

REGISTERED
SPEED POST



F.No. 195/184/2015-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.....

Order No. 102/18-Cx dated 5-2-18 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. LUD-EXCUS-000-APP-15-15-16 dated 30.04.2015 passed by Commissioner of Central Excise (Appeals), Chandigarh

Applicant : M/s SEL Manufacturing Co.Ltd., Ludhiana

Respondent : Commissioner of Central Excise, Ludhiana

ORDER

A revision application No.195/184/2015-RA dated 06.7.2015 is filed by M/s SEL Manufacturing Co.Ltd., Ludhiana (hereinafter referred to as the applicant), against the order No.LUD-EXCUS-000-APP-15-15-16 dated 30.04.2015, passed by Commissioner of Central Excise (Appeals), Chandigarh, whereby allowing Revenue's appeal the Assistant Commissioner's Order is set aside who had sanctioned rebate of duty to the applicant.

2. The brief facts of the case are that the applicant has exported textile articles on payment of duty under Notification No.29/2004-CE dated 9.7.2004 and claimed rebate of duty which was sanctioned by the jurisdictional Assistant Commissioner also. However, the concerned Commissioner reviewed his Order and filed an appeal which is allowed by the Commissioner (Appeals) vide above stated Order holding that the applicant was not allowed to pay duty on the exported goods as they were availing exemption Notification No.30/2004-CE dated 9.7.04.

3. The revision application is filed by the applicant mainly on the ground that the applicant was eligible to avail Notification No.29/2004-CE and 30/2004-CE simultaneously and the Punjab & Haryana High Court's decision in the case of M/s Nahar Industries Enterprises Ltd., 2009(235) ELT 22 is not applicable to their present case.

4. While personal hearing in this case was availed by the Advocate of the applicant on 21.12.17, Smt. Darshana Sharma, Superintendent, GST Range, Samrala, appeared for personal hearing on 11.1.18 for the respondent and opposed the revision application for the reasons discussed in the OIA.

5. On examination of all the relevant records, it is clearly noticed that the goods manufactured by applicant have been exported on payment of duty from Credit and no doubt has been expressed by any departmental authority about this fact. In fact, the rebate claim was also allowed by the Asstt. Commissioner on the basis of the export of duty paid goods. However, it has been held to be inadmissible by the Commissioner

(Appeal) for the reason that the applicant was not authorized to pay duty of excise on exported goods as the applicant was availing full exemption from duty on its product under Notification No.30/2004-CE dated 09.07.2004. The applicant has also not denied this fact and has accepted that they were availing Notification No.30/2004-CE dated 09.07.2004 and did not avail any credit in respect of input used for manufacturing the exported goods and even in respect of other goods during the relevant time. But the applicant has stated that they had already accumulated credit prior to availing the full exemption from duty under Notification No.30/2004 and the same was utilized while clearing the exported goods by paying duty as per Notification No.29/2004-CE dated 09.07.2004 for which there is no legal bar under this Notification or any other legal provision.

6. There is no dispute that the applicant's product i.e. textile goods were covered under both Notification No.29/2004 and 30/2004 which are fully independent from each other. Hence, the Government is clear in its view that the applicant had option to avail any of the two Notifications and even both could be availed simultaneously in respect of different lots/consignments of the textile goods. When the applicant availed full exemption from duty in respect of all or some textile goods under Notification No.30/2004 it is beyond any doubt that the applicant could not avail credit on inputs used in relation to such goods and if they availed credit the applicant was not eligible from full exemption from duty under the said Notification No.30/2004. But there is no such allegation from lower authority that the applicant has violated any condition of Notification No.30/2004. Even when the applicant did not avail any credit and availed exemption under Notification No.30/2004, the applicant was free to pay concessional Central Excise duty under Notification No.29/2004 and was not bound to avail Notification No.30/2004 only. Since the applicant has opted to pay duty on exported goods under Notification No.29/2004 by utilizing Credit already available with them, no legal error can be attributed to the applicant. It is also not the case of lower authority that credit was not legitimately earned by the applicant prior to option for Notification No.30/2004. As the applicant has undoubtedly exported the goods on payment of

Central excise duty and no contravention of any other condition stipulated in Rule 18 of Credit Rules, 2002 and Notification No.19/2004-CE (NT) has been alleged against the applicant in the case, rebate of duty is admissible to the applicant.

7. As regards Punjab & Haryana High Court's decision in the case of Nahar Industrial Enterprises Ltd, relied upon by Commissioners (Appeals) in his order for denying the rebate of duty to the applicant, the Government agrees with the contention of the applicant that this case is entirely different from the case of Nahar Industrial Enterprises Ltd. On detailed scrutiny of the aforesaid decision it is noticed that M/s Nahar Industrial Enterprises Ltd. had paid Central Excise duty through credit at tariff rate of 16% even when the effective rate of duty on the exported goods was only 4% under Notification No.29/2004. Thus, they had paid excessive duty amount through credit which was not payable at all and it was found glaring as they had paid duty @ 4% when they cleared the same product in domestic market. Thus, their intention for encashment of their accumulated credit by paying at tariff rate of duty and by ignoring effective rate of duty was obvious. Considering these facts High Court of Punjab & Haryana has held that excessive duty to the extent of 12% paid through credit cannot be allowed to be rebated through cash and for such excess payment credit can only be restored. Thus rebate of duty is not denied in the above cited case also and it was held to payable in cash and in form of credit. But in the instant case no such excess payment of duty has been alleged and the applicant has paid duty on the exported goods at the effective rate of duty specified under Notification No.29/2004-CE dated 09.07.2004 for which rebate of duty is admissible in cash as clarified by the CBEC vide its Circular No.687/3.2003-Cx dated 03.01.2003. Considering the above facts, the above cited decision of Punjab & Haryana High Court is not applicable to the present case and the Commissioners (Appeals) has committed an error by denying rebate of duty to the applicant in cash on the basis of above decision in the case of M/s Nahar Industrial Enterprises Ltd.

8. Accordingly, the Order of the Commissioner (Appeals) is set aside and revision application is allowed.

(Signature)
5.2.18

(R.P.Sharma)

Additional Secretary to the Government of India

M/s SEL Manufacturing Co. Ltd.,
Plot No.274, G.T.Road,
Dhandari Kalan, Ludhiana

G.O.I. Order No. 102/18-Cx dated 5-2-2018

Copy to:-

1. The Commissioner of Central Excise, Ludhiana, Central Excise House, 'F' Block, Rishi Nagar, Ludhiana-141001 (Punjab)
2. Commissioner (Appeals) Central Excise, Chandigarh-I, C.R.Building, Plot No.-19, Sector-17C, Chandigarh
3. The Deputy Commissioner of Central Excise Division-I, Ludhiana
4. PA to AS (RA)
- ✓ 5. Guard File
6. Spare Copy.

ATTESTED

Attested

(Ravi Prakash)
OSD (RA)

RDW
5/2/18
(नि.प्र.दे.पि.प्र.अ.दे.वि.)
असिस्टेंट सेक्रेटरी (आ.दे.वि.)
द्वि. मंत्रालय (आ.दे.वि.)
Ministry of Finance, (Deptt. of Rev.)
भारत, नया दिल्ली / Govt. of India
नया दिल्ली / New Delhi