



F. No. 195/61/2016-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...12/10/22

Order No. 55/2022-CX dated 11-10-2022 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. 25/2016 (CXAI) dated 29.01.2016, passed by the Commissioner of Central Excise (Appeals-II), Chennai.

Applicant : M/s Cassel Research Laboratories Pvt. Ltd., Chennai.

Respondent : The Commissioner of CGST & Central Excise, Chennai Outer.

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ORDER

A Revision Application No. 195/61/2016-RA dated 02.05.2016 has been filed by M/s Cassel Research Laboratories Pvt. Ltd., Chennai (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 25/2016(CXAI) dated 29.01.2016, passed by the Commissioner of Central Excise (Appeals-II), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 128/2014(REBATE) dated 29.01.2015, passed by the Assistant Commissioner of Central Excise, Chrompet Division, Chennai.

2. Brief facts of the case are that the Applicant herein filed a rebate claim for Rs. 2,17,326/-, under Rule 18 of the Central Excise Rules, 2002, in respect of goods exported, during November, 2012 to January, 2013, against 18 ARE-1s. On scrutiny of the claim, it was noticed from the ARE-1s that the goods were exported under LUT without payment of duty. On clarification from the Range Officer, the Applicant herein stated that they have cleared the goods without payment of duty under the previous LUT, which had expired on 22.11.2011, and they have debited the duty subsequently on 30.04.2013 alongwith interest and claimed rebate on 31.10.2013. The original authority, vide the aforesaid Order-in-Original, rejected the rebate claim on the grounds that duty was not paid at the time of removal of the goods for export. The appeal filed by the Applicant herein was rejected by the Commissioner (Appeals).

3. The Revision Application has been filed, mainly, on the grounds that the proof of export, duty involved and limitation are not in dispute in respect of the subject claim; that only ground against which the rebate claim was rejected is that the duty had not been paid at the time of clearance for export and has been paid subsequently with interest; that in case of short payment of duty at the time of clearance for export and if the differential duty is paid subsequently even after filing of the refund claim, the exporter is entitled to file a supplementary rebate claim and the differential duty paid as rebate; that Para 2.0,

Para IV of Chapter 8 of the CBEC's Central Excise Manual provides that supplementary rebate claim is admissible if the same is filed within one year limitation period; that the Board has, vide Circular No. 510/06/2000-CX dated 03.02.2000, also clarified on the same lines; that, therefore, rebate claim is admissible.

4. The personal hearing was fixed on 19.09.2022 and 07.10.2022. In the personal hearing held, in virtual mode, on 07.10.2022. Sh. M. Karthikeyan, Advocate appeared for the Applicant and requested that the compilation emailed on 07.10.2022 may be taken on record. He reiterated the contents of the RA. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5. The Government has carefully examined the case. The short point involved in this case is whether a rebate claim in respect of duty paid subsequent to removal of goods for export is admissible. The Commissioner (Appeals) has held the case against the Applicants on the ground that the duty ought to have been paid on monthly basis in accordance with the Rule 8 of the Central Excise Rules, 2002. However, the Applicants have correctly pointed out that [as per Para 2, Chapter IV of the CBEC's Central Excise Manual, supplementary rebate claim is permitted provided it is filed within the limitation period provided under Section 11B of the Central Excise Act, 1944. Further, it has also been correctly pointed out that the Board has, vide Circular No. 510/06/2000-CX dated 03.02.2000, stated that if the rebate sanctioning authority has reasons to believe that the duty has been paid in excess than that should have been paid he shall, after granting the rebate, inform the jurisdictional Assistant/Deputy Commissioner who shall scrutinize the correctness of assessment and take necessary action wherever necessary. In Para 4 of said Circular following is laid down:

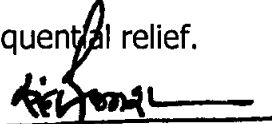
"4. Same principle should be applied to cases where any short payment of duty is noticed and the assessee pays the differential duty prior to sanction of rebate, whether he pays before or after adjudication of the case of short

(लक्ष्मी राधवन)
(Lakshmi Radhavan)
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जिला कारखाना, कोयंबूर
कोयंबूर, महाराष्ट्र
2022
Ministry of
Finance
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payment. The rebate of the full amount of duty paid on the goods exported (not the fine and/or penalties imposed, if any) should be allowed, provided the initial rebate claim was for the said full duty, or a supplementary claim was filed within the limitation period.”]

Thus, the rebate of the duty subsequently paid, i.e., subsequent to the removal of the goods for export is not unknown to Central Excise. The rebate is payable even in a case where duty is paid after adjudication. In the present case, it would appear from records that the goods were initially exported without payment of duty under LUT, which had expired. However, subsequently, when this was pointed out by the Range Officer, the Applicants herein paid the full duty along with interest and, thereafter, filed the rebate claim. Therefore, keeping in view the departmental instructions on the issue, in this case, there should be no difficulty in allowing the rebate of the duty paid subsequently.

6. In view of the above, the Revision Application is allowed with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India

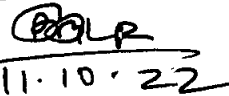
M/s Cassel Research Laboratories,
Pvt. Ltd. No. 54, Industrial Estate,
Thirumudivakkam, Chennai-600044.

G.O.I. Order No. 55/22-CX dated 11-10-2022

Copy to:

1. The Commissioner of CGST, (Chennai Outer), No. 2054, II Avenue, 12th Main Road, Newry Tower, Anna Nagar, Chennai-600040.
2. The Commissioner of Central Excise (Appeals-II), Central Excise Building, 26/1, Mahatma Gandhi Marg, Nugambakkam, Chennai-600034.
3. Sh. M. Karthikeyan, Advocate, Swamy Associates, 21/8, Rams Flats, Ashoka Avenue, Directors Colony, Kodambakkam.
4. PA to AS(RA).
5. Guard file.
6. Spare Copy.

ATTESTED



(लक्ष्मी राघवन)
(Lakshmi Raghavan)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Government of India
नई दिल्ली