

REGISTERED
SPEED POST



F.Nos. 195/498/2011-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..... 25/7/13

ORDER NO. 1059/13-Cx DATED 24-07-2013 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI D. P. SINGH, JOINT 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 orders-in-appeal
No. M-I/RKS/72/11 dated 01.03.2011 passed by
Commissioner of Customs and Central Excise
(Appeals), Mumbai Zone-I

APPLICANT : M/s VVF Ltd., 109-109 B, Opp. Fort Garden, Sion
(East), Mumbai – 400022

RESPONDENT : Commissioner of Central Excise, Mumbai-I

ORDER

This revision application is filed by M/s VVF Ltd., 109-109 B, Opp. Fort Garden, Sion (East), Mumbai – 400022, against the order-in-appeal No. M-I/RKS/72/11 dated 01.03.2011 passed by Commissioner of Customs and Central Excise (Appeals), Mumbai Zone-I with respect to order-in-original No. 19/07 dated 13.12.2007 passed by JCCE Mumbai-I Commissionerate.

2. Briefly stated the facts of the case are that the applicants had filed an application No. GDT/DBK/SSM-2/2005 dated 29.12.2005, for fixation of brand rate for the product "Sodium Salt of Monocarboxylic Acid-2" under the provisions of Customs & Central Excise Duties Drawback Rules, 1995. The said application was allotted FIFO No. B12005, dated 29.12.2005 and copy of the said application along with all enclosures was forwarded to the jurisdictional Assistant Commissioner, Div.F-II for necessary verification and detailed report, as required under the procedure laid down by the Board vide Circular No. 14/2003-Cus., dated 06.03.2003. On scrutiny, it was observed that the application had been filed within 83 days from the date of first shipment and the company had requested for condonation of delay for 23 days, as the application needed to be filed within 60 days from the date of first shipment. The jurisdictional Assistant Commissioner, Div.F-II vide letter dated 27.01.2006 had vetted and forwarded the verification report of the Range Superintendent in respect of the subject brand rate application. The office did not agree for the percent of wastages shown arising out of the product manufactured and exported and hence the applicants were called for personal hearing to explain their position.

2.1 The Additional Commissioner (Tech.), Central Excise, Mumbai-I, vide F.No. V(30) DBK/JNPT/VVF/CCEMI/13/T/2005/165 dated 01.04.2006 passed an order-in-original No. 20/2006 dated 31.03.2006 fixing the Brand Rate as Rs. 3207.77/- per metric tonne of the goods exported, (quantity restriction 411.750 MT) restricted to the exports made vide shipping bills as detailed thereunder and applicable to the exports made from Mumbai Port, JNPT and Mumbai Air Port. Being aggrieved with the said order-in-

original No. 20/2006 dated 31.03.2006, the applicants filed an appeal before Commissioner (Appeals) Mumbai-I who vide order-in-appeal No. CPA (3234)40/MI/2006 dated 14.06.2007, allowed the said appeal by way of remand, setting aside order-in-original passed by the Additional Commissioner. Therefore, a fresh personal hearing was granted to the applicants on 28.08.2007, and subsequently the Joint Commissioner (Tech), Central Excise, Mumbai-I, vide order-in-original dated 13.12.2007, has fixed the brand rate to Rs.3207.76 per metric tonnes with certain conditions.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who after consideration of all the submissions, rejected the appeals.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act 1944 before Central Government on the following grounds :

4.1 The efforts made by the applicants to get the documents from DRI were abortive, since DRI did not respond to the applicants' request. Applicants, however, are still following the matter with the DRI to obtain the required documents. In this situation applicants could not submit exhaustive submissions as promised to the Commissioner of Central Excise (Appeals). Before deciding the appeal, the Commissioner (Appeals) should have given one more chance to the applicants to furnish the exhaustive written submissions in support of their plea that in the earlier case brand drawback rate was fixed by the Deputy Commissioner was similar in facts and the situation in the present claim. It was not different. This was necessary in view of the principles of natural justice and fair play. At this stage, applicants would like to make it clear that the delay was not on account of the applicants. It was on account of DRI, who had been turning deaf ears to the applicants' specific request.

4.2 The appeal of the applicants was rejected by the Commissioner (Appeals) only on this ground that the applicants had not submitted any documentary evidence to rebut the findings of the lower adjudicating authority in denovo proceedings.

