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SPEED POST



F.No. 375/12,13,14,15/DBK/2014-R.A.Cx
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..

5/1/18

Order No. ~~04-07/18~~ Cus dated ~~3-1-2018~~ of the Government of India passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 202-205/CE/App/DLH-IV/2013 dated 17.01.2014 passed by the Commissioner of Central Excise, Faridabad.

Applicant : M/s K.P.S. Flexi Tubes

Respondent : Commissioner of Central Excise, Faridabad

ORDER

The Revision Applications No. 375/12,13,14,15/DBK/2014-R.A.Cx have been filed by M/s K.P.S. Flexi Tubes, Plot No. 7A, 13/3, Mathura Road, Faridabad, (hereinafter referred to as the applicant) against the Order-in-Appeal No. 202-205/CE/Appl/DLH-IV/2013 dated 17.01.2014, issued by the Commissioner (Appeals), Central Excise, Delhi-IV.

2. The brief facts leading to the filing of the Revision Applications are that the applicant had availed cenvat credit in respect of inputs and also claimed drawback under category (A) of drawback schedule which included Central Excise portion also. Whereas they were entitled to avail drawback in category (B) only since they had already availed cenvat credit in respect of inputs. However, subsequently they returned the Excise portion of drawback of duty to the department alongwith interest when it was pointed out by the Divisional A.C. in reference to rebate claims of Rs. 1,15,297/-, Rs. 89,034/-, Rs. 53,532/-and Rs. 98,160/- filed by the applicant against export of goods. These claims were rejected by the original adjudicating authority on the following grounds:

- i) The applicant had claimed drawback on the excise portion also therefore the rebate claim was not admissible.
- ii) There is no provision in law supporting refund of drawback once claimed and later claiming rebate on the same.

3. Being aggrieved by the order the applicant preferred an appeal with Commissioner (Appeals) who has also rejected their claims. The applicant has now filed the Revision Applications mainly on the following grounds:

- a) Drawback of duty relates to duty paid on inputs used in the manufacture of export goods. Whereas rebate of duty relates to the duty paid by them on their finished products at the time of export.
- b) Rule 18 of Central Excise Rules provides for two different benefits to the exporter either by way of CENVAT credit or drawback (category A) or rebate.

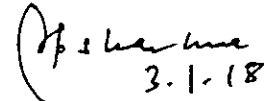
- c) The applicant has paid the Excise portion of drawback claimed by them to the department.
- d) Rebate is governed by Notification No 19/CE(NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules 2002 and drawback of duty by Customs and Central Excise and Service Tax Drawback Rules 1995.
- e) The following case laws also support their claims.
 - i) Commissioner of Central Excise, Pune Vs. M/s Esteem Services 2007(210) ELT. 546 (Tri. Mumbai)
 - ii) M/s Swatantra Bharat Mills Vs. CCE 1993 (68) ELT 504(GOI)

4. Personal hearing was held on 5.12.2017 which was attended by Shri G.S. Toor, Consultant, for the applicant who reiterated the grounds of revision already pleaded in their application.

5. On examination of all relevant records of this case, the Government finds that there is no doubt in this case that the applicant has exported the goods on payment of duty and there is no allegation that the applicant has not complied any other condition stipulated in Notification No.19/2004. Hence, the present case is squarely covered under Rule 18 and Notification No.19/2004 for the purpose of granting rebate of duty on the exported goods. The Commissioner (Appeals)'s objection that the applicant has availed drawback in respect of central excise duty also is not supported by Notification No.19/2004 in as much as there is no such condition therein which stipulate that rebate of duty on exported goods will not be admissible in the event of availing drawback of duty in respect of inputs. While for availing drawback of duty for central excise portion availment of cenvat credit in respect of inputs is a disqualification, but it is not so when rebate of duty is availed on exported goods under Notification No.19/2004. Moreover, the applicant has already paid back the drawback of duty availed in respect of central excise portion along with interest to the Government and thereby it cannot be stated thereafter that the applicant has availed drawback of central excise in respect of inputs. As regards Commissioner (Appeals)'s reliance on the Bombay High Court's decision in the case of Indorama

Textiles Ltd., 2006(200) ELT 3 (Bom.), the Government is of the view that this decision is not exactly applicable to the present case as in the said decision it was held that a person cannot avail rebate of duty in respect of both inputs and final exported goods simultaneously which is not the issue in the present proceeding. Moreover, the above decision of the Bombay High Court has been set aside by the Supreme Court in the case of Spentex Industries Ltd. Vs. CCE, 2015(324) ELT 686(S.C.) whereby it has been now held that an exporter can avail rebate of duty in respect of both inputs as well as final exported goods. Moreover, availment of rebate of duty on exported goods and drawback of duty in respect of central excise portion relating to the inputs used in the exported goods cannot be termed as double benefit as these two benefits are given under two different schemes by the Central Government enshrined in Rule 18 of Central Excise Rules and under Drawback Rules 1995. Therefore, the 4 rebate claims of Rs.1,15,297/-, Rs.89,034/-, Rs.53,532/- and Rs. 98,160/- are admissible to the applicant.

7. In view of the above discussions, the Commissioner (Appeals)'s Order is set aside and the Revision Applications are allowed.


3.1.18

(R.P.Sharma)

Additional Secretary to the Government of India

M/s K.P.S. Flexi Tubes,
Plot No. 7A , 13 /3; Mathura Road,
Faridabad

Order No. 04-07/18-Cus dated 3-1-2018

Copy to:

1. The Commissioner of Central Excise, Delhi-IV, New C.G.O. Complex N.H. IV, Faridabad, Haryana-121-001.
2. The Commissioner (Appeals) Central Excise Delhi-IV, New CGO Complex, NH-IV, Faridabad. 121001.
3. Assistant Commissioner of Central Excise Division-I, New CGO Complex, NH-IV, Faridabad-121001.
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED

(Debjit Banerjee)
STO (Revision Application)