

**SPEED POST**



F.No. 198/39/SZ/2018-RA  
F.No. 198/40/SZ/2018-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. 23/05/23

Order No. 87-88/2023-CX dated 23-05-2023 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 Applications filed under section 35 EE of the Central Excise Act, 1944, against the Orders-in-Appeal Nos. TNL/CEX/000/APP/069/17 dated 31.08.2017 & MAD/CEX/000/APP/086/17 dated 27.09.2017, passed by the Commissioner of GST & Central Excise (Appeals), Coimbatore.

Applicant : Commissioner of CGST & Central Excise, Madurai

Respondent : M/s Esaa Exports, Tuticorin

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**ORDER**

Two Revision Applications, bearing Nos. 198/39/SZ/2018-R.A. dated 05.12.2017 & 198/40/SZ/2018-R.A. dated 12.12.2017, have been filed by the Commissioner of CGST and Central Excise, Madurai (hereinafter referred to as the "Applicant"), against the Orders-in-Appeal Nos. TNL/CEX/000/APP/069/17 dated 31.08.2017 & MAD/CEX/000/APP/086/17 dated 27.09.2017, respectively, passed by the Commissioner of GST & Central Excise (Appeals), Coimbatore. The Commissioner (Appeals) has, vide the impugned Orders-in-Appeal, rejected the appeals filed by the department against Order-in-Original No. 29/2016 (Rebate) dated 23.09.2016 and Order-in-Original No. 03/2017 (Rebate) dated 22.02.2017, respectively, passed by the Assistant Commissioner of Central Excise, Tuticorin Division in respect of rebate applications filed by M/s Esaa Exports, Tuticorin (hereinafter referred to as the "Respondent"). As both the applications involve a common issue involving the same Applicants and Respondents, they are taken up jointly for consideration and disposal.

2. Brief facts of the case are that:

(i) RA No. 198/39/SZ/2018-RA : The Respondents filed rebate claim of Rs. 49,267/- before the Assistant Commissioner of Central Excise, Tuticorin on 21.09.2015, for the duty paid on the goods exported, as per details below:

ARE1 No. & Date	C.Ex. Invoice No. & Date	Amount of Duty paid	S. Bill No. & Date	Date of Shipment	Rebate claimed in Rs.
007/2015-2016 Dt. 07.07.15	1400464197 & 1400464204 both dated 07.07.2015	49,267/-	2460623 Dt.18.08.2015	26.08.2015	49,267/-

After due process of law, the rebate claim was initially rejected by the original authority, vide OIO No. 04/2016(Rebate) dated 02.02.2016. Aggrieved with the

rejection, the Respondents herein preferred an appeal before the Commissioner (Appeals). The appeal was allowed, vide OIA No. 62 to 72/2018 dated 15.06.2016, with consequential relief and OIO No. 04/2016(Rebate) dated 02.02.2016 was set aside. On the basis of the said OIA, the Respondents herein, again, filed the rebate claim on 27.06.2016. The rebate claim filed was sanctioned by the original authority, vide aforesaid OIO No. 29/2015 (Rebate) dated 23.09.2016. Aggrieved by the OIO dated 23.09.2016, the Applicant department filed an appeal before the Appellate authority on the grounds that revision application filed, against OIA Nos. 62 to 72/2016 dated 15.06.2016, has not attained finality and OIO passed by the lower authority on the basis of said OIA was not correct and since the conditions precedent were not fulfilled by the exporter (Respondents herein), the rebate claims had been rightly rejected initially by the original authority. The Commissioner (Appeals), vide the impugned OIA dated 31.08.2017, rejected the appeal on the grounds that implementation of OIA No. 62 to 72/2016 dated 15.06.2016 had not been stayed and as there was no dispute regarding export of goods, other procedural deviations can be condoned.

(ii) RA No. 198/40/SZ/2018-RA : The Respondents filed rebate claim of Rs. 20,855/- before the Assistant Commissioner of Central Excise, Tuticorin on 05.11.2015, for the duty paid on the goods exported, as per details below:

ARE1 No. & Date	C.Ex. Invoice No. & Date	Amount of Duty paid	S. Bill No. & Date	Date of Shipment	Rebate claimed in Rs.
009/2015-2016 Dt. 13.09.15	1791 dated 13.09.2015	20,855/-	3016577 Dt.15.09.2015	26.09.2015	20,855/-

After due process of law, the rebate claim was initially rejected by the original authority, vide OIO No. 08/2016(Rebate) dated 07.03.2016. Aggrieved with the rejection, the Respondents herein preferred an appeal before the Commissioner(Appeals) , which was allowed, vide OIA No. 12/2017 dated 20.02.2017, with consequential relief and OIO No. 08/2016(Rebate) dated 07.03.2016 was set aside. On the basis of the said OIA dated 20.03.2017, the

Respondents herein, again, filed the rebate claim on 14.03.2017. The rebate claim filed was sanctioned by the original authority, vide aforesaid OIO No. 03/2017 (Rebate) dated 22.03.2017. Aggrieved by the said OIO dated 22.03.2017, the Applicant department filed an appeal before the Commissioner (Appeals) on the grounds that revision application filed against OIA No. 12/2017 dated 20.02.2017 has not attained finality and OIO passed by the lower authority on the basis of said OIA was not correct and since the conditions precedent were not fulfilled by the exporter (Respondents herein), the rebate claims had been rightly rejected initially by the original authority. The Commissioner (Appeals), vide the impugned OIA dated 27.09.2017, rejected the appeal on the grounds that implementation of OIA No. 12/2017 dated 20.02.2017 had not been stayed and as there was no dispute regarding export of goods, other procedural deviations can be condoned.

