

REGISTERED
SPEED POST



F.No. 198/I-A/2016—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. 7/11/18...

Order No. 615/2018—CX dated 04-12-2018 of the Government of India, passed by Shri R. P. Sharma, Principal Commissioner & 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. 14-21/KOL-III/15 dated 05/10/2015, passed by the Commissioner (Appeals), Kolkata.

Applicant : The Commissioner of CGST, Kolkata.

Respondent : M/s Sesa International Ltd., Kolkata.

ORDER

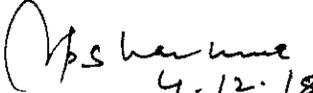
A Revision Application No. 198/I-A/2016-RA dated 13.01.2016 has been filed by the Commissioner of Central Excise, Kolkata (hereinafter referred to as the applicant) against the Order-in-Appeal Nos. 14-21/Kol-III/15 dated 05/10/2015, passed by the Commissioner (Appeals), Kolkata, whereby the respondent's appeal against the order-in-original has been allowed.

2. The brief facts leading to the present proceeding before the Government are that M/s Sesa International Ltd., the respondent, had filed rebate claims under Rule 18 of Central Excise Rules, 2002, read with notification no. 19/2004-CE (NT) dated 06/09/2004, in respect of central excise duty paid on the exported goods. But since sale proceeds received was lower than what was declared in the ARE-Is, the Maritime Commissioner reduced the rebate claims proportionately which was challenged by the respondent before the Commissioner (Appeals) and the same was allowed vide above mentioned order-in-appeal. The present revision application has been filed by the Department giving a vague reason that the order-in-appeal rejecting the order-in-original is erroneous for the above stated reason that the lesser sale proceed was received for the exported goods.

3. A personal hearing was offered on 11.10.2018. However, no one appeared for the applicant as well as the respondent and no request was also received from them for any other date of hearing in this matter from which it is implied that they are not interested in availing any personal hearing in this case and hence the matter is taken up for decision on the basis of records available.

4. The Government has examined the matter and it is observed that the rebate of duty is sought to be linked with the realization of foreign currency from the overseas buyer and not to the actual duty amount paid by the applicant on the exported goods. But no authentic reason is given by the lower authority in his Order for reducing the amount of rebate of duty in the above discussed situation on the basis of actual realization. In revision application also no legal authority has been cited to support the case that rebate claims can be reduced in the above stated circumstance. In Rule 18 of Central Excise Rules, 2002 and Notification No.19/2004-C.E. (N.T.) dated 6.9.2004 also, which are governing provisions for rebate of duty, it is nowhere stipulated that rebate of duty will be sanctioned by taking into account the amount of export proceeds realized by the exporter. Even Excise Manual of Supplementary Instruction, 2005 does not mention any such condition. In fact the realization of export proceeds itself is not a pre-condition for sanctioning of rebate of duty and, therefore, lesser realization of export proceeds cannot be a criterion for reducing the rebate claim. Therefore, the government does not agree with the contention of the applicant that the Commissioner (Appeals) has committed an error by allowing the appeal of the respondent and by allowing the rebate of duty to the respondent for full duty paid on exported goods.

5. Accordingly, the revision application is rejected.


4.12.18

(R. P. Sharma)

Additional Secretary to the Government of India

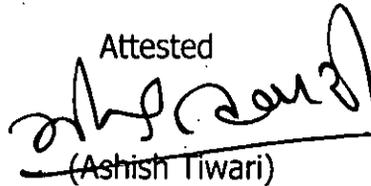
The Commissioner of Central Excise
(Central Goods & Service Tax),
Kolkata-III Commissionerate,
180, Shantipally, Rajdanga Main Road,
Kolkata-700135.

G.O.I. Order No. 6/5/18-Cx dated 4-12-2018

Copy to:-

1. The Commissioner of Central Excise, Kolkata-III, Kendriya Utpad Shulk Bhavan, Fron Building 1st Floor, 180, Shantipally, Rajdanga Main Road, 1st Floor, Kolkata-7001074.
2. M/s. Sesa International Ltd. 31, Shakespeare Sarani, Jesmine Tower, 6th Floor, Kolkata-700017.
3. P.S to AS (RA).
4. Guard file.

Attested



(Ashish Tiwari)

Assistant Commissioner (Revision Application)