

SPEED POST



F. No. 195/30/SZ/2018-R.A.
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...06/03/23..

Order No. 61/2023-CX dated 06-03-2023 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. COC-EXCUS-000-APP-275-2017 dated 23.11.2017, passed by the Commissioner Central Tax & Central Excise (Appeals), Cochin.

Applicants : M/s. Metrolla Steels Pvt. Ltd., Muvattupuzha, Kerala.

Respondent : Commissioner of CGST & Central Excise, Cochin.

ORDER

Revision Application No. 195/30/SZ/2018-RA dated 26.02.2018 has been filed by M/s Metrolla Steels Ltd., Muvattupuzha, Kerala (hereinafter referred to as the Applicant), against the Order-in-Appeal No. COC-EXCUS-000-APP-275-2017 dated 23.11.2017, passed by the Commissioner of Central Tax & Central Excise (Appeals), Cochin. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeal filed by the Applicant herein, against the Order-in-Original No. 69/2015-CE dated 29.05.2015, passed by the Deputy Commissioner of Central Excise, Muvattupuzha Division.

2. Briefly stated, the Applicants herein filed a rebate claim, vide letter dated 17.08.2009, claiming rebate of duty paid on goods exported by them to a Unit located in SEZ, during August and September, 2008. As per the details furnished by them they had exported 69 tonnes of steel to SEZ Unit without payment of duty. Since the condition to produce the necessary certificate of receipt of goods in SEZ on ARE-1s was not fulfilled, Applicants paid duty for the said clearances during October, 2008 and issued the separate invoice with debit note to SEZ Unit for Rs. 4,59,879/-. Applicants thereafter availed credit of the duty so paid by them, but upon being pointed out by the department, reversed the same, on 14.08.2009, along with interest. Thereafter, they had submitted the rebate claim for duty paid amounting to Rs. 4,59,879/-. The original authority, vide Order-in-Original No. 177/09 R dated 06.11.2009, sanctioned the rebate. However, subsequently, upon being pointed out in audit, a show cause notice no. 04/2010- CE dated 16.02.2010 was issued to the Applicants for recovery of Rs. 4,59,879/- as erroneously sanctioned refund, under Section 11A read with Section 11AB of the Central Excise Act, 1944. The Order-in-Original dated 06.11.2009 sanctioning rebate was also appealed against, by the department, before Commissioner (Appeals). The Commissioner (Appeals), vide Order-in-Appeal No. 148/2014 dated 29.10.2014, set aside the Order-in-Original dated 06.11.2009. Consequently, the demand for erroneous rebate raised by the show cause notice dated 16.02.2010 was confirmed by the original authority, vide aforesaid Order-in-Original dated 29.05.2015. The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals), vide the impugned Order-in-Appeal.

3. The Revision Application has been filed by the Applicant, mainly, on the grounds that they had initially exported the goods without payment of duty to SEZ Unit; that when the certificate of receipt of goods in SEZ was not forthcoming in time, they paid duty which has been claimed as rebate; that all conditions for grant of rebate have been fulfilled and, therefore, the same could not have been denied. Further submissions have been made on 27.02.2023 wherein it has been, inter-alia, brought out that the Order-in-Appeal No. 148/2014 dated 29.10.2014, passed by the

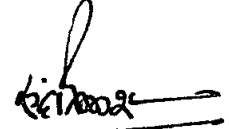
Commissioner (Appeals) setting aside the Order-in-Original dated 06.11.2009 vide which the rebate was granted to them, has been set aside by the Government, vide Order No. 626/2020-CX (WZ)/ASRA/Mumbai dated 14.09.2020.

4. Personal hearing in the matter was fixed on 15.02.2023 and 03.03.2023. In the personal hearing held, in virtual mode, on 03.03.2023, Sh. P. Sreedharan, Consultant appeared for the Applicant and requested that Written Submissions filed vide email dated 27.02.2023 may be taken on record. He reiterated the contents of the RA and Written Submissions. Ms. N.S. Jayasree, AC appeared for the department and supported the Order of Commissioner (Appeals). Upon being asked about the status of GOI Order No. 626/2020-CX (WZ)/ASRA/Mumbai dated 14.09.2020, Ms. Jayasree requested for time upto 11:00 hrs on 06.03.2023, to confirm the position. The department has, vide email dated 05.03.2023, confirmed that the GOI Order dated 14.09.2020 has not been challenged.

5. The Government has carefully examined the matter. In the instant case, the original authority had initially sanctioned the rebate of Rs. 4,59,879/-, vide Order-in-Original dated 06.11.2009, which was set aside by the Commissioner (Appeals) vide Order-in-Appeal No. 148/2014 dated 29.10.2014. Consequently, the protective demand, issued vide show cause notice dated 16.02.2010, has been confirmed by the original authority, vide Order-in-Original dated 29.05.2015. It has been submitted that the Order-in-Appeal dated 29.10.2014 has been set aside by the Government in revision, vide Order dated 14.09.2020. In the said Order dated 14.09.2020, the Government has held that "the transaction for said clearances to SEZ Unit has attained its finality on submission of certificate of receipt of goods issued by the Authorized Officer in SEZ." However, Applicants herein "had not followed the procedure laid down under Rule 18 of the Central Excise Rules, 2002 and Notifications issued thereof. The applicant, in this case, did not pay duty at the time of clearances but debited the same only on their failure to produce the certificate of receipt of goods in SEZ Unit----- within the stipulated time limit i.e., 45 days." As such, it has been held that the Applicants "were not eligible for rebate of duty so paid on their failure to produce the necessary certificate in respect of goods cleared to SEZ Unit." It has been further held that the duty which was paid on completion of stipulated time period of 45 days was "not due to exchequer" and hence, it needs to be refunded. Accordingly, Applicant was granted "liberty to approach the refund sanctioning authority for refund under Section 11B for the amount deposited by them." In other words, the Government has held that the rebate claim was not admissible and to that extent the Order-in-Appeal dated 29.10.2014 has been upheld but it has also been held that the amount paid as duty was not due and, therefore, Applicant was at liberty to seek refund of the amount deposited. The Government's Order dated 14.09.2020 appears to have attained finality. As such, the Government holds that the Order-in-Appeal dated 23.11.2017

which has been impugned in the present revision application cannot be faulted. However, the Applicant is at liberty to pursue the remedy granted to it, in terms of para 11 of Government Order dated 14.09.2020, for the refund of amount deposited, which was not due to exchequer.

6. The revision application is disposed of in above terms.



(Sandeep Prakash)

Additional Secretary to the Government of India

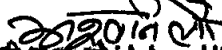
M/s Metrolla Steels Ltd.,
Pezhakkapilly, P.O. Paipra Muvattupuzha,
Kerala-686674.

G.O.I. Order No. 61 /23-CX dated 06-03-2023

Copy to: -

1. The Commissioner of CGST Kochi, C.R. Building, I.S. Press Road, Kochi-682018.
2. The Commissioner of Central Tax & Central Excise (Appeals), C.R. Building, I.S. Press Road, Cochin-18.
3. Sh. P Sreedharan, Consultant, Trade Track, 57/2538 A, 2nd Floor, Karikkode Warriam Warriyam Road, Kochi-682016.
4. PPS to AS (RA)
5. Guard File
6. ✓ Spare Copy.
7. Notice Board.

ATTESTED


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