

**SPEED POST**



F.No. 198/210/2016-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... 31/10/22

Order No. 70/2022-CX dated 31-10-2022 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. CMB/CEX/000/APP/127/2016 dated 09.06.2016, passed by the Commissioner of Central Excise & Service Tax (Appeals-I), Coimbatore.

Applicant : Pr. Commissioner of CGST & Central Excise, Coimbatore.

Respondent : M/s Lakshmi Electrical Control Systems Ltd., Coimbatore.

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**ORDER**

A Revision Application No. 198/210/2016-RA dated 30.09.2016 has been filed by the Commissioner of Central Excise, Coimbatore, presently, Pr. Commissioner of CGST & Central Excise, Coimbatore (hereinafter referred to as the Applicant), against the Order-in-Appeal No. CMB/CEX/000/APP/127/2016 dated 09.06.2016, passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals-I), Coimbatore. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, allowed the appeal filed by M/s Lakshmi Electrical Control Systems Ltd., Coimbatore (hereinafter referred to as the "Respondent") and set aside the Order-in-Original No. 06/2015 dated 30.10.2015, passed by the Deputy Commissioner of Central Excise, Coimbatore-IV.

2. Brief facts of the case are that the Respondents are manufacturers of products falling under Central Excise Tariff Heading No. 85177090 of Central Excise Tariff Act, 1985. They had filed a rebate claim for Rs. 16,95,148/-, being the Central Excise duty paid, in respect of the goods cleared to SEZ. It was observed that excess duty had been paid 12.36% as against the applicable rate of 10.3%. Further the Respondents had not produced Disclaimer Certificates and No Objection Certificate from the supplier of goods claiming the rebate. Hence, the pursuant to Show Cause Notice no. 18/2015 dated 31.08.2015, rebate claim was rejected by the Original Authority, vide the aforesaid Order-in-Original 30.10.2015. The Appeal filed by the Respondent herein has been allowed with consequential benefits by the Commissioner (Appeals).

3. The Revision Application has been filed, mainly, on the grounds that the issue involves non-compliance of the provisions of SEZ Act, 2005 and SEZ Rules, 2006; that the Appellate Authority has overlooked the non-production of Disclaimer Certificates; that the Commissioner (Appeals) has not examined all 39 ARE 1s and passed the Order only on the basis of a sample analysis; and that, therefore, the Order passed by the Commissioner (Appeals) may be modified and the case may be remanded to the Original Authority for proper verification.

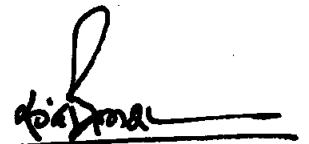
4. Personal hearing in the matter was fixed on 21.09.2022. Ms. Harita, DC appeared for the Department and requested for a short adjournment due to administrative exigency. Accordingly, the personal hearing was fixed on 12.10.2022 when no one appeared for the Applicant Department. In the last and final opportunity granted on 28.10.2022, no one appeared for Applicant Department again, nor any request for adjournment has been received. Sh. M. Saravanan, Consultant appeared for the Respondent and requested that Written Submissions dated 06.07.2022 may be taken on record. He, accordingly, supported the Order of Commissioner (Appeals).

5.1 The Government has carefully examined the matter. It would appear from the proceedings before the authorities below that the rebate claim was denied by the Original Authority on the grounds that the Disclaimer Certificates and No Objection Certificates were not filed. Further, the exporter had also not filed the Bills of Export. The Commissioner (Appeals) has, in the impugned Order-in-Appeal, held that non-filing of Bill to Export is merely a procedural lapse and substantive benefits cannot be denied for such procedural lapse. In this regard, she has relied upon several decisions of the Government. Proceeding further, the Commissioner (Appeals) has relied upon the judgment of the Hon'ble Bombay High Court in the case of UM Cables Ltd. Vs UOI {2013 (293) ELT 641 (Bom.)} wherein it is held that the 'conditions and limitations' for the grant of rebate are mandatory and matters of 'procedure' are directory. The Government is in agreement that the view so taken by the Commissioner (Appeals). In fact, several other Hon'ble High Courts have, subsequently, held on the same lines as in the case of UM Cables (Supra). Ref. Jubilant Life Sciences Ltd. {2016 (341) ELT 44 (Allahabad)}, Raj Petro Specialities {2017 (345) ELT 496 (Gujarat)}, Triputi Steel Traders {2019 (365) ELT 497 (Chattisgarh)}, and Haldia Petrochemicals Ltd. {2019 (368) ELT 502 (Calcutta)}. The Hon'ble Bombay High Court has, in the case of Zandu Chemicals Limited Vs. Union of India {2015 (315) ELT 520 (Bom)}, followed the judgment in UM Cables (Supra) and held that the procedural requirements are capable of

substantial compliance. In this light, the Government does not find any infirmity, in- principle, in the Order of Commissioner (Appeals).

5.2 However, it has been correctly pointed out by the Applicant Department that while ascertaining the substantial compliance, the Commissioner (Appeals) has not verified documents relating to all 39 ARE 1s and has confined herself to only sample analysis. It is apparent from paras 6, 7 (i) & 7 (ii) of the impugned Order-in-Appeal that the scrutiny verification was limited, on sample basis, to only 6 ARE 1s and connected documents. Needless to say that substantial compliance in the case of procedural infractions could not have been established on the basis of a sample analysis when each set of documents has given rise to the claim for rebate individually. In this light, the Government is in agreement with the prayer of the Applicant Department that the impugned Order-in-Appeal may be modified and the case may be remanded to the Original Authority for proper verification. Accordingly, the case is remanded to the Original Authority with the directions to establish substantial compliance with reference to the documents produced by the Respondent herein, after following the principles of natural justice, and thereafter grant rebate if such substantial compliance is established.

6. The impugned Order-in-Appeal is modified, accordingly, and the Revision Application is allowed in above terms.



(Sandeep Prakash)

Additional Secretary to the Government of India


The Pr. Commissioner of CGST & Central Excise,  
No. 6/7, A.T.D. Street,  
Race Course Road,  
Coimbatore- 641018.

G.O.I. Order No. 70 /22-CX dated 31-10-2022

Copy to: -

1. M/s Lakshmi Electrical Control Systems Ltd. Arasur Main Road, Arasur Coimbatore - 641407.
2. The Commissioner of Central Excise (Appeals-I), No. 6/7, A.T.D. Street, Race Course Road, Coimbatore - 641018.
3. Sh. M. Saravanan, Sree Gopal & Co, Chartered Accountants, 93 Sathyamurthy Road, Ramnagar, Coimbatore - 9.
4. PS to AS (RA)
- ✓ 5. Guard File.
6. Spare Copy.

ATTESTED

  
31.10.22

(लक्ष्मी राघवण)  
(Lakshmi Raghavan)  
अधुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi