

SPEED POST



F. No. 195/198/SZ/2017-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 31.1.23

Order No. 33 / 2023-CX dated 31.1.2023 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. 43/2017-CE AU-I dated 08.02.2017, passed by the Commissioner of Central Excise (Appeals-I), Bengaluru.

Applicant : M/s Molex (India) Pvt. Ltd., Bengaluru.

Respondent : The Pr. Commissioner of CGST & Central Excise, Bengaluru East.

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ORDER

A Revision Application No. 195/198/SZ/2017-RA dated 17.05.2017 has been filed by M/s Molex (India) Pvt. Ltd., Bengaluru (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 43/2017-CE AU-I dated 08.02.2017, passed by the Commissioner of Central Excise (Appeals-I), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, set aside the Order-in-Original No. 70/2011 (R) dated 27.05.2011, passed by the Assistant Commissioner of Central Excise, then Bengaluru-IV Division, to the extent it sanctioned the rebate of Rs. 10,60,098/- by way of re-credit into the CENVAT credit account.

2. Brief facts of the case are that the Applicants herein filed a rebate claim for an amount of Rs. 41,66,771/-, in respect of goods exported on payment of Central Excise duty, during the month of February, 2010. The rebate claim was sanctioned to the extent of Rs. 31,06,673/- in cash whereas balance amount of Rs. 10,60,098/- was allowed as credit in the CENVAT credit account, by the original authority. On an appeal filed by the Respondent department, the Commissioner (Appeals) set aside the sanction of the claim to the extent of Rs. 10,60,098/- by way of credit in the CENVAT credit account.

3. The Revision Application has been filed, mainly, on the grounds that the essential condition of export of goods has been satisfied and, therefore, the rebate cannot be rejected for procedural infirmities; that rebate claim cannot be rejected for non-submission of invoice, packing list, airway bill and shipping bill etc; and that the appeal filed by the department before the Commissioner (Appeals) was time barred.

4. Personal hearing in the matter was fixed on 21.12.2022, 11.01.2023 and 30.01.2023. No one appeared for either side on any of the dates fixed for hearing nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for disposal based on records.

5. The Government has carefully examined the matter. At the outset, it is observed that the instant revision application has been filed with a fee of Rs 200/-. In terms of sub-section (3) of Section 35EE of the Central Excise Act, 1944, a revision application "shall be accompanied by a fee" of Rs. 200/-, where amount of duty etc. involved is Rs. 1,00,000/- or less, and of Rs. 1000/- where amount of duty etc. is more than Rs. 1,00,000/-. Since in the present case, the amount involved is more than Rs. 1,00,000/-, RA fee of Rs. 1000/- should have been paid for this revision application to be maintainable. The Applicant herein was advised to pay the balance RA fee of Rs. 800/-, vide letters dated 18.05.2017, 05.12.2022, 28.12.2022 and 12.01.2023. However, the balance amount has not been paid. Since the payment of appropriate RA fee is mandatory for a revision application to be maintained, the instant revision is liable to be rejected on this ground alone.

6. Even on merits, it is observed that there is no denial that requisite documents were not furnished to the original authority. While it is indubitable that the substantive benefits like rebate cannot be denied for procedural infractions, it is settled that in case of such procedural infractions the Applicant is required to show substantial compliance. The order

of the original authority does not anywhere bring out that the Applicants herein, by producing other documents/evidence, established substantial compliance with the procedural requirements. Further, in a very cryptic Order, the original authority has also recorded that "in respect of DDU Shipment, the assessee is not eligible for cash rebate to the portion of the duty amount involved in the freight and insurance and the value on which the duty is paid is the section 4 value." No reasons are forthcoming for this finding. Therefore, the Commissioner (Appeals) has correctly observed that these findings are based on assumption and without verification of records. As such, the order of the original authority to the extent it sanctioned rebate of Rs. 10,60,098/- by way of re-credit in the CENVAT credit account could not have been sustained, as rightly held by the Commissioner (Appeals). Further, the issue of departmental appeal being allegedly time barred has been elaborately dealt with by the Commissioner (Appeals) in paras 6,7 & 8 of the OIA. The Government is in agreement with the findings of Commissioner (Appeals), on this count as well, for the reasons brought out by him in para 8 of the OIA.

7. The revision application is rejected for the aforesaid reasons.


(Sandeep Prakash)

Additional Secretary to the Government of India


M/s Molex (India) Pvt. Ltd.,
Plot No. 6(A), Sadarmangala,
Industrial Area, Kadugodi,
Bengaluru-560048.

G.O.I. Order No. 33 /23-CX dated 31 01 2023

Copy to:

1. The Pr. Commissioner of Central Goods & Service Tax, (EAST) Bengaluru TTMC BMTC Bus Stand Complex, Hal Airport Road, Domluru, Bengaluru-560071.
2. The Commissioner of Central Excise (Appeals-I), Traffic Transit Management Centre, BMTC Building, 4th Floor, Above BMTC Bust Stand, Domluru, Old Airport Road, Bengaluru-560071.
3. PA to AS (RA).
4. Guard file.
5. Spare Copy.
6. Notice Board.

ATTESTED


31.01.2023

(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