



REGISTERED
SPEED POST

F.No. 198/17/15-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.....

ORDER NO. 152/2018 CX dated 5-3-2018 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI RAJPAL SHARMA, ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL ACT, 1944.

SUBJECT : Revision Application filed, under section 35EE of the Central Excise Act 1944 against the Order-in-Appeal No. 01/CE/DLH/2015 dated 30.01.2015 passed by the

APPLICANT : The Commissioner of Central Excise, Delhi-I

RESPONDENT : M/s Kryton Power Controls (I) Pvt. Ltd.,

ORDER

A Revision Application No. 198/17/15-RA dated 01.05.2015 has been filed by the Assistant Commissioner, Central Excise, Division-IV, New Delhi, (hereinafter referred to as the applicant) against Order in Appeal No. 01/CE/DLH/2015 dated 30.01.2015, passed by the Commissioner (Appeals), Central Excise Appeals-1, Delhi-1.

2. The brief facts of the case leading to the filing of the Revision Application are that the respondent M/s Kryton Power Controls (I) Pvt. Ltd., filed a refund claim of Rs. 2,15,603/- against excess payment of duty which was rejected by the original adjudicating authority on the ground that the incidence of duty was passed on to the buyer and thus refund claim was hit by principle of undue enrichment as stipulated in section 11B of Central Excise Act 1944. Being aggrieved by the order, respondent filed an appeal with Commissioner (Appeals) who has allowed the appeal on the ground that it is a case of double taxation and the respondent has paid the duty amount to the buyer which was earlier paid by them. The Revision Application has been filed by the applicant against O-I-A mainly on the ground that the provisions of Section 11B clearly enunciate that once incidence of duty has been passed on to the buyer the refund cannot be given to the assessee.

3. Personal hearing was held on 22.02.2018 which was attended by Sh. Amitabha Dasmunshi, Director, and Sh. Mahavir Singh, Central Excise consultant, on behalf of the respondent, who mainly pleaded that the Revision Application is not maintainable for the reasons given in the Order-In-Appeal.

4. On examination of the Revision Application and the Order-in-Appeal it is evident that in the present proceeding the issue involved is regarding maintainability of refund of duty against excess payment of Central Excise duty by the respondent. Whereas under section 35EE, read with first proviso to section 35(B), the Revision Application can be filed with the Government only

if the order of the Commissioner (Appeals) involves an issue relating to loss of goods, rebate of duty on exported goods or goods exported under bond. Since no such issue is involved in the order of the Commissioner (Appeals) in this case and refund of excess duty is not specified under the above mentioned provisions, the Government is of the view that it does not have jurisdiction to deal with the Commissioner (Appeals)'s order in this case.

5. Accordingly, the Revision Application is rejected.

(Signature)
5.3.18

(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

The Commissioner of Central Excise,
Delhi-I, C.R. Building, I.P. Estate, New Delhi

ORDER NO. 4/2018-CX dated 5-3-2018

Copy to:-

1. M/s Kryton Power Controls(I) Pvt. Ltd. 248, Swaran Park, Udyog Nagar, Mundka, New Delhi-110 041.
2. The Commissioner of Central Excise (Appeals-I), Delhi-I, Room No. 134, Central Revenue Building, I.P. Estate, New Delhi -110002.
3. The Assistant Commissioner, Central Excise Division-IV, 2nd Floor, 12 Gagandeep Building, Rajendra Place, New Delhi-110008.
4. PS to AS(RA)
- ✓ 5. Guard File.
6. *Spare.*

ATTESTED

(Signature)
5.3.2018

(Debjit Banerjee)

STO (REVISION APPLICATION)