1,81,44,772/-	1,81,44,772/-
14/1795/10-CX	M/s Vikrant Overseas, 108-R, Industrial Area-B, Ludhiana	3/CE/ADC/LDH/2007 10.01.2007	23,22,308/-	23,22,308/-
15/1796/10-CX	M/s International Engineers, 108-R, Industrial Area-B, Ludhiana	8/CE/ADC/LDH/2007 10.01.2007	1,31,94,578/-	1,31,94,578/-
16/1797/10-CX	M/s Tech Industrial Corpn., 108-R, Industrial Area-B, Ludhiana	6/CE/ADC/LDH/2007 10.01.2007	45,85,456/-	45,85,456/-
17/1798/10-CX	M/s Kartik Overseas Ltd., 108-R, Industrial Area-B, Ludhiana	1/CE/ADC/LDH/2007 10.01.2007	49,66,929/-	49,66,929/-
18/1799/10-CX	M/s Bhagwati Components Mfg. Co., 108-R, Industrial Area-B,	5/CE/ADC/LDH/2007 10.01.2007	84,48,023/-	84,48,023/-

	Ludhiana			
19/1800/10-CX	M/s Sunrise International, 108-R, Industrial Area-B, Ludhiana	2/CE/ADC/LDH/2007 10.01.2007	1,26,17,219/-	1,26,17,219/-
20/1801/10-CX	M/s Brightwell Enterprises, 108-R, Industrial Area-B, Ludhiana	4/CE/ADC/LDH/2007 10.01.2007	1,69,58,617/-	1,69,58,617/-
21/1802/10-CX	M/s SRG Forge Overseas Ltd., 108-R, Industrial Area-B, Ludhiana	19/CE/ADC/LDH/2007 25.01.2007	17,87,427/-	17,87,427/-
22/1803/10-CX	M/s Shree Durga Impex, 108-R, Industrial Area-B, Ludhiana	7/CE/ADC/LDH/2007 10.01.2007	17,38,188/-	17,38,188/-

2.1 Brief facts of the case are that other Respondents exported goods which were manufactured by the first Respondent, M/s Nandan Autotech Ltd., Ludhiana. The manufacturer had removed those goods on payment of duty and the exporters, after exporting the goods, had filed rebate claims with the Central Excise Department at Ludhiana which were sanctioned, from time to time, in favour of the Respondents. In addition, the exporters had also availed the benefits of DEPB Scheme.

2.2 The DRI, Delhi Zonal Unit, during investigation of the case pertaining to the said exports by the Respondents, found that the exports were not genuine as the goods shown in the export documents, i.e., Alloy Steel Forgings (machined) were not actually exported. Diversion of exported goods to other countries and their over valuation was also alleged. Based on investigations, DRI issued show cause notices to the exporters for denial of DEPB Credits which were decided by the Commissioner of Customs, New Delhi. As a sequel to the DRI Investigations,

show cause notices were also issued by the Additional Commissioner, Central Excise Commissionerate, Ludhiana for recovery of the rebate claims which were claimed fraudulently by the Respondents and sanctioned by the department. The Additional Commissioner, vide the abovesaid Orders-in-Original, ordered the recovery of such rebate claims and also imposed penalties. Aggrieved, the Respondents herein filed their respective appeals before the Commissioner (Appeals), who, rejected all the appeals, vide Orders-in-Appeal No. 232-253/CE/LDH/2008 dated 19.08.2008. Revision Applications were filed by the Respondents before the Government against these Orders-in-Appeal dated 19.08.2008. The Government, vide GOI Order No.1782-1803/10-CX dated 24.12.2010, remanded the cases to the Commissioner (Appeals) with a direction to decide the case afresh after taking into account the observations made in Para 14,15 and 16 of the said Order. Paras 14,15 and 16 of the GOI order are reproduced below:

"14. Customs case regarding overvaluation of export goods and availment of higher DEPB Benefits now pending before Hon'ble CESTAT. The revaluation of seized goods conducted on the directions of Tribunal by Cost Accountant appointed by Chief Commissioner, Central Excise & Customs, Chandigarh @ Rs. 117/- per kg on record. Since the applicant's appeal is pending before CESTAT, the issue has not attained finality.

15. The CBI closure report with respect to impugned exports, has concluded that the charges leveled against all the accused are not proved. The exports of said goods were made and the foreign remittances of export proceeds were received through banking channels. The applicants have also relied upon two orders-in-original Nos. passed by the Commissioner Central Excise, Ludhiana as stated in para 3.12 above, where in it was held that the Unit M/s Nandan Autotech Manufactured alloy steel forgings which were exported by exported firms. Applicants have also pointed out that the cross examination of departmental officers as explained in para 3.13 also confirmed the said fact and Government observes that Commissioner (Appeals), has not taken into account the findings of CBI closure report, the cross examination of department officers and findings of Orders-in-Original of Commissioner Central Excise, Ludhiana and did not given any finding on these pleadings in this order. Moreover, the Custom case regarding overvaluation of export goods for availing higher DEPB benefits is still pending before CESTAT and ratio of its decision will be directly applicable to the impugned rebate claim cases. Commissioner (Appeals) ought to also have taken into account all the above points reports/documents while deciding the case.

