

SPEED POST



F. No. 198/12/2016-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...28/10/22

Order No. 67/2022-CX dated 28-10-2022 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. 156/2007 to 177/2007 dated 31.08.2007, passed by the Commissioner of Central Excise (Appeals-I), Bengaluru.

Applicant : Commissioner of CGST & Central Excise, Bengaluru North.

Respondent : M/s CIPSA – RIC (i) Ltd., Doddaballapur.

ORDER

A Revision Application No. 198/12/2016-RA dated 21.03.2016 has been filed by the Commissioner of Central Excise, Bangalore-IV, Commissionerate, presently, Commissioner of CGST & Central Excise, Bengaluru North (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 156/2007 to 177/2007 dated 31.08.2007, passed by the Commissioner of Central Excise (Appeals-I), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, allowed the Appeal of M/s CIPSA - RIC (I) Ltd., Dodaballapur, (hereinafter referred to as the Respondent) against the Order-in-Original No.68/2006 & 69/2006 both dated 06.12.2006, 70/2006, 74/2006, 75/2006, 76/2006 all dated 05.01.2007, 11/2007, 12/2007, 13/2007, 14/2007 & 15/2007 all dated 15.02.2007, 24/2007, 25/2007, 26/2007 & 27/2007 all dated 10.04.2007, 29/2007, 30/2007, 31/2007 & 32/2007 all dated 18.04.2007, 36/2007, 37/2007 & 38/2007 all dated 25.07.2007, passed by the Assistant Commissioner of Central Excise, 'C' Division, Bengaluru - II Commissionerate.

2. Brief facts of the case are that the Applicant herein filed 22 rebate claims, 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. 80,96,854/-. 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. 72,86,640/- whereas balance amount of Rs. 8,10,214/- was separately allowed as re-credit in the CENVAT credit account. Aggrieved, the Respondent filed an appeal before the Commissioner (Appeals), who vide the above mentioned OIA, has allowed the appeals filed by the Respondent herein.

3. The Revision Application has been filed, mainly, on the grounds that the rebate is to be based on the duty paid on the assessable value under Section 4 of the Central Excise Act, 1944 and, hence, the variance with FOB and CIF value are to be taken accordingly as the freight and issuance are not part of the assessable value.

4. Personal hearing was fixed on 22.06.2022, 06.07.2022, 21.07.2022, 28.07.2022, 21.09.2022, 12.10.2022 and 28.10.2022. No one appeared for either side nor any request for adjournment has been received. The Applicant department has, vide letter No. GEXCOM/REV/MISC/56/2021-REV-COMMR-CGST-BENGALURU (N) dated 23.09.2022, stated that no further oral/written submission are to be made. Since sufficient opportunities have been granted, the matter is taken up for final disposal based on records.

4. The revision application has been filed with a delay as the department had earlier filed an appeal before CESTAT, which has been rejected as non-maintainable vide Final Order No. 20071/2016 dated 20.01.2016. Delay caused due to pursuing remedy in a wrong forum is condoned.

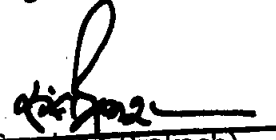
5.1 The Government has examined the matter carefully. It is not in dispute that the goods were exported and central excise duty has been paid on the export goods. The Respondent has paid duty as per value mentioned in ARE-1, which includes freight and insurance charges i.e. on CIF value basis. It is 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 to be taken as the 'place of removal' and accordingly, the FOB value has to be treated as the value for the purposes of Section 4. This position has not been rebutted by the Commissioner (Appeals). Thus, the excess amount paid by the Respondent 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, i.e., 'duty' means the duty payable under Section 4 of the Central Excise Act.

5.2 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.

5.3 The Hon'ble Punjab & Haryana High Court's 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.)}.

6. In view of the above, the Revision Application is allowed and the impugned OIA dated 31.08.2007 is set aside.



(Sandeep Prakash)

Additional Secretary to the Government of India

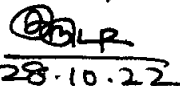
Commissioner of CGST & Central Excise,
Bengaluru North Commissionerate
No. 59, HMT Bhavan, Ganga Nagar,
Bellary Road,
Bengaluru – 560032

G.O.I. Order No. 67/22-CX dated 28-10-2022

Copy to:

1. M/s CIPSA – RIC (1) Ltd. No. 20, KIADB Industrial Area, Doddaballapur– 5612032.
2. The Commissioner of Central Excise (Appeals-1), Traffic and Transit Management Centre, BMTC Bus stand, HAL Airport Road, Dommaluru, Bengaluru - 560071.
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