

SPEED POST



F. No. 195/13/2017-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 03/11/22

Order No. 73/22-Cx dated 02-11-2022 of the Government of India passed by Sh. Sandeep Prakash, 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.37/2017 (CTA-II) dated 30.06.2017 passed by the Commissioner of Central Tax (Appeals-II), Chennai.

Applicant : M/s Johnson Lifts Pvt. Ltd., Chennai.

Respondents : The Commissioner of GST & Central Excise, Chennai (North).

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ORDER

A Revision Application No. 195/13/2017-RA dated 12.12.2017 has been filed by M/s Johnson Lifts Pvt. Ltd., Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 37/2017 (CTA-II) dated 30.06.2017, passed by the Commissioner of Central Tax (Appeals-II), Chennai, wherein, the Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original No. LTUC/37/2016-AC(RF) dated 19.01.2016, passed by the Assistant Commissioner, Large Taxpayer Unit, Chennai.

2. Brief facts of the case are that the Applicant is engaged in manufacturing of 'parts of Lifts' and was registered under Central Excise Registration No. AAACJ0838QXM002. The Applicant was availing Cenvat Credit on the inputs, input services and Capital Goods used in the manufacture of finished goods. They filed a rebate claim for an amount of Rs. 2,68,914/-, being the excise duty paid on the goods purportedly supplied to M/s Info Park, Kochi (a unit in SEZ), during June, 2015. On verification of the claim, it was noticed that the Applicant had provided copies of invoices, which were not certified and even those invoices were not addressed to the SEZ unit. Further, the goods were not cleared under the prescribed document i.e., ARE-1 but were cleared under an invoice. Hence, a Show Cause Notice dated 06.11.2015 was issued to the Applicant herein resulting in rejection of the refund claim by the original authority. The Applicant herein preferred an appeal before the Commissioner (Appeals) who, vide the impugned O-I-A, upheld the OIO and rejected the appeal.


3. The revision application has been filed, mainly, on the grounds that the Applicant had entered into a Letter of Intent for design, manufacture, supply, erection, testing and commissioning with the SEZ Unit; that materials were supplied in knocked down condition on various dates, as such, invoices were raised in the name of the Applicant for the purpose of transportation; that on completion of successful erection and commissioning, final commercial invoice was raised in the name of customer; that only first three supplies were on payment of duty and other supplies were made without payment of duty through ARE-1 as per notification No. 42/2001-CE(NT); that they have not collected excise duty from their customer which is evident from the Chartered Accountant's certificate submitted by them with the lower authority. The Applicant further submitted that even though they had submitted these documents to prove that the goods were supplied to SEZ, the original authority as well as the appellate authority rejected the refund claim on the grounds that no documents were adduced to prove that the goods were supplied to SEZ.

4. Personal hearing, in virtual mode, was held on 02.11.2022. Sh. Durairaj, Advocate appeared for the Applicant and reiterated the contents of the RA. He requested that the rebate may be allowed in view of the Chartered Accountant certificate provided by them. No one appeared for the Respondent Department nor has any request for adjournment been received. Hence, it is presumed that the department has nothing to add in the matter.

5. The Government has examined the matter carefully. The Government observes that, in the present matter, the goods are said to have been removed from DTA to SEZ, without preparing ARE-1. It is the contention of the Applicant that non-preparation and filing of ARE-1 is merely a procedural

infraction. However, the Commissioner (Appeals) has rejected this contention by citing Rule 30(1) of the SEZ Rules, 2006, which requires that the goods should be supplied from DTA to SEZ under the cover of ARE-1 as referred to in notification no. 42/2001-CE(NT) dated 26.06.2001. Keeping in view the rule position so cited by the Commissioner (Appeals), the Government is in agreement with his finding that this is not merely a procedural lapse. Further, it is also not in dispute that the relevant Excise invoices are in the Applicant's own name. Therefore, the factum of export and duty paid nature of goods are not established with reference to the documents produced. As such, the Government does not find it to be a fit case for revision.

6. In view of the above, the revision application is rejected.


(Sandeep Prakash)

Additional Secretary to the Government of India

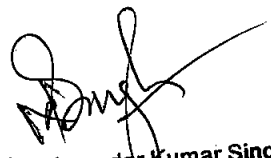
M/s Johnson Lifts Pvt. Ltd.,
No. 17, Poonamallee Bye Pass Road,
Poonamallee, Chennai-600056.

Order No. 73/22-CX dated 02-11-2022

Copy to:

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2. Principal Commissioner of CGST & Central Excise, Chennai North, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
3. PA to AS(RA)
- ✓ 4. Guard File.
5. Spare Copy

ATTESTED


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