16. *Further equity of law demands that the contentions and pleadings of the applicant parties who are the charged/offenders herein should be given due considerations and the conclusive stage should not be finalized in an undue haste. The applicants here in have specifically made submissions to consider the accepted/established reports and conclusion of some of the statutory authorities as on record in this case for consideration and in-corporation in the ongoing case proceedings, such as initial report of analysis from CRCL, Valuation of Cost as R.117/- per kg. by Cost Accountant under the directions of CESTAT and detailed observations as made by CBI in its enquiry closure report."*

The Commissioner (Appeals), vide the impugned Order-in-Appeal dated 29.04.2011, proceeded to decide the case in favour of the Respondents on the ground that nothing adverse has come out against the Respondents in the investigations and that DEPB credit is independent of the rebate issue.

3. The instant revision applications have been filed by the department, mainly, on the ground that the Commissioner (Appeals) should have kept the matter pending till decision by CESTAT in the case regarding higher DEPB benefits, as per the directions of GOI vide Order dated 24.12.2010. Reply has been filed by the Respondents herein on 25.02.2013.

4. Personal hearing was held on 15.12.2021. Sh Basant Kumar, DC, appeared on behalf of the Applicant, in virtual mode, and reiterated the contents of the revision applications. Sh. Kamaljeet Singh, Advocate, appeared for the Respondents and filed a written submission dated 15.12.2021, which was taken on record. Upon being asked, Sh. Singh, in all fairness, admitted that Commissioner (Appeals) has passed the impugned Order without following para 14 of the GOI's earlier order in the matter and hence the matter could be remanded to Commissioner (Appeals) for a decision after taking into account decision in the DEPB matter.

5. The Government has carefully examined the matter. The present case originates out of the investigations carried out by the DRI in respect of the exports made by the Respondent exporters of the goods manufactured by the first Respondent. Pursuant to the investigations, the DRI issued show cause Notices

seeking to deny DEPB benefits and initiating penal action against the Respondents, inter-alia, on the grounds that the goods exported were not alloy steel forging (machined); that the goods though shown to be consigned to several destinations were actually diverted to Dubai; that the foreign buyers were non-existent; that two sets of invoices and packing lists were prepared; and that the goods were heavily overvalued. The outcome and findings of these investigations have been relied upon to issue show cause notices, involved in the subject revision applications, to recover the rebate already sanctioned and for penal action. It is in this background that the Government had earlier remanded the matter to the Commissioner (Appeals) for decision afresh, inter-alia, keeping in view the outcome of the DEPB case, which was then pending before CESTAT. However, the Commissioner (Appeals) has passed the impugned Orders-in-Appeal without doing so. It is true that rebate of duty is different from the case of wrong availment of DEPB credit. However, as brought out earlier, both the cases hinge upon the revelations made in the DRI investigations. Therefore, findings in facts in the DEPB case, though not binding, would be of persuasive value in the present case as well. It appears that the DEPB case is, presently, pending before the original authority for de-novo adjudication, pursuant to the Final Order No. C/A/54167-54234/2017-CU[DB] dated 20.06.2017 of CESTAT. In these facts and circumstances, the Government considers it appropriate to remand the case to Commissioner (Appeals) with a direction to decide it afresh after the DEPB matter is decided de-novo by the original authority.

6. The revision applications are allowed by way of remand to the Commissioner (Appeals), with directions, as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of CGST & CE, Ludhiana,
CGST House, "F" Block, Rishi Nagar,
Ludhiana – 141 001.

Order No. 198/476-497/21-Cx dated 20.06.2021

Copy to:

1. M/s Nandan Autotech Ltd. & Others, Kanganwal Road, Ludhiana, Punjab – 141 017.
2. M/s National Steel Products Co., 108-R, Industrial Area-B, Ludhiana-141 003.
3. M/s Building Metals, 108-R, Industrial Area-B, Ludhiana-141 003.
4. M/s Buildex Metals, 108-R, Industrial Area-B, Ludhiana-141 003.
5. M/s Vikrant Overseas, 108-R, Industrial Area-B, Ludhiana-141 003.
6. M/s International Engineers 108-R, Industrial Area-B, Ludhiana-141 003.
7. M/s Tech Industrial Corpn., 108-R, Industrial Area-B, Ludhiana-141 003.
8. M/s Kartik Overseas Ltd., 108-R, Industrial Area-B, Ludhiana-141 003.
9. M/s Bhagwati Components Mfg. Co., 108-R, Industrial Area-B, Ludhiana-141 003.
10. M/s Sunrise International, 108-R, Industrial Area-B, Ludhiana-141 003.
11. M/s Brightwell Enterprises, 108-R, Industrial Area-B, Ludhiana-141 003.
12. M/s SRG Forge Overseas Ltd., 108-R, Industrial Area-B, Ludhiana-141 003.
13. M/s Shree Durga Impex, 108-R, Industrial Area-B, Ludhiana-141 003.
14. The Commissioner (Appeals), CGST, Chandigarh-II, Plot No. 19, Sector-17-C, Chandigarh – 160 017.
15. Sh. Kamaljeet Singh, Anuranjana K. Singh, J-144, Patel Nagar-I, Opp. Roadways Bus Stand, Ghaziabad, Uttar Pradesh – 201 002.
16. PA to AS(RA).
17. ~~Guard File.~~
18. Spare Copy.

ATTESTED



(लक्ष्मी राघवन)
(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