

REGISTERED
SPEED POST



F.No. 198/114/2015-R.A.
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..7/8/18

ORDER NO.510/2018-CE dated 6-8-2018 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI R.P.SHARMA, PRINCIPAL COMMISSIONER & ADDITIONAL
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE
CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed under Section 35EE of the
Central Excise Act,1944 against the Order-in-Appeal No.
101/SVS/RTK/2014 dated 08.02.2014, passed by the
Commissioner of Central Excise (Appeals), Delhi-III,
Gurgaon.

APPLICANT : The Commissioner of Central Excise & Service Tax,Rohtak

RESPONDENT : M/s JSL Stainless Ltd.

ORDER

A Revision Application No. 198/114/2015-R.A. dated 29.09.2015 is filed by the Commissioner of Central Excise & Service Tax, Rohtak (hereinafter referred to as the Applicant) against the Order—In—Appeal No. 101/SVS/RTK/2014 dated 08.02.2014 whereby the appeal of the respondent, M/s Jindal Steel Limited, Hisar has been allowed.

2. The Revision Application is filed mainly on the ground that the rebate claim of Rs. 24,55,006 was erroneously granted to the respondent and hence the Commissioner(Appeal)'s Order setting aside the recovery of the said amount ordered by the Original adjudicating authority under Section 11A of the Central Excise Act is erroneous.

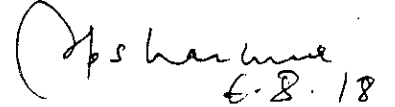
3. Personal hearings were offered in this case on 21.03.2018, 12.04.2018 and 01.05.2018. But no one appeared for the applicant. However, the respondent availed the hearing on 01.05.2018 through its three employees Shri Sanjeev Mishra, GM, Shri Subhasish Ghosh, GM and Shri R. Yadav, Sr. Manager. They furnished written reply dated 27.04.2018 contesting the Revision Application mainly on the grounds that there is no condition under Notification No.19/2004 – CE (N.T.) that the grant of rebate is subject to realization of export proceeds, CBEC Circular No. 354/70/97- CX dated 13.11.1997 does not prescribe that receipt of lesser amount or non-receipt of realization of export proceed would mean that goods have not been exported, the Allahabad High Court has clearly held in the case of M/s Polyplex Corporation Ltd. V/s Joint Secretary, Ministry of Finance, {2014(306) ELT -24(AII)} that mere executive decision cannot authorize the authorities to do something which is not otherwise permitted under Statutory Rules and the jurisdictional Commissioner of Central Excise, Rohtak, has subsequently held in the respondent's own case vide Order-In-Original No. 84-86-CE/COMMR/HG/RTK/2016-17 dated 31.03.2017 that the rebate of duty cannot be held to be erroneous merely because of non-submission of Bank Realization Certificates.

4. The government has examined the matter and it is observed at the outset that the Revision Application has been filed after the delay of 460 days against the

Order—In—Appeal dated 28.02.2014 which was received by the applicant on 27.03.2014 as per the Revision Application itself. As per the application for condonation of delay dated 24.08.2015 the delay in filling this Revision Application has occurred due to wrong filling of appeal before the CESTAT earlier and its rejection on 04.08.2015 for lack of jurisdiction. But the government is not impressed by this reason as choosing of wrong appellate forum by the departmental authorities cannot be expected and condoned. Moreover, the government has power to condone the delay upto three months only and beyond it the government does not have any authority to condone under Section 35EE(2) of the Central Excise Act. Thus the condonation of delay of 460 days is not within the competence of the government and hence the Revision Application is liable for rejection on this ground alone.

5. Besides above, the Revision Application is not found sustainable on merit also as neither Rule 18 of Central Excise Rules nor Notification No. 19/2004 has any such condition that rebate of duty will not be allowed in absence of a Bank Realisation Certificate and the rebate of duty will be recovered for non submission of Bank Realisation Certificate. The CBEC's above referred Circular also does not say so and the Allahabad High Court has clearly held in the case of Polyplex Corporation Ltd. that executive order cannot prevail over the Statutory Rules. Above all, the jurisdiction Commissioner, Central Excise, Rohtak has subsequently ordered vide Order-In-Original dated 31.03.2017 in the case of the respondent itself that the rebate of duty cannot be denied or recovered on the basis of CBEC's Circular No. 354/70797-CX dated 13.11.1997. Further as per the Order dated 21.11.2017 of the Superintendent, Hisar Range, issued to the respondent, the aforesaid Order of the Commissioner has been accepted by the Committee of Commissioners. Thus, the issue raised in the Revision Application is no more in dispute as per the subsequent orders of several departmental authorities.[¶]

6. Accordingly, the Revision Application is rejected.


(R.P. Sharma) 6.8.18

Additional Secretary to the Government of India

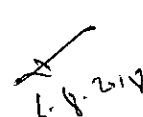
The Commissioner of Central Excise & Service Tax,
Rohtak, SCO-6, Sector-1,
Rohtak-124001.

ORDER NO.510/18- Cx dated 6-8-2018

Copy to: -

1. M/s. JSL Stainless Ltd., O.P. Jindal Marg, Delhi Road, Hisar (Haryana).
2. The Commissioner of Central Excise (Appeals), Delhi-III, Plot No. 36-37, Sector-32, Opposite Medanta-Medicity, Gurgaon- 122003.
3. The Additional Commissioner of Central Excise & Service Tax, SCO. 6,8,10, Sector-1, Rohtak-124001.
- ✓ 4. PA to AS(RA)
5. Guard File
6. Spare copy

ATTESTED


(Debjit Banerjee)
S.T.O. (RA)