

F. No. 195/230/SZ/2019-R.A.
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SPEED POST



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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...08/02/2023

Order No. 52-55/2023-CX dated 08-02-2023 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 No. 610 & 612 to 614/2018-CT dated 110.3.2019, passed by the Commissioner of Central Tax (Appeals-II), Bengaluru.

Applicant : M/s R.L. Fine Chem Pvt. Ltd., Bengaluru.

Respondent : The Pr. Commissioner of CGST & Central Excise, Bengaluru (North).

ORDER

Four Revision Applications, bearing Nos. 195/230-233/SZ/2019-RA all dated 17.06.2019, have been filed by M/s RL Fine Chem Pvt. Ltd., Bengaluru (hereinafter referred to as the Applicant) against the Orders-in-Appeal No. 610 & 612 to 614/2018-CT dated 11.03.2019, passed by the Commissioner of Central Tax (Appeals-II), Bengaluru. The Commissioner (Appeals) has, vide impugned Orders-in-Appeal, upheld the Orders-in-Original, passed by the Assistant Commissioner of Central Tax, ND-8 Division, Bengaluru, as tabulated in para 2 below.

2. Brief facts of the case are that the Applicants herein filed 04 rebate claims of central excise duty paid on final products, which were exported, in terms of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004. The goods were cleared for export on payment of duty using the CENVAT credit account. The original authority, after following the principles of natural justice, found that the Applicants had paid excess duty as the duty was paid on CIF value basis whereas it was required to be paid on FOB value basis, as per Section 4 of the Central Excise Act, 1944. Accordingly, the original authority allowed the rebate in cash proportionate to the amount of duty paid on the FOB value basis whereas balance amount was treated as lapsed in terms of proviso to Section 142(3) of the CGST Act, 2017. The appeals filed by the Applicants herein have been rejected by the Commissioner (Appeals). The details are tabulated as under:

S. No.	R.A. No. & date	O-I-O No. & date	Exports made during	Date of filing of rebate claim	Amount allowed as rebate in cash (in Rs.)	Amount held deemed to have lapsed as per OIO (in Rs.)
1.	195/230/SZ/2019 dated 17.06.2019	01/2018-19 (R) dated 16.04.2018	22.06.2017 to 30.06.2017	13.03.2018	13,83,748/-	1,35,372/-
2.	195/231/SZ/2019 dated 17.06.2019	50/2017-18 (R) dated 12.03.2018	26.05.2017 to 31.05.2017	22.01.2018	15,13,689/-	1,32,835/-
3.	195/232/SZ/2019 dated 17.06.2019	12/2018-19 (R) dated 26.06.2018	09.06.2017 to 30.06.2017	30.05.2018	12,19,043/-	71,524/-
4.	195/233/SZ/2019 dated 17.06.2019	51/2017-18 (R) dated 12.03.2018	30.06.2017 to 30.06.2017	23.01.2018	7,46,738/-	69,666/-

3. The Revision Applications have been filed, mainly, on the grounds that in the subject cases the original authority has relied on the Review Order C. No. IV/03/119/2017

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Rev BG North dated 30.08.2017, passed by the Commissioner of Central Tax, Bengaluru North, to deny the rebate of excess duty paid on the CIF value basis and held that excess duty paid had lapsed, which is not sustainable in law; that the disputed amount has been rejected on the basis of first proviso to Section 142(3) *ibid*, which is applicable only in the case of claim for refund of CENVAT credit which is not the case here; that the first proviso to Section 142(3) *ibid* would apply to the cases of refund of any unutilised CENVAT credit in terms of Rule 5 of the CENVAT Credit Rules, 2004 and not to the cases of rebate under Rule 18 *ibid*; that the amount paid in excess of duty liability cannot be treated as duty and it has to be treated as a voluntary deposit, which the Government is required to return in the manner it was paid; and that in view of the transitional provisions of Section 142(3) *ibid*, the excess amount has to be paid in cash.

4.1 Personal hearing in the matter was held, in virtual mode, on 18.01.2023. Sh. HR Vishwanath, Advocate appeared for the Applicants and submitted that RA Nos.195/157-166/SZ/2018-RA involving identical issue were also pending consideration. Therefore, he requested for all these cases to be clubbed for being heard together. In the hearing held on 06.02.2023, it was pointed out to the Applicants that the earlier RAs had been disposed off, vide the Government Order No. 146-155/2022-CX (SZ)/ASRA/Mumbai dated 08.02.2022, against the Applicants herein. Sh. HR Vishwanath, Advocate reiterated the contents of the RA and requested for time to make additional submissions which was granted. No one appeared for the personal hearing 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.

