

REGISTERED
SPEED POST



F.No.195/680/2011-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.....06/08/13

ORDER NO. 1081/13-Cx DATED 05-08-2013 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. 15/Kol-V/2013 dated 08.03.2013 passed by
Commissioner of Central Excise (Appeals), Kolkata

APPLICANT : M/s Hi-Tech Systems & Services Ltd., White House,
119, Park Street, Kolkata

RESPONDENT : Commissioner of Central Excise, Kolkata-V

ORDER

This revision application is filed by M/s Hi-Tech Systems & Services Ltd., White House, 119, Park Street, Kolkata against the order-in-appeal No. 15/Kol-V/2013 dated 08.03.2013 passed by Commissioner of Central Excise (Appeals), Kolkata.

2. Brief facts of the case are that M/s Hi-Tech Systems and Service Ltd. have raised ARE-1 No. HS/EX/2011-12/ 010 dated 17.10.2011 where it appears that the assessee have despatched one set of suspension platform (sub heading No. 84289000) valued Rs.5,20,633/- to Adani Power Ltd., Adani Power SEZ, Thermal Power Project, Gujrat. They have raised Central Excise invoice 00126 dated 17.10.2011 declaring Rs. 52063/- as Cenvat, Rs. 1041/- as Edu Cess and Rs. 521 as S&H Edu Cess payable. Subsequently vide Sl. No. 00197 dated 31.10.2011 Rs. 792192/- as Cenvat Rs. 15844/- as Edu Cess and Rs. 7924/- as Edu Cess was paid by the assessee.

2.1 They submitted one rebate claim for Rs.53,625/- against the supply as mentioned herein before receipt by this office on 14.02.2012 before the Assistant Commissioner, Central Excise, Garden Reach Division. They submitted copy of purchase order, commercial invoice, Central Excise invoice Cenvat credit account and statement for the period December 2011 without any authentication from Indian Overseas Bank, Kolkata-I BB Branch highlighting one entry sl. No.22 against which credit of Rs.4,92,729/- from Adani Power was reflected. They have reported loss of original and duplicate copy of ARE-1 wherein certificate by the officer of SEZ, evidencing entry into SEZ was supposed to be reflected against Part-B of the ARE-1.

2.3 After following due process of law, adjudicating authority rejected the rebate claim on the ground that Customs endorsed ARE-1 and proof of duty payment has not been furnished.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals). Appeal was rejected on the ground that valid proof of duty payment was not submitted.

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 For that we have furnished before adjudicating authority a confirmation letter, issued by Superintendent, Range-II Garden Reach Division, Kolkata-V Commissionerate wherein clearly stated that the supplied materials has entered into / received in full at M/s Adani Power Ltd., SEZ Mundra, Kutch on 29.10.2011 and the same has been admitted by the appellate authority, it was held in Kansal Knitweaves vs. CCE (2001) 136 ELT 467 (CEGAT) that even if ARE-1 is not produced, invoice bill of lading, shipping bills are sufficient proof of export. This case was relied on Shree Krishna Pharmaceuticals vs. CCE 1988 (36) ELT 190 (CEGAT) and same view was expressed in Model Buckets vs. CCE (2007) 217 ELT 264 (CESTAT) and Shreeni Colours Chem vs. CCE (2009) 233 ELT 367 (CESTAT). Further it was also decided in Sanket Industries Ltd. (2011) 268 ELT (GOI) that rebate is available even if ARE-1 is not duly endorsed by Customs, if otherwise, evidence of export is available. Procedural lapse is condonable.

4.2 For that question no. 7.0 (b) of the order was – Payment of duty is not categorically reflected through copy of Entry book of duty credit on inputs. In the month of October 2011, the total accumulated amount debited to RG – 23A Part-II was, as CENVAT : 792192, Edu Cess : Rs.15844/- and H.E. Cess : Rs.7924/- (vide debit entry Sl. No. 00197 dated 31.10.2011, out of which CENVAT : Rs.52063/- E.Cess : Rs.1401/- and H.E. Cess: Rs.521/- was debited towards duty involvement in excise invoice No. 00126 dated 17.10.2011, ref. ARE-1 no. HS/EX/2011-12/010 dated 17.10.2011 – as evidence enclosing herewith the self certified copy of RG23A – Part II for the month of October 2011 for your ready reference. In this connection it also mentioned that we are working under the jurisdiction of the Assistant Commissioner of Central Excise

Garden Reach Division, the original authority to whom we regularly submit return and duty payment documents, therefore, duty payment particulars are already lies with them.

