

REGISTERED
SPEED POST



F.No.195/31/2012-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.....

01/11/12

ORDER NO. 1369/13-Cx DATED 30.10.2013 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.73/CE/Delhi/11 dated 25.10.2011 passed by
Commissioner of Central Excise (Appeals) Delhi-I,
New Delhi

APPLICANT : M/s Denn Exports, New Delhi

RESPONDENT : Commissioner of Central Excise, Delhi-I

ORDER

This revision application is filed by M/s Denn Exports, New Delhi against the order-in-appeal No. 73/CE/Delhi/11 dated 25.10.2011 passed by Commissioner of Central Excise (Appeals) Delhi-I, New Delhi with respect to order-in-original No. 38/Div.-II/Rebate/2010 dated 27.10.2010 passed by Deputy Commissioner of Central Excise, Div.-II, Delhi-I.

2. Brief facts of the case are that M/s Denn Exports, 27, DSIDC Complex, Mata Sundari Road, New Delhi-110002 (hereinafter called as 'the party') is a merchant exporter and they were engaged in export of excisable goods from their unit. The party had presented a refund claim for an amount of Rs.33,313/- being paid as duty on excisable goods exported by them in the office of the Deputy Commissioner of Central Excise, Division-II, Karampura, New Delhi on 29.07.2010. At the time of submissions of the said refund claim, the party submitted a set of five copies of ARE-1, copy of shipping bill/export invoice/purchase bill/excise gate pass in support of their claim.

3. The claim submitted by the party was forwarded to the jurisdictional Range Officer for verification of the same. The Range Officer vide his report dated 08.09.2010 informed that (i) as per available records in this Range, M/s Denn Exports, 27, DSIDC Complex Mata Sundari Road, New Delhi-2 are not registered with the Range (ii) the party has submitted a copy of Gatepass cum delivery challan "Original for Buyer" vide DC No. E/W009302636 dated 27.03.2010 issued to M/s Deep (I) Enterprises Pvt. Ltd., 13, Bhera Enclave, Paschaim Vihar, Outer Ring Road, New Delhi giving therein details of sate of "i-10 Megna Car" of Hyundai Motors. The party has not submitted a certificate issued by the jurisdictional Range office of Central Excise to the effect that M/s Deep (I) Enterprises Pvt. Ltd. has not availed credit of Central Excise duty paid on the said vehicle (iii) the party has submitted a copy of tax invoice issued by M/s Deep (I) Enterprises Pvt. Ltd. Vide invoice No.1201000004 dated 10.05.2010 in favour of the party wherein total amount of Rs.4,12,266/- being paid is shown against the said vehicle but the amount of Central Excise duty has not been shown separately and it is

vehicle but the amount of Central Excise duty has not been shown separately and it is also not evident whether the said amount of Rs.4,12,266/- also includes the said Central Excise duty or not. (iv) from the shipping Bill No.2389414 dated 17.05.2010, it appears that the details of ARE-1 are not entered into the said shipping bill and from the remarks given on the said shipping bill, it appears that the goods covered under the said shipping bill were exported on 18/19.05.2010. (v) the party has submitted all the five copies of ARE-1 No.001 dated 12.05.2010 along with its refund claim application. From the said ARE-1 it appears that the said ARE-1 was prepared and signed on 12.06.2010 by Shri V. K. Anand (Pro.) of M/s Denn Exports, much after the date of actual export of said goods i.e. 18/19.05.2010. Thus, it is also evident that the copy of said ARE-1 has not been submitted to the Range office.

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

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who also 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 That the basis of rejection of appeal made by the Appellate Authority vide para no.4 is absurd. The reply to each ground is submitted hereunder :-

(i) That the manufacturer without paying the goods cannot remove the care out of factory. The officials can verify this fact easily as every vehicle has unique chassis number or they can directly interact their counter part at Chennai where the unit exist for verification of facts regarding their doubts. They can even check the facts from the office eof the dealer (here M/s Deep Hyundai, a unit of Deep India Enterprises Pvt. Ltd.) who issued the Excise Gate pass. The official do not want to solve the issue and made it complicated and most of the time have a sound sleep in their office They forget that they are public servants.

(ii) Although, it has been verified by the dealer that they have not taken Cenvat Credit still unnecessarily this issue has been raised.

