



REGISTERED
SPEED POST

F.No. 198/596/11-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. 23/9/13

ORDER NO. 1098 /13-Cx DATED 23.08.2013 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 order-in-appeal
No.YDB/438/RGD/2011 dated 28.4.2011 passed by
the Commissioner of Central Excise (Appeals),
Mumbai Zone-II

Applicant : Deputy Commissioner of Central Excise (Rebate),
Raigad Commissionerate

Respondent : M/s Shankar Packaging, Vadodara

ORDER

This revision application is filed by Deputy Commissioner of Central Excise (Rebate), Raigad Commissionerate against the order-in-appeal No.YDB/438/RGD/2011 dated 28.4.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II with respect to order-in-original No.756/10-11/AC dated 13.8.10 passed by the Assistant Commissioner of Central Excise (Rebate), Raigad.

2. Brief facts of the case are that M/s Shankar Packaging Limited a Merchant Exporter, situated at 2-6 GIDC Estate, Vaghodia-391760, District Baroda have filed the following rebate claims under the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No.19/2004-CE(NT) dated 6.9.2004 on the basis of following relevant documents/details produced with the claim.

Sr. No.	RC-No.	RC-Date	ARE-1 No.	ARE-1 date	MR No. – Date	Amount claimed
1	26058/2008-2009	17.12.2008	93	29.5.2008	13.6.2008	52316
					TOTAL	52316

The above mentioned claim could not be processed due to deficiencies indicated below:

- i) Original, duplicate and triplicate copies of ARE-1 No.93 dated 29.5.08 and invoice No.93 dated 29.5.08 have not been filed with the claim
- ii) Stated to be supplementary claim
- iii) There are no provisions under Section 11B of the Central Excise Act, 1944 and under Rule 18 of the Central Excise Rules, 2002 and the Notification issued hereunder for supplementary claims.

After following due process of law, the adjudicating authority rejected the said rebate claim.

3. Being aggrieved by the impugned order-in-original, the applicant filed appeals before Commissioner (Appeals), who allowed the appeal and set aside the impugned order-in-original.

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

4.1 The original rebate claim was sanctioned vide order-in-original No.R-2522/08-09 /AC(Rebate)/Raigad dated 29.09.2008 vide which an amount of Rs.2,38,216/- was sanctioned. There was a total amount of duty paid of Rs.2,90,532/- out of which Rs.2,38,216/- was claimed by the respondent and the same was sanctioned vide order-in-original No. R-2522/08-09/AC(Rebate)/Raigad dated 29.09.2008. The claimant did not challenge this order. Thus the order dated 29.09.2008 became final. If the claimant had any grievance against that order that they are sanctioned with lesser amount of rebate by, they should have filed appeal against that order with proper appellate authority within stipulated time limit. Hon'ble Supreme Court in several decisions has held that even a wrong order is valid unless modified or set aside in appeal. As held in (1) Priya Blue International 2004 (172) ELT 145 (SC), (2) Euro Tex Industries 2007(216) ELT137(EB) and (3) Flock India Ltd. 2000 (120) ELT 285(SC) that without challenging the original order any refund cannot be filed. Further Supreme Court in J.P. Tobacco Products Pvt. Ltd. 2008 (229) E.L.T. 325 (S.C.), wherein the Hon'ble Court has held that "Non-filing of appeal - Revenue not filed appeal against Tribunal order whereby demand set aside - Impugned order attained finality - Section 35C of Central Excise Act, 1944". Therefore, filing a supplementary rebate claim without challenging the original rebate sanctioning

order was not legal and proper on the part of the claimant and Asstt. Commissioner rightly rejected the rebate claim vide order-in-original No. 756/AC(Rebate)/Raigad dated 13.08.2010 passed by the Asstt. Commissioner, Rebate, Raigad, rejecting therein a rebate claim of Rs.52,316/- and the impugned order-in-appeal No.YDB/438/RGD/2011 dated 28-04-2011 setting aside the said order-in-original dated 13.08.2008 is not proper and legal.

5. A show cause notice was issued to the respondent under Section 35EE of Central Excise Act 1944 to file their counter reply. The respondent party filed counter reply vide letter dated 10.9.2011 and made following submissions:

5.1 The Respondents state and submit that it is an internationally accepted principle that goods to be exported out of a country are relieved of the duties borne by them at various stages of their manufacture in order to make them competitive in the international market. The most widely accepted method of relieving such goods of the said burden is the scheme of rebate.

5.2 The Respondents state and submit against the Grounds now taken by the Applicant was not taken by the Adjudicating authority as well as in the SCN. This ground of not filing the appeal against the First order-in-original No.R-2522/08-09/AC(Rebate)/Raigad dated 29.09.2008 vide which an amount of Rs.2,38,216/-was sanctioned is not taken in the Order-in-original No.756/10-11/A.C. dated 13.08.2011, which is the impugned order-in-original by the adjudicating authority at all. This ground is also not taken before the Commissioner (Appeals). The Applicant is not allowed to take the fresh ground at the Revision Stage. Further in the Refund claim Form the Respondents mentioned the claim inadvertently. It is a clerical mistake. In respect of Clerical Mistake no appeals are required to be filed. Hence needs to be set aside on this ground alone.