4.3 For the question no. 7.0 (c) of the order was – Receipts of sale proceeds is not matching from the documents submitted as Bank statement mentioned in the appeal order that the question was unanswered. Enclosed herewith a copy of bank statement of Indian Overseas Bank, I.B.B. Branch, 2 Wood Street, Kolkata – 700 016, where we got credit the full amount in two parts by way of RTGS (online fund transfer) Rs.492729/- on 22.12.2011 and Rs.27904/- on 17.02.2012 respectively against our Excise invoice No. 00126 dated 17.10.2011 from Adani Power Ltd.

4.4 For that as duty have been paid against the said excise invoice no. 00126 and ARE-1 no. HS/EX/2011-12/010 dated 17.10.2011 under claim of rebate and it is proved by way of confirmation from our jurisdiction range office that the questioned goods have entered in the Adani Power SEZ through the said ARE-1, so the very purpose of the ARE-1 have been established and our claim of rebate is quite justified and bonafide. Out claim of rebate, appealed before your good office, may please be approved.

5. Personal hearing scheduled in this case on 25.07.2013 was attended by Shri Raj Kumar, CCE Kolkata-V on behalf of the respondent sated the order-in-appeal being legal and proper may be upheld. Applicant vide letter dated 22.07.2013, reiterated the grounds of revision application and requested to decide the case on merits as they don't want any hearing in the matter.

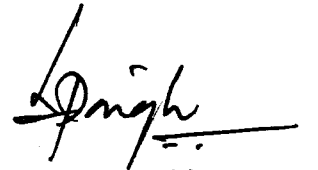
6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. On perusal of records, Government notes that in this case rebate claim of Rs.53625/- is rejected mainly on the ground that duty payment is not proved. Applicant has been claiming that in the month of October 2011, total accumulated amount debited to RG-23 A Part-II was Rs.792192/-, Edu Cess: Rs.15844/- and H.E.

Cess : Rs.7924/- vide debit entry Sr. No. 00197 dated 31.10.2011 out which Cenvat credit of Rs.53625/- was debited towards duty involvement in excise invoice No. 00126 dated 17.10.2011. The copy of RG 23A Part-II register's relevant page submitted by applicant reveals that at Sr. No. 00197/31.10.2011 against Invoice No. JV 00019 the said amount was debited. The column of address of consignor is blank. There is no mention of Central Excise invoice No. and the amount of Rs. 53625/- against the said debit entry. So it cannot be said that said debited amount of Rs. 792192/- include the duty of Rs. 53625/- debited against relevant Central Excise Invoice No. 00126 dated 17.10.2011. Applicant has taken the same plea before both the lower authorities who have not accepted the same. Applicant has not submitted any valid documentary evidence in support of his plea that said debit entry 00197/31.10.11 include the debit of duty against impugned goods. So, this plea of applicant is not acceptable. In this case the fundamental condition, of payment of duty on exported goods is not satisfied and therefore rebate claim is rightly held inadmissible.

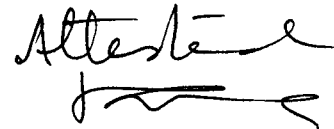
8. In view of above position, Government do not find any infirmity in the impugned order-in-appeal and therefore upholds the same.
9. The revision application is thus rejected being devoid of merit.
10. So ordered.

M/s Hi-Tech Systems & Services Ltd.,
White House, 119, Park Street,
Kolkata



(D.P. Singh)

Joint Secretary (Revision Application)



(टी. आर. आय / T.A. Aiy)
अधीक्षक, आर.ए./Superintendent
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance, (Deptt. of Revenue)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

Order No.1081 /13-Cx dated 05.08.2013

Copy to:

1. Commissioner of Central Excise Kolkata-V Commissionerate, Kendriya Utpad Shulk Bhavan, 3rd Floor, 180, Shanttipally, Rajdanga Main Road, E.M. By-pass, Kolkata – 700 107.
2. Commissioner of Central Excise (Appeals-I), 4th Floor, Bamboo Villa, 169 AJC Bose Road, Kolkata – 700 014.
3. The Assisant Commissioner of Central Excise, Garden Reach Division, Kolkata-V Commissionerate, 180, Shanttipally, Rajdanga Main Road, E.M. By-pass, Kolkata – 700 107.
- ✓ 4. PA to JS(RA)
5. Guard File.
6. Spare Copy



(T.R. Arya)
Superintendent(Revision Application)