3. The Revision Applications have been filed, mainly, on the grounds that the revision applications have been filed against the earlier OIAs on the basis whereof subsequent OIOs have been passed by the original authority and they have not been disposed of and, hence, the issue has not attained finality; that the notification no. 19/2004-CE (NT) recognizes factory and warehouse alone as the premises from which the goods should be cleared for export; that, admittedly, the goods in the present case had not been cleared directly from factory or warehouse; that the claimants had not followed the procedure prescribed by the Board, vide Circular No. 294/10/47 dated 30/01/1997; that the said Circular stipulates that an exporter desiring to export pre-packed excisable goods (capable of the being clearly identified) which are in original factory packed condition/not processed in any manner after being cleared from the factory should make an application in writing to the Superintendent of Central Excise in charge of the Range under whose jurisdiction such goods are stored after which the Range Officer may verify such goods prior to export; that, in the present case, these instructions have not been followed; and that, therefore, the Commissioner (Appeals) has erred by allowing the rebate. On the other hand, the Respondents herein vide their letter dated 20.05.2023 contended that the revision applications filed by the department are liable to be

dismissed, in terms of instructions issued, vide F.No. 390/Misc/116/2017-JC dated 22.08.2019, on the grounds of monetary limits.

4. Personal hearings in the matter were fixed, in virtual mode, on 24.03.2023, 24.04.2023 and 22.05.2023. No one appeared for either side on any of the dates fixed for hearing nor any request for adjournment has been received. Since sufficient opportunities have been granted, the case is taken up for disposal based on records.

5.1 The Government has carefully examined the matter. The Respondent has, at the outset, taken a preliminary objection based on monetary limits prescribed for filing appeals by the Department before the CESTAT, High Courts and Supreme Court, in terms of instruction F.No. 390/Misc/116/2017-JC dated 22.08.2019. The Government observes that the said instructions prescribe monetary limits below which appeals should not be filed before CESTAT, Hon'ble High Courts and Hon'ble Supreme Court, in legacy matters of Central Excise and Service Tax. The said instructions do not lay down any monetary limits in respect of Revision Applications preferred before the Government. Even earlier instructions issued by the Board, from time to time, did not prescribe any monetary limits in respect of revision applications to be filed before the Government. This is evidently due to the reason that the monetary limit in respect of the revision applications to be filed before the Government is provided in the proviso to sub-section (1) of Section 35EE itself. Thus, the monetary limit having been provided in the statute itself there would be no need to issue separate instructions in this regard. Therefore, the subject contention cannot be accepted.

5.2 On merits, the issue involved in the present case is whether rebate ought to have been allowed by the Commissioner (Appeals) despite the Respondent herein not following the conditions of notification no. 19/2004-CE(NT). The Government observes that, as correctly pointed out by the Applicant department, identical issue arose for consideration in RA No.198/219/2016-RA dated 15.11.2016 and RA No. 198/66/2017-RA dated 18.05.2017, filed by the department, against OIA No.

MDU/CEX/000/APP/62 to 72/2016 dated 15.06.2016 and OIA No. MDU/CEX/000/APP/012/2017 dated 20.02.2017, respectively. The said RAs have been decided by the Government, vide GOI Order No. 54/2022-CX dated 11.10.2022 and GOI Order No. 28/2023-CX dated 11.01.2023, and the Orders-in-Appeal impugned therein have been set aside. Since the instant RAs are arising out of Orders issued in pursuance of the Orders that have already been set aside, vide GOI Orders dated 11.10.2022 & 11.01.2023, the Orders-in-Appeal impugned, in the instant RAs, also cannot stand.

6. In view of the above, the Revision Applications are allowed and the impugned Orders-in-Appeal are set aside.



(Sandeep Prakash)

Additional Secretary to the Government of India

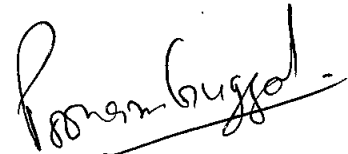
The Commissioner CGST & Central Excise,  
C.R. Building, Bibikulam,  
Madurai – 625 002.

G.O.I. Order No. 87-88/23-CX dated 23-05-2023

Copy to: -

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2. The Commissioner of CGST & Central Excise (Appeals), C.R. Building, Lal Bahadur Shastri Marg, Madurai – 625 002, Tamil Nadu.
3. PPS to AS (RA)
4. Guard File.
5. Notice Board
6. Spare Copy

ATTESTED



पूनाम गुग्गल / Poonam Guggal  
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