5.3 In this connection the Respondents further submit that there is no question of filing appeal against the Order-in-original dated 29.09.2008 as there is nothing wrong in that Order. Through oversight inadvertently Respondent shown the wrong amount in the Refund Claim application and the same was sanctioned. Hence the Respondents rightly filed the supplementary claim and the same is valid as per Commissioner (Appeals) order as under:

"Part-2, part IV of the Chapter 8 of CBEC's Central Excise Manual of Supplementary Instructions lays down the condition that the supplementary rebate claim, if any, should be filed within the stipulated time provided under Section 11B of the Central Excise Act, 1944. Similarly, Circular No.510/06/2000-CX dated 03.02.2000 in para 4 also stipulates that the rebate of full amount of duty paid on the goods exported not the fine and/or penalties imposed, if any should be allowed, provided the initial rebate claim was filed for the said full duty, or a supplementary claim was filed within the limitation period. The supplementary instructions as well as the Board's Circular dated 03.02.2000 have made provisions for supplementary rebate claim with the only condition that the same should be filed within stipulated period. In the instant case the supplementary rebate claim has been filed within stipulated time, the Respondent fulfilled the condition laid down in the Boards Circular and the CBEC Excise Manual. Thus, the lower authority's finding not sustainable."

6. Personal hearing scheduled in this case on 7.8.2013 at Mumbai was attended by Shri R.V.Shetty, Advocate on behalf of the respondents who reiterated the grounds of cross objections dated 10.9.2011.

7. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

8. On perusal of records, Government observes that applicant department has challenged the impugned order-in-appeal on the ground that the initial order-in-original No.R-2522/08-09 dated 29.9.08 sanctioning rebate claim of Rs.238216/- was not challenged by respondent and the same had become final. In this regard, Government notes that the finding of Commissioner (Appeals) on the rebate claim are as under:

"The duty involved in the exported goods was Rs.2,90,532/- as certified by the jurisdictional Central Excise Officers under whose supervision, the goods were examined and stuffed in the container. The full amount of duty of Rs.2,90,532/- was paid at the time of clearance of goods. Form 'C' and ARE-1 show the duty as Rs.2,90,532/-. It was only in Annexure 'A' of the rebate claim that the respondents had inadvertently shown the amount of rebate as Rs.2,38,216/- which was sanctioned by the Assistant Commissioner (Rebate) vide his order No.R-2522/08-09/AC(Rebate) dated 29.9.2008. As the full amount of duty paid on the exported goods was not rebated, the respondents had filed the supplementary rebate claim.

Part-2, part IV of the Chapter 8 of CBEC's Central Excise Manual of Supplementary Instructions lays down the condition that the supplementary rebate claim, if any, should be filed within the stipulated time provided under Section 11B of the Central Excise Act, 1944. Similarly, Circular No.510/06/2000-CX dated 03.02.2000 in para 4 also stipulates that the rebate of full amount of duty paid on the goods exported (not the fine and/or penalties imposed, if any) should be allowed, provided the initial rebate claim was filed for the said full duty, or a supplementary claim was filed within the limitation period. The supplementary instructions as well as the Board's Circular dated 03.02.2000 have made provisions for supplementary rebate claim with the only condition that the same should be filed within stipulated period. In the instant case the supplementary rebate claim has been filed within

stipulated time, the Respondent fulfilled the condition laid down in the Boards Circular and the CBEC Excise Manual. Thus, the lower authority's finding not sustainable."

It is quite clear that the supplementary claim was filed within one year in terms of CBEC Supplementary Instructions. The initial claim was filed for Rs.238216/- as per Annexure-A of claim which was sanctioned. But, it is not disputed that total duty paid on said goods of Rs.290532/- was mentioned in ARE-1 form and form 'C'. So there was a clerical error in claiming the correct amount of rebate. Since the amount of Rs.52316/- short claimed in initial claim was not claimed/sanctioned so there is no question of this amount being covered by earlier order-in-original dated 29.9.08. As such, its sanction by impugned order-in-appeal cannot be called contrary to the provisions of law. Moreover, the said ground was never raised before the lower authorities.

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

10. The revision application is thus rejected being devoid of merits.

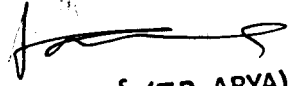
11. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

Deputy Commissioner of Central Excise (Rebate)
Central Excise, Raigad
Ground Floor, Kendriya Utpad Shulk Bhavan
Plot No.1, Sector-17
Khandeshwar, New Panvel-410206



(टी. आर. आर्य / T.R. ARYA)
अधीक्षक, आर.ए / Superintendent RA
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance, (Deptt. of Re.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

Order No. 1098 /2013-Cx dated 22.08.2013

Copy to:

1. M/s Shankar Packaging Ltd., 2-6, GIDC Estate, Vaghodia-391760, Distt. Baroda
2. Commissioner of Central Excise (Appeals), Central Excise, Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, Bandra Kurla Complex, Bandra(East), Mumbai-400 051.
3. The Assistant Commissioner (Rebate), Central Excise, Raigad, Ground Floor, Kendriya Utpad Shulk Bhavan, Plot No.1, Sector-17, Khandeshwar, New Panvel-410206
4. Shri R.V.Shetty, Advocate, 101, 1st Floor, E-Wing, Sterling Court, Marol, MIDC Orkay Mill Lane, Next to Maheswari Nagar, Andheri (E), Mumbai-400093
5. PA to JS (RA)
6. Guard File
7. Spare copy

ATTESTED



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