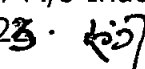
4.2 Additional submissions have been filed by the Applicants, by email, on 06.02.2023 wherein it is, *inter-alia*, submitted that the amount paid in excess is a deposit lying with the Government, which is required to be refunded in the same manner in which it was paid; that since there is no CENVAT credit account *w.e.f.* 01.07.2017 after the introduction of GST, instead of re-crediting to the CENVAT account of the Applicant, the balance has to be paid in cash itself as per the provisions of Section 142(3) *ibid*. Judgments in the cases of *Thermax Ltd. vs. Union of India* {2019 (31) GSTL 60 (HC-Guj.)}, and *Oswal Casting Pvt. Ltd. vs. CCE & ST* {2019 (24) GSTL 649 (Tri-Chan)} have been relied upon in support of the subject contentions.

5.1 The Government has carefully examined the case. The duties in the instant case were paid on CIF value basis and rebate was claimed. The original authority found that the duties were required to be paid on the transaction value *i.e.*, on FOB value basis in case of exports. He, accordingly, allowed the rebate of duties paid proportionate to duty payable on FOB value basis and held that the balance amount had lapsed, in terms of first proviso to Section 142(3) of the CGST Act, 2017. The Commissioner (Appeals) has upheld this position.

5.2 At the outset, it is observed that while holding so the original authority has relied upon the Review Order No. C. No. IV/03/119/2017 Rev BG North dated 30.08.2017, passed by the Commissioner of Central Tax, Bengaluru North which was issued under the provisions of Section 35E (2) of the Central Excise Act, 1944. It is evident from the orders of the original authority that there is no justification forthcoming in support of the view taken by him other than that it is in compliance with the aforesaid Review Order dated 30.08.2017, passed by the Commissioner in respect of some other assessee. Therefore, the orders of the original authority suffers from non-application of mind.

5.3 On merits, indubitably the duty was paid in excess of that ought to have been paid. The excess amount paid, i.e., the difference between the duty paid on CIF value basis and the duty correctly payable on FOB value basis, has to be held to be in nature of deposit, which cannot be withheld without authority of law, and therefore, it's re-credit in the CENVAT credit account would be legitimate. [Ref. Garden Silk Mills Ltd. vs. UOI {2018 (11) GSTL 272 (Guj.)}, Balkrishna Industries Ltd. {2011 (271) ELT 148 (GOI)}]. Further, the Hon'ble Gujarat High Court has, in the case of Thermax Ltd. vs. UOI (supra), after examining the provisions of Section 142(3) ibid, held as under:

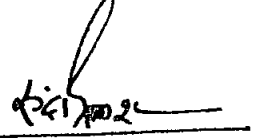
"10. It is thus eminently clear from the aforesaid observations made in the impugned order that the duty, which was paid by the petitioner, which was otherwise not payable on the exported goods and therefore, rebate of such duty was not admissible in terms of Rule 18 of the Central Excise Rules. However, the duty, which was paid by the petitioner is held to be treated as voluntary deposit. As per Section 142(3) of the GST Act, every claim for the refund filed by any person before, on or after the appointed day i.e. 1-7-2017 for refund of any amount of Cenvat credit, duty, tax, interest or any other amount paid under the existing law, should be disposed of in accordance with the provisions of existing law and any amount eventually accruing to such person should be paid in cash. We are of the considered opinion that in view of this clear provision, the Respondent No. 2 ought to have directed the sanctioning Authority to refund the amount of duty refundable to the petitioner in cash instead of credit in Cenvat Account."

As such, the plea for re-credit of rebate amounts found to be not admissible in the CENVAT Credit account and, consequent, payment in cash, on the basis of transitional provisions made in Section 142(3) ibid, cannot be faulted. The Government has taken an identical view in the case of M/s Indo MIM Pvt. Ltd., Bengaluru, vide GOI Order No. 22-25/2023-CX dated 05.01.2023. 

5.4 As already brought out hereinabove, the earlier Revision Application Nos. 195/157-166/SZ/2018-RA filed by the Applicants herein on the same issue have been decided against them by the revisionary authority at Mumbai, vide aforesaid Order dated 08.02.2022. The Government has perused the said Order dated 08.02.2022 and finds that the judgments of the Hon'ble Gujarat High Court in the cases of Garden Silk Mills Ltd (supra) and Thermax Ltd. (supra) had apparently not been brought to the notice of the revisionary authority at that stage.

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6. In view of the above, the revision applications are allowed with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s. R.L Fine Chem Pvt. Ltd.,
No.15, KHB Industrial Area, Yelahanka,
Bengaluru-560064

G.O.I. Order No. 52-55/23-CX dated 08-02-2023

Copy to: -

1. The Pr. Commissioner of Central Goods & Services Tax (North), No.59, HMT Bhavan, Bellary Road, Bengaluru-560032.
2. The Commissioner of Central Tax (Appeals-II), Bengaluru, Traffic & Transit Management Centre, BMTC Bus Stand, Domluru, HAL Airport Road, Bengaluru-560071.
3. Sh. M.S. Srinivasa, Advocate, No. 39/1, 2nd floor, Sannidhi Road, N R Colony, Basavanagudi, above SBI, Bengaluru-560004.
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy.
7. Notice Board.

ATTESTED



अश्वनी कुमार लौ / Ashwani Kumar Lau
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राजस्व विभाग / Department of Revenue
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