



REGISTERED
SPEED POST

F.No.195/777/2011-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...12/11/17

ORDER NO. 1262 /13-Cx DATED 16-09-2013 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. YDB/155/TH-I/2011 dated 16.06.2011 passed by
Commissioner of Central Excise (Appeals) Mumbai
Zone-I

APPLICANT : M/s Nirmal Chemicals, Distt. Thane

RESPONDENT : Commissioner of Central Excise, Thane-I

ORDER

This revision application is filed by M/s Nirmal Chemicals, Distt. Thane, Maharashtra against the order-in-appeal No. YDB/155/TH-I/2011 dated 16.06.2011 passed by Commissioner of Central Excise (Appeals) Mumbai Zone-I with respect to order-in-original No. R-497/10-11 dated 25.02.2011 passed by ACCE Kalyan Division-III, Thane-I Commissionerate.

2. Brief facts of the case are that M/s Nirmal Chemicals (hereinafter referred to as the 'claimant') situated at A/73, MIDC, Industrial Estate, Dombivli (E) have filed a rebate claim for Rs. 7416/- on 8.12.2010 under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/04-CE(NT) dated 06.09.2004. On going through the records, it is noticed that –

(i) that they have not produced the triplicate (pink) copy of the ARE-1 No. NC/03/10-11 dated 27.07.2010 along with rebate claim on 08.12.2010 evidencing export of goods.

(ii) that they have not submitted any other record/documents other than above evidencing export of goods.

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

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the same.

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 They have erred in rejecting the rebate application on the ground that the applicant had not submitted the triplicate copy of the ARE-1. They erred in not

appreciating that as per para 8.3 of the CBEC's Central Excise Manual of Supplementary instructions, the applicant for rebate is required only to submit the original copy of the ARE-1, which the applicant has admittedly submitted.

4.2 They have erred in not appreciating that as far as the triplicate copy of ARE-1 is concerned, the same has to be sent directly by the jurisdictional Superintendent of Central Excise (range office) to the rebate sanctioning authority as provided in para 8.4 of the said manual and it is not for the applicant to submit the same.

4.3 Without prejudice to the above, even assuming that the contents of the said letter dated 12.01.2011 are correct, as per the said letter itself the fact of export is admitted. Further, the fact that duty has been paid is also not disputed and can be easily verified by the Assistant Commissioner from the Range Superintendent. When the fact of Export and payment of duty are not in dispute, the substantive benefit of export cannot be denied on the mere technical / procedural ground of non-submission of the triplicate copy of the ARE-1.

5. Personal hearing scheduled in this case on 8.8.2013 at Mumbai was attended by Shri Abhay Pethe , Partner of the firm on behalf of the applicant who reiterated the grounds of revision application.

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 Rs.7416/- is rejected for non-submission of triplicate copy of ARE-1 form. In this case, applicant has submitted all the requisite documents including original and duplicate copies of ARE-1 along with the rebate claim. There is no dispute about the export of duty paid goods. Adjudicating authority has recorded in para 6 of his order-in-original as under:

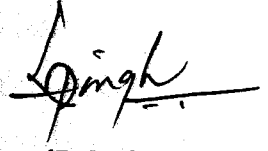
"6. On going through the records, I notice that assessee has not submitted the triplicate (pink) copy of the ARE1 No. NC/03/10-11 dated 27.07.2010 along with rebate claim on 08.12.2010 evidencing export of goods."

The original authority has observed that triplicate copy is the evidence of export of goods. The observation is contrary to the procedure laid down in the Not. No. 19/04-CE(NT) dated 6.9.2004. The original and duplicate copy contains the certification from the Customs authorities that goods have been exported. The triplicate copy is certified by Range Superintendent with respect to payment of duty. In this case no dispute is raised about payment of duty. However, the original authority could have verified the duty payment of such a small amount from range office rather than straightaway rejecting the claim when the export of goods is not in dispute.

8. Government therefore, sets aside the impugned order-in-appeal and remands the case back to original authority for fresh consideration in the light of above observations. A reasonable opportunity of hearing will be afforded to the applicant.

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

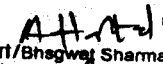
10. So ordered.



(D.P. Singh)

Joint Secretary (Revision Application)


M/s Nirmal Chemicals
A/73, MIDC, Industrial Estae, Dombivli (E)
Distt. Thane, Maharashtra


(भागवत शर्मा/Bhagwati 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.1262/13-Cx dated 16.01.2013

Copy to:

1. Commissioner of Central Excise, Thane-I, 3rd Floor, Navprabhat Chambers, Ranade Road, Dadar (West), Mumbai – 400 028
2. Commissioner of Central Excise (Appeals), Mumbai Zone-I, Mehar Building, Dady Seth Lane, Chowpatty, Mumbai – 400 007.
3. The Assisant Commissioner of Central Excise, Kalyan-III Division, Gyneshwar Prasad Building, 1st Floor, Murbad Road, Opp. State Bank of India, Kalyan(W) - 421301.
4. PA to JS(RA)
5. Guard File.
6. Spare Copy


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

