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SPEED POST



F.No. 198/01/12-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. 120/17-Cx DATED 5-9-2017 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI R.P.SHARMA 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.154(CB)CE/JPR-II/2011 dated
29.8.2011, passed by the Commissioner (Appeals), Central Excise,
Jaipur-II

Applicant : Commissioner of Central Excise, Jaipur-II

Respondent : M/s Rajasthan Spinning & Weaving Mills Ltd., Bhilwara

ORDER

A Revision Application Number 198/01/12-RA has been filed by Commissioner of Central Excise, Jaipur-II, (hereinafter referred to as 'the applicant') against the Order-In-Appeal No.154(CB)CE/JPR-II/2011 dated 29.8.2011, passed by the Commissioner (Appeals), Central Excise, Jaipur-II.

2. This Revision Application is filed mainly on the ground that Commissioner (Appeal) has wrongly ordered to pay interest on the rebate of duty amount. Brief facts leading to present Revision Application are that the respondent M/s Rajasthan Spinning & Weaving Mills Ltd., Bhilwara claimed rebate on duty in respect of exported textile goods from the Assistant Commissioner of Central Excise Division but the same was rejected by Assistant Commissioner, Division and subsequently by Commissioner (Appeals) and finally it was allowed by Joint Secretary (RA) when they approached him by way of Revision Application. In compliance of the order of Revisionary Authority, the rebate of duty of Rs.80,92,520/- was sanctioned in cash and Rs. 2,71,039/- was sanctioned in credit account of respondent. But respondent also claimed interest on duty amount to the tune of Rs.21,74,453/- from the Assistant Commissioner, Bhilwara Division for delaying the sanctioning of their rebate claim which was rejected. On the applicant appeals, the same is allowed by Commissioner (Appeals) vide his order as mentioned above. Being aggrieved, Assistant Commissioner, Bhilwara has filed the above stated Revision Application to challenge the Commissioner (Appeals) order.

3. A Personal hearing scheduled on 29.08.2017 was attended by Shri Dhruv Tiwari, the Advocate, and he reiterated the grounds already advanced in their revision application.

4. On examination of all the relevant case records, it is noticed that the main issue to be determined by the Government is whether interest is payable to respondent for the period after 3 months of filing the rebate claim by them. The case of the applicant is that 3 months period in this case should be counted from date of Revisionary Authority's order dated 05.04.2010 allowing rebate of duty to the respondent and since they have given the rebate of duty within 3 months of having received the order of revisionary authority, no interest is payable to the respondent. On the other hand Commissioner (Appeal) and respondent are of the view that normal period of 3 months which is available with the Department for sanctioning the rebate claim should be counted from their original rebate claim and interest is payable if the same is

● not paid to them within the said specified period due to delay on their part or delay on account of further litigation.

5. Section 11 BB unambiguously provide that interest is payable in the event of non-refunding of duty within 3 month from the date of receipt of application and it is further clarified in explanation (E) in Section 11 BB that where any order of refund is made by Appellate authorities as mentioned therein, order passed by Appellate authority should be deemed to be an order passed under sub section (2) of the Section 11 B. Net effect of Section 11 BB is that the order passed by Appellate authority like Commissioner (Appeals), Appellate tribunal or a court is to be considered as the order passed by jurisdictional Assistant /Deputy Commissioner of Central Excise Division. Applying this deeming provision to the present case, it is obvious that the Assistant Commissioner of Division allowed the rebate claim in this case on the date on which the order of JS(RA) was received by him and actually the rebate of duty was given even later on. Even though the revisionary authority is not mentioned in explanation to Section 11 BB, the cardinal principal enshrined in Section 11 BB which is to pay interest on account of delay in giving refund of duty for any reason, including prolonged litigation, is equally applicable if the rebate of duty amount is finally ordered by the Revisionary Authority and delay is caused on account of departmental litigation.

6. It is not in dispute that the respondent filed the rebate claim much before the revisionary order passed by the Joint Secretary(RA) and payment of rebate of duty in this matter is delayed due to rejection of these claim at the level of AC, Division and Commissioner (Appeals). But when the rebate of duty was sanctioned by the JS(RA), it directly restored the original rebate claim and the delay in payment of rebate claim is computable from the original rebate claim of the respondent. Thus the contention of the applicant that delay should be counted from the date of the receipt of order of Joint Secretary (RA) is not at all legally maintainable. If this argument is accepted, whole purpose and spirit behind Section 11 BB will be defeated. This view is also supported by the following case laws:

- (i) Ranbaxy Laboratories Ltd. Vs. Union of India { 2011(273)ELT 3(S.C).
- (ii) Union of India Vs. Hamdard (waqf) Laboratories {2016 (333) E.L.T 193(S.C).
- (iii) Surajbhan Synthetics (P) Ltd. Vs. Commissioner of Central Excise Hyderabad – IV{2017(49) S.T.R.98(Tri. Bang.)}.

7. Applicant's other argument that the rebate claim of the respondent were not complete by 04.06.2010 is also contradicted by the very fact the all rebate claim were rejected by the Assistant Commissioner, Division long before from which it is implicit that all the rebate claims were complete much before.

8. In view of the above discussion, Government finds that Revision Application filed by CCE, Jaipur, is not maintainable and hence is rejected .

R.P. Sharma
5-9-17

(R.P.SHARMA)

(Additional Secretary to the Government of India)

Commissioner of Central Excise
Central Excise Commissionerate Jaipur-II,
Statue Circle, C-Scheme, Jaipur

Order No. 120/17-Cx dated 5-9-2017

Copy to:-

1. M/s Rajasthan Spinning & Weaving Mills Ltd., Post Box No.28, Khartigram, Gulabpura, Distt. Bhilwara, Rajasthan
2. The Commissioner (Appeals-II), Customs & Central Excise, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur
3. The Deputy Commissioner, Central Excise Division, Bhilwara
4. Shri Dhruv Tiwari Senior Advocate, Lakshmi Kumaran & Sridharan Attorneys, 5 Jangpura Extension, Link Road, New Delhi-110014
5. PS to JS (Revision Application)
- ✓ 6. Guard File
7. Spare Copy.

ATTESTED

Ravi Prakash
05/09/17

(Ravi Prakash)

OSD (RA)