(iii) Again the illogical issue has been raised regarding proper procedure. If the dealer does not issue the gate pass in time, how the procedure can be followed related to the intimation of export etc. You know that you do not have any power to take action against the dealer for late issue of the gate pass.

That in light of above clarification you are requested to set aside the order of appellate authority and ask them to refund the duty paid to the revisionist.

5. Personal hearing scheduled in this case on 18.10.2013 was attended by Shri Vinod Kumar Anand, Proprietor of the applicant firm who reiterated the grounds of revision application. Shri S. Dua, Inspector, Division-II Central Excise Commissionerate Delhi-I appeared on behalf of the department and requested to uphold the impugned order-in-appeal. He stated that written reply will be filed in week's time. But till date, no reply is filed.

6. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned order-in-original and order-in-appeal.

7. On perusal of records, Government observes that applicant's rebate claim was rejected on the ground of non-compliance of procedure laid down in Not. No. 19/04-CE(NT) dated 6.9.2004. Applicant is now contending that manufacturer of car cannot remove goods with paying duty and official can easily verify this fact as vehicle has unique chassis number.

8. Government notes that rule 18 of Central Excise Rules, 2002 provides for grant of rebate of duty paid on excisable goods exported or duty paid on materials used in the manufacture or processing of such goods and rebate shall be subject to such conditions or limitations if any and fulfillment of such procedure as may be specified in the notification. Further, notification No.19/04-CE(NT) dated 6.9.2004 is issued under rule 18, prescribing conditions or limitations and procedure to be fulfilled for grant of

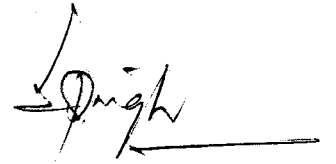
rebate of duty paid on excisable goods exported. The condition specified in para (2) are not satisfied since the goods are not exported direct from factory or warehouse. The procedure for clearance of goods for export as detailed in para 3 of said notification is not followed by applicant at all. Neither ARE-1 form is prepared nor the ARE procedure is followed while clearing goods for export. The ARE-1 prepared after the export of goods has no meaning since the said document is required to be prepared at the time of clearance of goods for export and it will contain the certifications by Central Excise officers as well as Customs Officers about examination of goods and export of goods.

9. Government notes that CBEC vide circular No.294/10/97-CX dated 30.01.1997 has prescribed the procedure to be followed when goods are exported from a place other than factory. Applicant has also not followed the said procedure. In such a situation the export of duty paid goods cannot be established. The claimant of rebate has to follow the statutory provisions of law and laid down procedure to claim the rebate of duty. Non-compliance of condition / procedure of Not. No.19/04-CE(NT) dated 6.9.2004 renders the rebate inadmissible. The claimant in such a situation cannot simply claim without any documentary evidence, Central Excise certification that goods are duty paid. The verification of payment of duty takes places through laid down procedure which applicant failed to follow. The fundamental condition of export of duty paid goods is required to be satisfied for granting rebate of duty under rule 18 of Central Excise Rules, 2002. In this case neither the duty payment has been confirmed from the documents submitted by applicant nor the prescribed procedure/conditions was complied and therefore the rebate claim is rightly rejected by lower authorities.

10. Government do not find any infirmity in the impugned order-in-appeal and therefore upholds the same.

11. The revision application is rejected being devoid of merits.

12. So ordered.



(D.P. Singh)

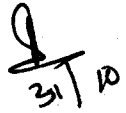
Joint Secretary(Revision Application)

M/s Denn Exports
27, DSIDC Complex,
Mata Sundari Road,
New Delhi – 110002.

Order No. 1369 /13-Cx dated 30.10.2013

Copy to:

1. Commissioner of Central Excise, Delhi-I Commissionerate, C.R. Building, I.P. Estate, New Delhi.
2. Commissioner of Central Excise (Appeals), Delhi-I, Room No.134, C.R. Building, I.P. Estate, New Delhi.
3. Deputy Commissioner of Central Excise, Division-II, 4, Shopping Centre, Milan Cinema Complex, Karampura, New Delhi – 110015.
4. PA to JS(RA)
5. Guard File.
6. Spare Copy



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