

SPEED POST



F. No. 195/208/2017-RA
F. No. 195/208-A/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. 03/02/23

Order No. 44-45/2023-CX dated 03-02-2023 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 Applications, filed under section 35 EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. HYD-EXCUS-003-APP-046-16-17 dated 22.02.2017 & HYD-EXCUS-003-APP-61-16-17 dated 27.03.2017, passed by the Commissioner of Central Excise (Appeals), Hyderabad.

Applicant : M/s Icomm Tele Ltd., Hyderabad.

Respondent : The Commissioner of CGST & Central Excise, Medchal.

ORDER

Revision Applications, bearing Nos. 195/208/2017-RA & 195/208-A/2017-RA both dated 22.05.2017, have been filed by M/s Icomm Tele Ltd., Rangareddy District, Hyderabad (hereinafter referred to as the Applicants) against the Orders-in-Appeal Nos. HYD-EXCUS-003-APP-61-16-17 dated 27.03.2017 & HYD-EXCUS-003-APP-046-16-17 dated 22.02.2017, respectively, passed by the Commissioner of Customs & Central Excise (Appeals), Hyderabad. The Commissioner (Appeals) has, vide the impugned Orders-in-Appeal, upheld the Order-in-Original No. 4/Adjn/2016 dated 29.01.2016, passed by the Assistant Commissioner of Central Excise, Uppal Division & Order-in-Original No. 14/2015-CE-Hyd-III-Adjn (ADC) dated 31.12.2015, passed by the Additional Commissioner of Customs, Central Excise & Service Tax of the then Hyderabad-III Commissionerate.

2. Briefly stated, the Applicants herein are manufacturer exporters of Transmission Lines Towers and Parts. They had filed rebate claims of Central Excise duty paid on goods exported, in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The claims were sanctioned by the original authority. However, subsequently it was observed that the necessary proof of inward remittance of export proceeds for full value of goods exported was not produced by the Applicants and, therefore, proportionate amount of rebate, i.e., the rebate proportionate to the export proceeds not realised was sought to be recovered from them. After following the principles of natural justice, the original authority, vide Order dated 29.01.2016, confirmed the demand of Rs. 2,10,153/- and, vide Order dated 31.12.2015, confirmed a total demand of Rs. 2,01,83,385/, as erroneous refund. The Appeals filed by the Applicants herein have been rejected by the Commissioner (Appeals).

3. The Revision Applications have been filed, mainly, on the grounds that neither Rule 18 nor the Notification No. 19/2004-CE(NT) prescribed that grant of rebate is based on the realisation of export proceeds; that, under Rule 19 of the Central Excise Rules, 2002, export of goods is permitted under Bond without reference to receipt of export proceeds; that, therefore, insistence on such realisation for the purpose of sanction of rebate under Rule 18 is inequitable; that the Government has, wherever required, specifically made the realisation of export proceeds mandatory as in the case of Drawback; that the reliance placed on Board's Circular No. 354/70/1997-CX dated 13.11.1997 is totally misplaced as the said Circular was issued with a view to reduce the delay in acceptance of proof of export; that the said Circular prescribes that TR copy should be construed as a proof of export but, if there is a delay, Mate Receipt or BRC can be furnished as alternate proof of export ; that therefore, insistence on BRC only as a proof of export is incorrect; and that the Hon'ble Allahabad High Court has, in the case of Polyplex Corporation Ltd. {2014 (306) ELT 24 (All.)}, held that denial of the rebate on the basis of Board's Circular dated

13.11.1997, which lays down certain conditions that are beyond statutory provisions under Notification No. 19/2004-CE(NT), is not proper.

4. Personal hearing in the matter was fixed on 14.01.2022, 11.01.2023 and 30.01.2023. In the personal hearing held, in virtual mode, on 31.01.2023, Sh. P. Sai Makrand, Advocate appeared for the Applicant and stated that NCLT, Hyderabad Bench has, vide Order dated 17.10.2019, approved the Resolution Plan for the company. He requested for time upto 01.02.2023 to make additional submissions on this basis. Sh. Makrand also reiterated the contents of the RA. No one appeared for the Respondent department on any of the dates fixed for hearing nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter. Subsequent to the hearing, the Applicants herein have filed a copy of the Final Order dated 17.10.2019, passed by the NCLT approving the Resolution Plan under IBC in respect of the Applicant Company. A copy of the Final Order No. 41761/2021 dated 23.08.2021, passed by the CESTAT, Chennai Bench has also been filed, wherein the CESTAT has in another case related to the Applicant herein has, after taking note of the NCLT order dated 17.10.2019, taken a view that the appeal before it did not survive.

5. The Government has carefully examined the matter. It is observed that the Applicant herein is under insolvency and Resolution Plan has been approved by the NCLT, vide Order dated 17.10.2019. The Applicants herein have, with reference to the NCLT's Order and view taken by CESTAT in their own case, suggested that the present Revision Applications would not survive. In this view of the matter and as the Applicants themselves are not interested in pursuing the case, the Revision Applications are disposed off, accordingly, without traversing the merits of the case.


(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Icomm Tele Ltd. 47-60,
Keesara Road, Nagaram, Ranga Reddy
District, Hyderabad,
Telangana-500083.

G.O.I. Order No. 44-45 /23-CX dated 03-02-2023

Copy to:

1. The Commissioner of Central Goods & Service Tax, Medchal, H. No. 11-4-649/B, Lakdi-KA Pool, Hyderabad-500004.
2. The Commissioner of Central Excise (Appeals), 7th Floor Kendriya Shulk Bhavan, Opp. L.B. Stadium, Basheerbagh, Hyderabad-500004.
3. M/s Swamy Associates, Flat No. 307, Block-B, Sri Land Mark, Street No. 8, Habsiguda, Hyderabad-500007.
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy.
7. Notice Board.

ATTESTED



03-02-2023

(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