

REGISTERED

SPEED POST



F.NO. 198/211/2011-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.....14/2/13

ORDER NO. 127/2013-CX DATED 14-02-2013 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. M-I/AV/372/10 dated 29.11.2010 passed by
Commissioner of Central Excise (Appeals) Mumbai Zone-I

APPLICANT : The Commissioner of Central Excise, Mumbai-I

RESPONDENT : M/s Giza International Pvt. Ltd., Mumbai

ORDER

This revision application is filed by CCE Mumbai-I against the order-in-appeal No. M-I/AV/372/10 dated 29.11.2010 passed by Commissioner of Central Excise (Appeals) Mumbai Zone-I with respect to order-in-original No.K-II/414-R/2007 (MTC) dated 18.07.2007 passed by ACCE(Rebate) Mumbai-IV.

2. The brief facts of the case are that M/s Giza International Pvt. Ltd., Mumbai - 400013 (the appellant), a merchant exporter filed rebate claim for Rs.81,233/- in respect of excisable goods purportedly cleared for export under ARE-1 No. 04/05-06 dated 9.8.2005. The said goods should have been exported within six months from the date of clearance of the goods from the factory of the manufacture or any extension granted by the Commissioner, Central Excise for the export of goods beyond six months period in terms of Notification No. 19/04-CE(NT) dated 6.9.2004 issued under Rule 18 of the Central Excise Rules, 2002. The appellants neither exported the goods within six months from the date of clearance of the goods for export from the factory nor obtained any extension from the Commissioner for the export of goods beyond six months period as required under para 2(b) of the Notification No. 19/04-CE(NT) dated 6.9.2004 in respect of exported goods. Hence show cause notice dated 29.05.2007 was issued to the appellants seeking to reject the rebate claim on the ground of non-fulfillment of conditions and limitations of the Notification No. 19/04-CE(NT) dated 6.9.2004. The adjudicating authority vide order-in-original dated 18.7.2007 rejected the rebate claim for Rs.81,233/-.

3. Being aggrieved by the said order-in-original, respondent filed appeal before Commissioner (Appeals) who appeal by way of remand order with the direction to sanction the rebate claim considering the extension of another 6 months granted by jurisdictional ACCE.

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

4.1 The order of Commissioner (Appeals) is contrary to the provisions of Section 35A(3) of the Central Excise Act, 1944. Consequent to the amendment to the said provisions brought about vide Finance Act, 2001, that came into effect from 11.05.2001, the power to remand the case to the adjudicating authority for a fresh

4.2 CBEC has also clarified vide instruction issued under F.No.275/34/2006-CX.8A dated 18.02.2010 that the Commissioner (Appeals) do not have the power to remand and is bound to decide the case finally after necessary enquiry at his level.

4.3 The Commissioner (Appeals) should have decided the case finally as she does not have statutory power to remand. Therefore, Commissioner (Appeals) has erred by remanding the case and his order-in-appeal deserves to be appealed against.

5. A show cause notice was issued to the respondent under Section 35 EE of Central Excise Act, 1944 to file their counter reply. No reply is filed by respondent till date.

6. Personal hearing was scheduled in this case on 11.10.12 & 20.12.2012. Shri D.S. Meena, DCCE, K-I Div., Mumbai-I attended hearing on 20.12.2012 on behalf of the applicant department and reiterated the grounds of revision application. Nobody attended any of the hearings on behalf of the respondents.

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

8. Government notes that in this case goods were exported under rebate claim after six months from the date of clearance from factory of manufacture and therefore condition 2(b) of Not. No. 19/04-CE(NT) dated 6.9.2004 is violated. Commissioner

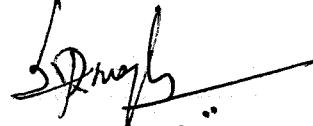
(Appeals) has observed that Maritime Commissioner, the rebate sanctioning authority has not considered the extension of another 6 months granted by jurisdictional ACCE. Therefore he directed the Maritime Commissioner to sanction rebate claim considering the said extension of time limit. Applicant department has contested the impugned order-in-appeal on the ground that Commissioner (Appeals) has no remand power after the amendment of Section 35 A(3) of CEA 1944 w.e.f. 11.5.2001 and therefore he should have decided the case finally.

9. Government notes that department has not raised any issue on merit of the case and only contested the decision with respect to remand power of Commissioner (Appeals). Hon'ble CESTAT in recent judgments in the case of CCE Delhi Vs. Vikram Dhawan 2012 (284) ELT 554 (T-Del) and M/s Howkin Cookers Ltd. Vs. CCE Ahmedabad 2012 (284) ELT 677 (T-Del) has held that Commissioner (Appeals) has remand power even after amendment of section 35A(3) of Central Excise Act, 1944 vide Finance Act, 2001. In view of these case laws, the plea of the department does not hold good.

10. Commissioner (Appeals) has directed the rebate sanctioning authority to consider the extension granted by jurisdictional ACCE and sanction rebate claim. In this regard, Government notes that as per condition 2(b) of Not. No. 19/04-CE(NT) dated 6.9.2004 the competent authority to grant such extension is CCE. So, the rebate sanctioning authority may direct the respondent to produce valid extension permission from CCE. In case he fails to submit the same within reasonable time, the rejection of rebate claim will be in order. Therefore, Government remand the case back to original authority to consider the matter afresh in terms of above observation. A reasonable opportunity of hearing will be afforded to the respondents.

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

12. So ordered.

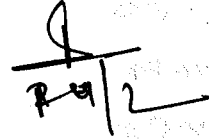


(D P SINGH)

Joint Secretary (Revision Application)

The Commissioner of Central Excise & Customs,
Mumbai-I Commissionerate,
New Central Excise Building, M.K. Road,
Opp. Churchgate Railway Station,
Mumbai - 400 020.

Att estd.

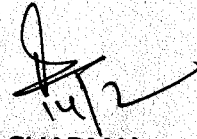


(भागवत शर्मा/Bhagwat Shama)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
सरकार भारत/Govt. of India
-46 दिल्ली/NEW DELHI

G.O.I. Order No. 127/2013-Cx dated 14.02.2013

Copy to:

1. The Commissioner of Central Excise (Appeals), Mumbai Zone-I, Mehar Building, Dadi Seth Lane, Chowpatty, Mumbai
2. The Assistant Commissioner (Rebate), Central Excise Mumbai-IV, 2nd Floor, M.S.E.B. Building, Estrella Batteries Compound, Dharavi, Mumbai – 400 019.
3. M/s Giza International Pvt. Ltd., C/o Prakash Cotton Mills Pvt. Ltd., Opp. G.K. Marg, Lower Parel, Mumbai – 400013.
- ✓ 4. PS to JS(RA)
5. Guard File.
6. Spare Copy



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