



F. No. 195/389/2015-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 27/10/22

Order No. 64/2022-CX dated 27-10-2022 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. 132/2015(CXA-I) dated 04.06.2015, passed by the Commissioner of Central Excise (Appeals-I), Chennai.

Applicant : M/s Petro Araldite Pvt Ltd., Chennai.

Respondent : Commissioner of CGST & Central Excise, Chennai.

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ORDER

A Revision Application No. 195/389/2015-RA dated 04.06.2015 has been filed by the M/s Petro Aaldite Pvt., Ltd. Chennai, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 132/2015(CXA-I) dated 04.06.2015, passed by the Commissioner of Customs & Central Excise (Appeals-I), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the Appeal of the Applicant against the Order-in-Original No. 02/2014 (R) dated 27.01.2014, passed by the Assistant Commissioner of Central Excise, C Division, Chennai I Commissionerate.

2. Brief facts of the case are that the Applicant herein filed 01 rebate claim, under Rule 18 of the Central Excise Rules, 2002, in respect of Central Excise duty paid on the exported goods, for a total amount of Rs. 8,84,121/-. The original authority restricted the rebate claim in cash to the duty corresponding to the FOB value of the goods. Accordingly, the rebate claim was sanctioned, in cash, for an amount of Rs. 8,43,801/- whereas balance amount of Rs. 40,320/- was allowed as re-credit in the CENVAT credit account. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which has been rejected.

3. The Revision Application has been filed, mainly, on the grounds that the market price must necessarily relate to the value in the market to which goods are exported; that and there is no provision for re-credit of duty paid in Cenvat Account under the provisions of Excise Act or Rules made thereunder, that therefore, the original authority and Commissioner (Appeals) has erred in not allowing the balance amount paid to be rebated in cash. A reply has been filed by the Principal Commissioner of Central Excise, Chennai-I, vide letter C.No. V/33/02/93/2015- R & T dated 25.07.2016.

4. Personal hearing was fixed on 10.08.2021, 17.08.2021, 15.12.2021, 21.12.2021, 07.10.2022 and 27.10.2022. No one appeared for either side nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for final disposal based on records.

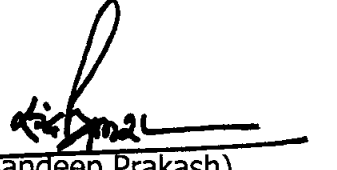
4.1 The Government has examined the matter carefully. It is not in dispute that the goods were exported and central excise duty has been paid on the export goods. The Applicant has paid duty as per value mentioned in ARE-1 which is higher than the transaction value determined under Section 4 of Central Excise Act, 1962 and has claimed rebate on the enhanced value which appears to correspond to the CIF value. It is observed that, as per Section 4(1) of the Central Excise Act, 1944, the value of goods shall " (a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value." In the present case, the port of export has been taken as the 'place of removal' and accordingly, the FOB value has been treated as the value for the purposes of Section 4. The Applicant has not rebutted this position factually. Thus, the excess amount paid by the Applicant on CIF basis was not payable as central excise duty. The amount paid in excess of duty payable does not assume the character of duty as defined under Rule 2 (e) of Central Excise Rules 2002-'duty' means the duty payable under Section 4 of the Central Excise Act.

4.2 CBEC, vide circular no. 203/ 37/ 96-CX, dated 26.04.96, has stated that AR-4 (now ARE-1) value of excisable goods should be determined under Section 4 of Central Excise Act, 1944. Any amount paid in excess of duty liability on one's own volition cannot be treated as duty. It has to be treated simply as a voluntary deposit with the Government which is required to be returned to the Applicant in the manner, in which it was paid, as the said amount cannot be retained by Government without any authority of law.

4.3 The Hon'ble Punjab & Haryana High Court, has, in the case of Nahar Industrial Enterprises Ltd, {2009(235)ELT(P&H)}, referred to the CBEC Circular No. 687/3/2003-CX, dated 03.01.2003 and held that excess duty paid through CENVAT credit cannot be allowed to be rebated through cash and for such excess payment CENVAT credit can only be restored. This Order of the Hon'ble High Court has been upheld by the Hon'ble Supreme Court {2022 (380) E.L.T. (S.C.)}.

4.4 Therefore, there is no infirmity in the impugned order of Commissioner (Appeals).

5. In view of the above, the Revision Application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

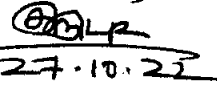
M/s Petro Araldite pvt. Ltd.,
Manali Express Highway,
Manali, Chennai-600068.

G.O.I. Order No. 64/22-CX dated 27-10-2022

Copy to:

1. The Commissioner of CGST & Central Excise, 26/1, Mahatama Gandhi Road, Nungambakkam, Chennai - 6000034.
2. The Commissioner of Customs & Central Excise (Appeals-1), 26/1, Mahatama Gandhi Road, Nungambakkam, Chennai - 6000034.
3. PA to AS(RA).
4. Guard file.
5. Spare Copy.

ATTESTED



(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