

SPEED POST



F.No. 195/01/2021-R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHICAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 28/12/21.....

Order No. 289/ 2021-CX dated 28-12-2021 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 Orders-in-Appeal No. 27/CEX/RKL-GST/2020 dated 16.12.2020 passed by the Commissioner (Appeals), CGST, CE & Customs, Bhubaneswar.

Applicants : M/s B & A Packaging India Ltd., Balasore, Odisha.

Respondent : Commissioner of CGST & CE, Bhubaneswar, Odisha.

ORDER

A revision application no. 195/01/2021-RA dated 09.03.2021 has been filed by M/s B & A Packaging India Ltd., Balasore, Odisha (hereinafter referred to as the Applicants) against Order-in-Appeal no. 27/CEX/RKL-GST/2020 dated 16.12.2020 passed by the Commissioner (Appeals), CGST, CE & Customs, Bhubaneswar, wherein the appeal filed by the Applicants against Order-in-Original No. AC/CE/BLS/30/2018 dated 31.05.2018, passed by the Assistant Commissioner, CGST & CE, Balasore Division, has been rejected.

2. Brief facts of the case are that the Applicants cleared 6.665 MTs of Multiwall Paper Sacks from their factory, vide ARE-1 No. 04 dated 09.07.2011 on payment of central excise duty of Rs. 1,08,562/- to Dahej SEZ, Gujarat. Subsequently, they filed a rebate claim of the said amount before the Assistant Commissioner of CGST & CE, Balasore Division, which was sanctioned vide OIO No. AC/CE/BLS/38/2012 dated 03.12.2012. The said OIO was set aside by the Commissioner (Appeals) vide OIA No. 87/CE/B-I/2016 dated 27.10.2016. Consequently, OIO dated 31.05.2018 was passed by the original authority, confirming the demand of recovery of the sanctioned rebate amount. Aggrieved, the Applicants filed an appeal before the Commissioner (Appeals), who, vide the impugned OIA, rejected the appeal on the ground that the OIA No. 87/CE/B-I/2016 dated 27.10.2016 had not been appealed against and had attained finality.

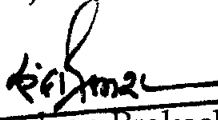
3. The instant revision application has been filed, mainly, on the grounds that the Commissioner (Appeals) had earlier wrongly allowed the department's appeal against the rebate sanctioned to them; that the earlier order was passed ex-parte and was incorrect on merits as well; and that the Commissioner (Appeals) has, therefore, incorrectly followed the earlier OIA dated 03.12.2012.

4. Personal hearing was held on 27.12.2021, in virtual mode. Sh. Partha Mukherjee, Group GM, appeared for the Applicants and requested that Written Submissions filed on 24.12.2021 vide email may be taken on record. He reiterated the contents of the RA and the Written Submissions. No one appeared for the Respondent department and no request for adjournment has also been received. Hence, the matter is taken up for decision on the basis of records available.

5. The Government has carefully examined the matter. It is observed that the order sanctioning the rebate has been set aside by the Commissioner (Appeals), vide the OIA dated 27.10.2016 and the matter has attained finality as no appeal was filed by the Applicants against the said OIA. Thus, it stands settled that the rebate claims were sanctioned erroneously. The Government observes that the Hon'ble Supreme Court, in the case of ITC Ltd. Vs Commissioner of Central Excise, Kolkata-IV [2019 (368) ELT 216 (SC)], while considering the question whether in the absence of any challenge to the order of assessment in appeal, any refund application against the assessed duty can be entertained 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 and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act."* While arriving at this conclusion, the Apex Court also noticed the provisions of Section 28 of the Customs Act, 1962, dealing with the recovery of duty not levied or not paid or short levied or short paid or erroneously refunded. In the case of Tripura Ispat Vs. UOI & Others [2021-TIOL-146-HC-Tripura-CX], the matter before the Hon'ble High Court of Tripura was that Tripura Ispat, the petitioner, was issued a show cause notice by the department for recovery of amount of Rs. 53,06,055/- refunded to them as erroneous refund under Section 11A of the Central Excise Act, 1944 along with interest. The Hon'ble High Court observed that *"If the department was aggrieved by the refund order*

passed by the Assistant Commissioner, it was open for the department to file appeal against such order as is provided in Section 35 of the Central Excise Act, 1944." and in absence of such appeal having been filed, proceeded to hold that "[15] Section 11A of the Central Excise Act does not authorize the Assistant Commissioner to revise or review his own order. In the show cause notice effectively what he proposes to do is revise and recall his own order on the ground that the law that he applied when he passed order of refund, has since been changed. This in our opinion is wholly impermissible". The show cause notice issued by the department was, therefore, quashed by the Hon'ble High Court. In the present case, the department, being aggrieved by the rebate order, challenged the same under Section 35 and after succeeding in appeal, proceeded to confirm the demand under Section 11A *ibid*. As such, following the ratio of ITC Ltd. (*supra*) and Tripura Ispat (*supra*), no infirmity can be ascribed to the impugned OIA.

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


 (Sandeep Prakash)

Additional Secretary to the Government of India

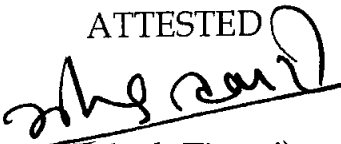
M/s B & A Packaging India Pvt. Ltd.,
 22, Balgopalpur Industrial Area,
 Balasore-756 012 (Odisha)

G.O.I. Order No. 289/21-CX dated 28-12-2021

Copy to: -

1. The Commissioner of CGST & CE, Bhubaneswar.
2. Commissioner (Appeals), Bhubaneswar.
4. P.S. to A.S. (Revision Application).
5. Guard File.

6. Spare Copy.

ATTESTED

 (Ashish Tiwari)

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