4.3 Applicants submit that the order has been passed by the Commissioner (Appeals) in violation of the principles of natural justice. The impugned order of the Commissioner (Appeals), therefore, deserves to be set aside and the matter deserves to be remanded back to the original adjudicating authority for deciding the issue afresh by following the principles of natural justice and also to follow the directions given by the Commissioner of Central Excise (Appeals) in his order-in-appeal No. CPA (3234)40/M-I/2007 dated 14.06.2007 contained in paragraphs 8 & 9 of that order-in-appeal. The Joint Commissioner has not verified the records as directed by the Commissioner (Appeals) before arriving at his decision in denovo proceedings. He mechanically reproduced the same findings which were earlier given by the Additional Commissioner, Central Excise in his order-in-original No. 20/2006 dated 31.03.2006 which was set aside by the Commissioner (Appeals).

4.4 In further written submissions dated 4.3.2013 applicant has submitted as under :-

4.4.1 Applicant had filed drawback brand rate fixing application to the Additional Commissioner of Central Excise, Mumbai-I, claiming Brand Rate of Rs.3818.38 per mt less duty on recoverable waste namely L.G. M.F.A. (Low Grade Mixed Fatty Acid) Rs.27.24. Net drawback claim was Rs.3791.14.

4.4.2 Additional Commissioner by his order dated 31.03.2006 fixed the brand rate amount of Rs.3818.38 minus Rs.610.61 = Rs.3207.77. He determined the amount of duty on recoverable waste of LGMFA as Rs.610.61 based on the import price of crude palm stearine which was Rs.4,483.25. The applicant had determined the duty on LGMFA @ Rs.1000/- PMT which worked out to Rs.27.24.

5. Personal hearing was scheduled on 4.3.2013 and 27.6.2013. Hearing held on 4.3.2013 was attended by Shri Naresh Dalir, General Manager of Company and Shri A.V. Naik, Advocate.

6. Government has carefully considered all the case records, submission made by both the parties and perused the impugned order-in-original and order-in-appeal.

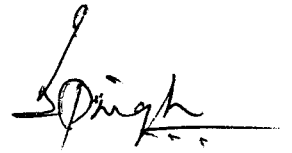
7. On perusal of records, Government observes that DBK brand rate of Rs.3207.76 per MT fixed in this case by ADC Mumbai-I vide order dated 13.12.2007 was upheld by Commissioner (Appeals) vide order-in-appeal dated 01.03.2011. The applicant has filed this revision application mainly on the ground that both the authorities have taken price of Rs.4483.25 PMT and on that basis the duty on recoverable waste (quantity 0.1362) was worked out as Rs.610.61; that however they have worked out duty on the same quantity of recoverable waste @ Rs.1000/- PMT involving duty of Rs.27.24.

8. In this case the original authority has held that the recoverable loss LGMFA is on account of crude palm stearine and acid oil and since no duty is paid on acid oil the entire duty component in LGMFA is of crude palm stearine whose import price as per Bill of Entry is Rs.4,48,3.25/MT. It is not in dispute that duty on the inputs contained in 0.1362 MT of the waste is required to be deducted from the total duty of inputs. Adjudicating authority has deducted the actual duty involved on such input as per the relevant bills of entry. So the contention of the applicant to adopt the value for low grade mixed fatty acid @ Rs.1000 MT is not acceptable.

9. In view of above discussion, Government do not find any legal infirmity in the impugned order-in-appeal and therefore upholds the same.

10. The revision application is therefore rejected being devoid of merit.

11. So ordered.

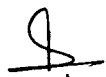


(D.P. Singh)

Joint Secretary (Revision Application)

M/s VVF Ltd.,
109-109 B, Opp. Fort Garden,
Sion (East), Mumbai – 400022

Att. u/s



(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
G B E C - O S D (Revision Application)
दिल्ली न्यायालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev)
भारत सरकार/Govt of India
नई दिल्ली/New Delhi

Order No. 1059/13-Cx dated 24.07.2013

Copy to:

1. Commissioner of Central Excise (Appeals), Mumbai Zone-I, Mehar Building, Dadi Seth Lane, Chowpatty, Mumbai
2. The Deputy Commissioner Central Excise (Tech.), Mumbai-I, Central Excise Building, 115, M.K. Road, Churchgate, Mumbai – 400 020.
3. Commissioner of Central Excise Mumbai-I Commissionerate, 115, New Central Excise Building, M.K. Road, Opp, Churchgate Station, Mumbai – 400 020
- ~~4. PA to JS(RA)~~
5. Guard File.
6. Spare Copy



(B.P. Sharma)
OSD(Revision Application)