

SPEED POST



F. No. 199/01/ST/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...02/02/22

Order No. 18 /22-ST dated 01-02-2022 of the Government of India, passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994.

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994 against the Order-in-Appeal No. MRT/EXCUS/000/APPL-MRT/407/2018-19 dated 11.12.2018 passed by the Commissioner (Appeals), CGST, Meerut.

Applicant : The Pr. Commissioner, CGST, Meerut.

Respondent : M/s ALM Industries Ltd., Saharanpur.

ORDER

A Revision Application No. 199/01/ST/2019-R.A. dated 11.03.2019 has been filed by Pr. Commissioner, CGST, Meerut (hereinafter referred to as the Applicant department) against the Order-in-Appeal No. MRT/EXCUS/000/APPL-MRT/407/2018-19 dated 11.12.2018 passed by the Commissioner (Appeals), CGST, Meerut. The Commissioner (Appeals), vide the impugned Order-in-Appeal, has on an appeal filed by M/s ALM Industries Ltd., Saharanpur (hereinafter referred to as the Respondent) permitted a part of the rebate claim, which was originally rejected.

2. Briefly stated, the Respondents filed rebate claim of Rs. 11,19,689/- for the month of December, 2016, in respect of service tax paid on the specified services used in the export of 'frozen meat', in terms of Notification No. 41/2012-ST dated 29.06.2012. The Assistant Commissioner, CGST, Saharanpur, vide Order-in-Original No. 57/2017 (R) dated 10.10.2017, sanctioned the claim to the extent of Rs. 9,40,998/- but rejected the claim of Rs. 73,608/- pertaining to Swachh Bharat Cess (SBC) & Krishi Kalyan Cess (KKC); an amount of Rs. 85,391/- for non-submission of BRCs; and an amount of Rs. 19,672/- on other grounds. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, allowed the rebate in respect of amounts pertaining to SBC & KKC as well as the rebate claim of Rs. 85,391/- rejected due to non-submission of BRCs.

3. The revision application has been filed on the grounds that the Commissioner (Appeals) has allowed the rebate of the amount rejected for non-submission of BRCs without even verifying that the remittance has been received as on the date of impugned Order-in-Appeal when the stipulated period of nine months has elapsed. The Written Replies dated 15.05.2019, revised, vide letter dated 25.05.2019, has been filed by the Respondent. It is, inter alia, stated therein that the BRCs of sale proceeds in respect of rebate claim amounting to Rs. 85,391/- are in process, however, it may take sometime which may be condoned. The Respondents also submitted that the matter may be decided on the basis of available records and they do not wish to be heard in person.

4. Personal hearings in the matter were fixed on 24.12.2021, 07.01.2022 & 31.01.2022. No one appeared for either of the parties nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for disposal based on records.

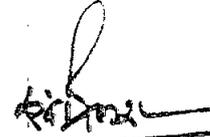
5. The Government has carefully examined the matter. The rebate has been denied by the original authority on the grounds that the BRCs evidencing realization of export proceeds have not been submitted. The Commissioner (Appeals) has, on the other hand, allowed the rebate observing that there is no requirement for submission of BRCs at the time of sanction of rebate under the Notification No. 41/2012-ST. However, in case the BRCs are not submitted within the stipulated period or extended period, action may be taken as per para-4 of the notification. Therefore, the rejection of refund claim has been held to be not tenable. The aforesaid para-4 of the Notification dated 29.06.2012 reads as under:

"(4) Where any rebate of service tax paid on the specified services has been allowed to an exporter on export of goods but the sale proceeds in respect of said goods are not received by or on behalf of the exporter, in India within the period allowed by the Reserve Bank of India under section 8 of the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such rebate shall be deemed never to have been allowed and may be recovered under the provisions of the said Act and the rules made thereunder;"

The Commissioner (Appeals) is technically correct in observing that there is no requirement in the notification making the submission of proof towards realisation of export proceeds as a pre-condition for sanction of rebate claim. Rather the notification provides that if any rebate has been allowed but the sale proceeds are not received within the period allowed under FEMA, including any extension of such period, such rebate shall be deemed never to have been allowed and may be recovered, under the provisions of the Finance Act, 1994 and the Rules made thereunder. However, in the present case, the period of realisation of export proceeds, i.e., nine months had already elapsed when the Order-in-Original came to be passed on 10.10.2017. The Applicant department has correctly pointed out that evidence of realisation was not produced even before the Commissioner (Appeals). In fact, even before the Government, the contention of the Respondents is that the

realisation may take sometime which may be condoned. Thus, it is evident that the export proceeds have not been realised till date. In such a situation, two options are available – one, the rebate may be allowed and thereafter the procedure for recovery may be initiated or; two, since the export proceeds have evidently not been received during the period allowed under FEMA nor the competent authority has extended the period of realisation, the rebate itself may not be allowed, at this stage. In case, the first option is exercised, it will lead only to a multiplicity of proceedings when it is evident that rebate once sanctioned would have to be recovered. Thus, the second option is just and fair in the facts and circumstances of the case. Accordingly, the Government holds that the impugned Order-in-Appeal cannot be sustained.

6. The revision application is allowed.



(Sandeep Prakash)

Additional Secretary to the Government of India

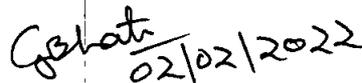
The Pr. Commissioner of CGST, Meerut,
Opposite CCS University, Mangal Pandey Nagar,
Meerut (U.P.) – 250 004.

G.O.I. Order No. 18/22-ST dated 01-02-2022

Copy to: -

1. M/s ALM Industries Ltd., 43-Kutub Market, Ambala Road, Saharanpur (U.P.) – 247 001.
2. The Commissioner (Appeals), CGST, Meerut, Opposite CCS University, Mangal Pandey Nagar, Meerut (U.P.) – 250 005.
3. PA to AS (Revision Application).
4. Spare Copy.
5. Guard File.

ATTESTED



GULSHAN BHATIA
Superintendent