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SPEED POST



F.No.195/1299/11-RA
F.No.195/697/12-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...22/11/13

ORDER NO. 1388-1389 /13-Cx DATED 26.11.2013 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.IND/CEX/000/APP/365/11 dated 20.9.2011 &
IND/CEX/000/APP/88/12 dated 29.3.2012 passed by the
Commissioner of Customs and Central Excise (Appeals),
Indore

Applicant : M/s Prestige Feed Mills Ltd., Dewas.

Respondent : The Commissioner of Customs & Central Excise, Indore.

ORDER

These revision applications are filed by M/s Prestige Feed Mills Ltd., Dewas (M.P.) against orders-in-appeal No.IND/CEX/000/APP/365/11 dated 20.9.2011 & IND/CEX/000/APP/88/12 dated 29.3.2012, passed by the Commissioner of Customs and Central Excise (Appeals), Indore with respect to order-in-original passed by the Assistant Commissioner, Central Excise & Customs, Division-Ujjain.

2. Brief facts of the cases are that the applicant M/s Prestige Feed Mills Ltd., filed input rebate claims for duty paid on the inputs i.e. Hexane which was used in the manufacture of export goods (De-oil Cake) under Notification No.21/04-CE(NT) dated 6.9.04. On the scrutiny of the rebate claim it is found in some claims that some documents including original and duplicate copy of ARE-2 was not filed. It was also observed that approval of input output ratio of duty paid inputs were not obtained. Therefore show cause notices were issued proposing rejection of rebate claims, on ground of non-fulfillment of the conditions of Notification No.21/2004-CE(NT) dated 06.09.2004. Subsequently, vide impugned orders-in-original, the original authority rejected rebate claims of the applicants.

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

4. Being aggrieved by the impugned orders-in-appeal, the applicant has filed these revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following common grounds:-

4.1 The applicant inter-alia states that both the lower authorities have failed to appreciate the true facts and circumstances of the case and also the true purpose and effect of Scheme of Rebate as provided by the Govt. of India under

Rule 18 of Central Excise Rules, 2002 as well as various neutralization scheme for wipe out the cascading effect of taxation upon the goods produced/exported by the applicant and has rejected the claim of Rebate of duty paid on goods exported which is contrary to and inconsistent with the said Rules and the various binding precedents and guidelines issued there under. It is also submitted that the order is misconceived as well as cryptic as a result of non-application of mind. Hence, it deserves to be set aside. It is ruled by the Govt. of India vide its Order No. 527-528/2005 dated 18.11.2005 in the matter of M/s Modern Process Printers Ltd that rebate/drawback and other such export promotion scheme of the Govt. are incentive-oriented beneficial schemes intended to boost export in order to promote exports by exporter to earn more foreign exchange for the country and in case the substantive fact of export having been made is not in doubt, liberal interpretation is to be accorded in case of technical lapses if any, in order not to defeat the very purpose of such scheme.

4.2 In regard to the filing of ARE-2 with rebate claim, the applicant submitted that they have already submitted all the ARE-2 with the rebate sanctioning authority along with rebate claim. However, the applicant shocked to find such statement of both the lower authority that the applicant has not submitted the ARE-2. Hence, the applicant again reiterated that they have filed the said documents before the rebate sanctioning authority.

4.3 As regard to the input output ratio the applicant inter-alia states that the applicant has claimed the rebate of duty paid on Hexane only which is used in the manufacturing of export product i.e. Soyabean De-oiled Cake. The applicant is regular exporter of this type of product and the rebate sanctioning authority also has jurisdiction over the factory premises of the applicants, which can be cross verified by them in case of any doubt in his mind. However, the Standard

Input Output Norms for the manufacturing of said product has already been fixed by the Govt. of India under SION Sr. No.E-42 published by the DGFT, Ministry of Commerce and Industries, which may be referred for the satisfaction of the rebate sanctioning authority. However, the applicant has claimed the rebate within this norm before the rebate sanctioning authority. The applicant inter-alia states that in the matter of M/s Murli Agro Product Ltd. [2006(200) ELT 0175 (GOI)] the Joint Secretary has allowed the claim of the applicant on the basis of SION Norms of same products.

4.4 That the input-output ratio of the applicant has been approved for the later period for the same exported goods i.e. De-oiled cake, which may be taken into consideration while deciding the rebate claim of the applicant. The applicant states that the Joint Secretary to the Govt. of India has recently allowed a revision application filed by M/s Hastum Agro Products Pvt. Ltd. and in decision taken in the matter of the Commissioner of Central Excise, Ahmedabad Vs. M/s Prananta Foods Ltd. under which the ratio fixed for the later period, was ordered for consider for the sanctioning of the rebate claim of the applicant related to earlier period.

4.5 As regard to the submission of invoices issued under Rule 11 of Central Excise Rules 2002, the applicant inter-alia states that as the export product is not an excisable product. Hence, there is no need to issue such excisable/ Modvatable invoices in this present. However, they have issued commercial invoices for the same which is already submitted with the claim of the applicant. Rule 11 of Central Excise Rules 2002 mandate issuance of excisable invoice only when the goods are excisable.

4.6 The applicant has relied upon various case laws in favour of their conclusion.

5. Personal hearing scheduled in this case on 17.10.2013, was attended by Shri Ranjeet Kumar Singh, advocate on behalf of the applicant who reiterated the grounds of Revision Application. Nobody attended hearing on behalf of respondent department.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal. Since a similar issue is involved in both the cases, so said applications are taken up together for decision by this common order.

