

SPEED POST



F.No. 195/07/2019-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...11/5/21

Order No. 97/2021-CX dated 11-5-2021 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 Nos. 238-239/CE/CGST-Appeal-Gurugram/SG/2017 dated 19.12.2017 passed by the Commissioner(Appeals), CGST, Gurugram.

Applicants : M/s. SNG Metals Pvt. Ltd., Faridabad.

Respondent : The Commissioner of CGST, Faridabad.

ORDER

A revision application no. 195/07/2019-RA dated 19.03.2019 has been filed by M/s SNG Metals Pvt. Ltd., Faridabad (hereinafter referred to as the applicant) against Order-in-Appeal No. 238-239/CE/CGST-Appeal-Gurugram/SG/2017 dated 19.12.2017, passed by the Commissioner (Appeals), CGST, Gurugram. The Commissioner (Appeals), vide the impugned Order-in-Appeal, has upheld the Orders-in-Original Nos. 06/AC/D-VII/Rebate/2017-18 and 07/AC/D-VII/Rebate/2017-18, both dated 11.04.2017, passed by the Assistant Commissioner of the then Central Excise, Division-VII, Faridabad, vide which the rebate claims filed by the applicant herein were rejected.

2. Brief facts of the case are that the applicant filed two rebate claims, amounting Rs. 2,02,581/- and Rs. 24,080/-, for claiming rebate of excise duty paid on excisable goods, namely, Motor Vehicle Parts through their Cenvat Account, under Rule 18 of the Central Excise Rules, 2002. The rebate claims filed on 19.01.2016 & 22.01.2016 were initially rejected by the original authority, vide two separate Orders dated 11.04.2016. In appeal, the Commissioner (Appeals), vide Orders dated 04.01.2017, remanded the matter to the original authority with directions to pass a speaking order on merits. Pursuant thereto, the Orders dated 11.04.2017 were passed by the original authority, which have culminated into the impugned Order-in-Appeal. The original authority has rejected the refund claim on two grounds, namely, (i) the party had not submitted BRC/evidence regarding realisation of export proceeds within the period stipulated for the purpose, and; (ii) Duty had been paid through the Cenvat Account where the credit had been availed on the basis of an Excise registration found to be wrong and as such the credit was inadmissible and did not qualify the rebate claim for sanction. In appeal, the Commission (Appeals) has noted that the export proceeds had been realised through a freely convertible Vostro Account in the Indian Rupees. However, the applicant could not provide the relevant documents pertaining to the Vostro account. There is no finding recorded by the Commissioner (Appeals) on the issue (ii). Hence, this revision application.

3. Personal Hearing in the matter was held on 10.05.2021. Shri N.K. Sharma, Advocate appeared for the applicant. He highlighted that:

(i) As per Rule 18, only conditions for grant of rebate are that the goods have been exported and that the excise duty has been paid.

(ii) Notwithstanding (i), the export proceeds have been realised through Vostro Account in INR. This is clearly recorded in the OIA.

(iii) The other ground that CENVAT credit which has been used to pay duty was not admissible and hence duty has not been paid, is not been dealt with by the Commissioner (Appeals).

No one appeared for the respondent department nor any request for adjournment has been received. Therefore, the matter is taken up for decision on the basis of records.

4. The Government has examined the matter. As regards issue (i), it is observed that Rule 18 of the Central Excise Rules, 2002 and the relevant notification no. 19/2004-CE (NT) do not prescribe realisation of export proceeds and submission of BRCs etc., to evidence the same, as a condition precedent to the sanction of rebate claim. Hence, denial of rebate to the applicant solely on this count is not sustainable. This view is supported by the judgment of the Hon'ble Allahabad High Court in the case of Jubilant Life Sciences Ltd. vs. Union of India {2016 (341) ELT 44 (ALL)}. Identical view has also been taken by the Government earlier in the case of M/s Salasar Techno Engineering Pvt. Ltd. {2018 (264) ELT 1143 (GOI)} and, recently, in the Order no. 66/2021-CE dated 31.03.2021 in the case of M/s Taurus Agile Technology Co. Pvt. Ltd., Delhi as well as Order no. 96/2021-CE dated 10.05.2021 in the case of M/s. Jindal (India) Ltd., Howrah. In any case, the applicant had produced details regarding realisation of export proceeds before the Commissioner (Appeals) and the same has not been accepted merely on the ground that the passbook/ account statement has not been submitted. Therefore, the Government finds that the Order of Commissioner (Appeals) cannot be sustained in so far as it relates to issue (i). As regards issue (ii), it is already indicated hereinabove that

the Commissioner (Appeals) has recorded no finding in respect thereof. Therefore, the case is liable to be remanded to the Commissioner (Appeals) for de-novo consideration and decision on merits in respect of issue (ii).

5. In view of the above, the impugned Order-in-Appeal is set aside and the revision application is allowed in so far as it relates to issue (i) whereas it is allowed by way of remand to the Commissioner (Appeals) for de-novo consideration in respect of issue (ii), as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s SNG Metals Pvt. Ltd.,
Plot No. 44, Sector-6,
Faridabad – 121 006.

G.O.I. Order No. 97/21-CX dated 11-5-2021

Copy to: -

1. The Commissioner of Central Goods & Service Tax, Faridabad, GST Bhavan, New C.G.O. Complex, N.H. 4, Faridabad- 121 001.
2. Commissioner (Appeals), Central Goods & Service Tax, Gurugram.
3. Sh. N.K. Sharma & Associates, 131, NH-5, Railway Road, N.I.T. Faridabad – 121 001.
4. P.S. to A.S. (Revision Application).
5. Guard File.

6. spare copy.

ATTESTED



12/5/21
Suhel (RA)