



F.No.195/1036/11-R.A.(CX)
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..1.2.9.113

Order No. 1254 / 13 - CX dated 13.09.2013 of the Government of India, passed by Shri D.P.Singh, Joint Secretary to the Government of India, under Section 35EE of the Central Excise Act, 1944.

Subject : Revision Application filed Section 35EE of the Central Excise Act, 1944 against the Order – in -- Appeal No. PKS/25/BEL/2011 dated 18.05.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai – (II)

Applicant : M/s. Cipla Ltd.,
3rd Floor, Raj Plaza,
Excise Department,
Opp. Everest Masala Factory,
L.B.S. Road,
Vikhroli (W),
Mumbai - 400 083

Respondent : Commissioner of Central Excise & Customs,
1st Floor, C.G.O.Complex,
C.B.D., Belapur,
Navi Mumbai - 400 614

ORDER

This Revision Application is filed by Cipla Ltd., 3rd Floor, Raj Plaza, Excise Department, Opp. Everest Masala Factory, L.B.S. Road, Vikhroli (W), Mumbai against the Order-in-Appeal No. PKS/25/BEL/2011 dated 18.05.2011 passed by Commissioner of Central Excise (Appeals), Mumbai – II, Mumbai Zone –II, with respect to Order-in-Original No. 415R/RKD/AC(RC)/M-III/10-11 passed by Maritime Commissioner (Rebate), Central Excise, Mumbai – III.

2. Brief facts of the case are that the applicant M/s. Cipla Ltd. have filed rebate claim No. 386/10-11 dated 30.08.2010 for Rs. 23,709/- in respect of ARE-1 No. 192/MIC/2009 dated 18.08.2009 covering export of goods made through Invoice Nos. 242, 243 and 244 all dated 18.08.2009 under Rule 18 of the Central Excise Rules, 2002. The case was adjudicated vide Order-in-Original dated 31.01.2011 the Commissioner has granted rebate of duty paid in respect of goods covered under Invoice No. 243 dated 18.08.2009 but rejected the rebate claim in respect of other two invoices viz. 242 and 244, since the applicant could not produce duplicate copy of excise invoice.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals) who upheld the Order-in-Original and rejected the appeal.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of the Central Excise Act, 1944 before Central government on the following grounds :

4.1 Adjudicating authority has not followed the direction laid down in Notification No.19/2004-CE dated 06.09.2004. The essential condition under the said notification is that the goods shall be exported after payment of excise duty.

4.2 Also we would like to bring your attention on laid down export procedure under supplementary instruction given in CBEC Manual under Chapter 8 at point No. 8.3 where require documents to be filled along with rebate claim have been notified.

"8.3 - The following documents shall be required for filling claim of rebate :

- (i) A request on the letterhead of the exporter containing claim of rebate, ARE-1 numbers and dates, corresponding invoice numbers and dates, amount of rebate on each ARE-1 and its calculations;
- (ii) Original Copy of ARE-1;
- (iii) Invoice issued under Rule 11;
- (iv) Self attested copy of shipping bill; and
- (v) Self attested copy of Bill of Lading;
- (vi) Disclaimer Certificate (in case claimant is other than the exporter)

As per the above mentioned laid down procedure, it is necessary to submit invoice issued under rule 11 of Central Excise Act, 1944 but it is no where mentioned that only duplicate for transporter of Central Excise invoice require to get sanction of rebate claim.

We have correctly followed above mentioned procedure by submitting original for buyer of central excise invoice as this copy is also issued under rule 11 of Central Excise Act, 1944.

4.3 Further, the export of goods is not in dispute. Also the payment of duty is not in dispute. Therefore, our rebate claim needs to be sanctioned.

5. Personal hearing scheduled in this case on 08.08.2013 was attended by Shri Sivan C Pali, Manager Tax on behalf of the applicant who reiterated the grounds of Revision Application. Shri S.K.Mohanty attended hearing on behalf of the respondent /Department and requested to uphold the Order-in-Appeal.
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 observes that rebate claim of duty paid on exported goods pertaining to two Central Excise Invoice Nos. 242 and 244 both dated 18.08.2009 was disallowed since applicant failed to submit duplicate copy of the invoice. Government notes that the export of duty paid goods is not disputed by the department in this case. As per para 8.3 of part I of Chapter 8 of CBEC Excise Manual of supplementary instruction, one of the documents required to be enclosed with rebate claim is invoice issued under Rule 11 of Central Excise Rules, 2002. It does not specify that only duplicate copy of invoice is to be produced as notified in the Mumbai- III Committee Trade Notice No. 2/06 dated 22.03.2006. In this case, applicant has submitted original invoice since duplicate copy is misplaced. This is only a procedure lapse which can be condoned. The substantial benefit of rebate claim cannot be denied for mere minor procedural lapses as held in catena of judgements. The rebate claim can be considered for sanction on the basis of original invoice if the claim is otherwise in order.
8. In view of the above position, Government sets aside the impugned order and remands the case back to original authority for fresh consideration of rebate claim in accordance with law by taking into account the above observations. A reasonable opportunity of hearing will be afforded to the applicants.

9. The revision application is disposed off in terms of the above.

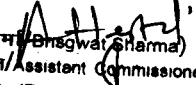
10. So, Ordered.



(D.P. SINGH)

JOINT SECRETARY (REVISION APPLICATION)

M/s. Cipla Ltd.,
3rd Floor, Raj Plaza,
Excise Department,
Opp. Everest Masala Factory,
L.B.S. Road,
Vikhroli (W),
Mumbai - 400 083



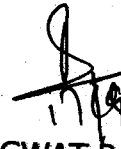
(भागवत शर्मा Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/ Govt. of India
नई दिल्ली / New Delhi

Order No. 1254 / 13 - CX dated 13.09.2013

Copy to:-

1. Commissioner of Central Excise & Customs, 1st Floor, C.G.O.Complex, C.B.D., Belapur, Navi Mumbai - 400 614
2. The Commissioner of Central Excise (Appeals), Mumbai - III, Mumbai - Zone -II, 5th Floor, C.G.O.Complex, C.B.D., Belapur, Navi Mumbai - 400 604
3. The Deputy Commissioner (Rebate), Central Excise, Mumbai - III Commissionerate, Vardan, 3rd Floor, MIDC, Wagle Industrial Estate, Thane (W), Mumbai - 400 604
4. M/s. Cipla Ltd., 3rd Floor, Raj Plaza, Excise Department, Opp. Everest Masala Factory, L.B.S. Road, Vikhroli (W), Mumbai - 400 083
- ✓ 5. PS to JS(RA)
6. Guard File
7. Spare Copy.

ATTESTED



(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)