7. Government observes that the applicant filed rebate claims of duty paid on raw materials/inputs used in manufacture of exported goods under Rule 18 of Central Excise Rule 2002 read with Notification No. 21/2004-CE(NT) dated 06.09.2004. Original authority observed that in some cases the applicant failed to submit some documents including original and duplicate copies of ARE-2 forms and also that the applicant did not get the input/output ratio approved. Accordingly, the adjudicating authority vide impugned orders-in-original, rejected rebate claims. Commissioner (Appeals) rejected appeals filed by the applicant. Now, applicant has filed these revision applications on grounds mentioned in para (4) above.

8. Government finds that the original authority has rejected the rebate claim on the ground that the applicant failed to obtain approval of input-output norms. Regarding non-submission & approval of input-output declaration, Government has already held in case of CCE Bhopal Vs M/s Sidhartha Soya Products Ltd. reported as 2006(205) ELT 1093(GOI) that substantial benefit of input rebate claim cannot be denied for said procedural lapse. Moreover as per provisions of para 3.2 of Part V of Chapter 8 of CBEC Central Excise Manual on Supplementary

Instructions, the input-output norms notified under Export-Import Policy may be accepted by department unless there are specific reasons for variation. The fundamental requirement of determining admissibility of input rebate is that use of duty paid materials in the manufacture of exported goods is established beyond doubt. The applicant claimed that these input/output ratio is within SION. Moreover, the input/output ratio of said commodity has been approved by department for subsequent exports. Under such circumstances, Government finds that the input output ratio, which is as per input output ratio specified in SION or the approval granted by department for subsequent exports, can be accepted considering the manufacturing formula adopted by applicant.

9. Government observes that rebate claims were also rejected on ground that in some cases, either original and duplicate AREs-2 were not submitted or some columns of the said ARE-2 forms were not filled. The original authority has cited the GOI Revision Order No.216/11-CX dated 7.3.11 issued from file No.198/19/09-RA-Cx in the case of M/s CIL Textiles Pvt. Ltd., Indore wherein it was held that input rebate claim was held inadmissible for failure of the claimant to submit original and duplicate ARE-2 forms. In this regard Government observes that Hon'ble High Court of Bombay in its judgements dated 24.4.13 in the case of M/s U.M.Cables Vs. UOI (WP No.3102/13 & 3103/13) reported as TIOL 386 HC MUM CX. has held that rebate sanctioning authority shall not reject the rebate claim on the ground of non-submission of original and duplicate copies of ARE-1 forms if it is otherwise satisfied that conditions for grant of rebate have been fulfilled. Government, therefore, in the light of principle laid down by Hon'ble High Court of Bombay in the said case, is of the view that original authority has to consider the input rebate claims on the basis of collateral evidences where original and duplicate ARE-2 form is not submitted. If use of duty paid inputs in the manufacturing of exported goods is established

and claim is otherwise found admissible, then rebate claims will not be rejected on grounds of non-submission of ARE-2.

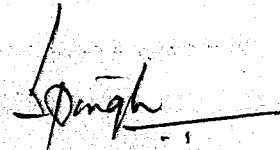
10. Government notes that in this case a few rebate claims were considered as time barred in the show cause notice but adjudicating authority has not given any finding on said time bar aspect of claim. It is a well settled position that a rebate claim has to be filed within one year from the date of export of goods as stipulated in Section 11B of Central Excise Act 1944 and claim filed after said period cannot be entertained and is liable to be rejected as time barred. In the revision application, order-in-original and order-in-appeal, no details of such time barred claims are given except the amount involved. The original authority has to work out the exact details of such time barred claims from original case file and disallow them if found time barred.

11. Government notes that fundamental requirement for grant of input rebate claim is that duty paid inputs are used in the manufacture of exported goods. The claimant is required to submit the duty paid input invoices and satisfy the original authority that duty paid input are used in manufacturing of finished goods and said finished goods are exported out of India. Though there were charges against claimant that duty paying input invoices and other relevant information are not submitted along with rebate claims but there is no discussion on this aspect in the order. The use of duty paid inputs in the manufacturing of exported goods is required to be established beyond doubt for determining admissibility of input rebate claims. So, the original authority has to verify this aspect and then arrive at a proper conclusion on the issue. Applicant has claimed that they have submitted all the requisite documents before original authority but no evidence is produced to verify the authenticity of their claim.

12. Keeping in view the above position case is required to be remanded back for fresh consideration of matter. Government, therefore, sets aside the impugned orders and remands the cases back to original authority for denovo consideration in accordance with law taking into account the observations made in above paras. The applicant is directed to submit all the relevant documents before original authority. A reasonable opportunity of hearing will be afforded to both the parties.

13. The revision applications are disposed off in terms of above.

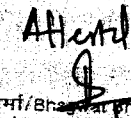
14. So, ordered.



(D.P.Singh)

Joint Secretary to the Government of India

M/s Prestige Feed Mills Ltd.,
49-C, Industrial Are No.II
A.B. Road, Dewas (MP).

Attested

(भगवत शर्मा/Bhaskar Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
NEW DELHI/NEW DELHI

Order No. 138P-1389 /13-Cx dated 26.11.2013

Copy to:-

1. The Commissioner of Central Excise & Customs, P.B. No. 10, Manik Bagh Place, Indore -452 001 (MP)
2. The Commissioner (Appeals) Customs & Central Excise, Keshar Bagh Road, Indore, (MP).
3. The Assistant Commissioner of Central Excise, & Customs, Division Bharatpuri Ujjain, (MP)
4. M/s Singh Associates, 16/267, 1st Floor, Street No.9, Joshi Road, Karol Bagh, New Delhi 110005.
5. PS to JS(Revision Application)
6. Guard File
7. Spare Copy.

ATTESTED



20/11
(B.P.Sharma)

OSD (Revision Application)