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F.No. 195/1051/11-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.....

28/11/13

Order No. 1392/13-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,
1944 AGAINST THE ORDER-IN-APPEAL No.
IND/CEX/000/APP/292/11 dated 19-07-2011
passed by Commissioner of Central Excise,
(Appeals), Indore.

Applicant : M/s. Kriti Nutrients Ltd.,
Industrial Area-III, A.B. Road,
Dewas.

Respondent : Commissioner of Central Excise and Service Tax,
P.B. No. 10, Manikbagh Palace, Indore (MP).

ORDER

This revision application is filed by the M/s. Kriti Nutrients Ltd., Industrial Area-III, A.B. Road, Dewas against the Order-in-Appeal No. IND/CEX/000/APP/292/11 dated 19-07-2011 passed by the Commissioner of Central Excise (Appeals), Indore with respect to Order-in Original passed by the Assistant Commissioner of Central Excise, Division- Bharatpuri, Ujjain.

2. Brief facts of the case are that the applicant M/s. Kriti Nutrients Ltd., Dewas is engaged in the manufacture of Vegetable oils and its bye products falling under chapter No. 15 of the schedule to the Central Excise Tariff Act, 1985. The applicant purchased Licithin on payment of duty and exported the same under rebate claim for Rs. 76077/-. The claimant filed rebate claim for the excise duty paid on exported Licithin in terms of Rule 18 of Central Excise Rules, 2002. The above said rebate claim was scrutinized and it was found that applicant has not fulfilled conditions prescribed under Notification No. 21/2004-CE (NT) dated 06-09-2004 issued under Rule 18 of Central Excise Rules, 2002. Therefore, show cause notice dated 21-12-2010 was issued to the applicant for rejection of said rebate claim. The applicant in their reply to show cause notice amongst other submissions stated that they have filed the rebate claim for finished goods and therefore there is no need to declare input-output ratio in this case. The adjudicating authority vide the impugned Order-in-Original adjudicated the show cause notice and rejected claim filed by the applicant. The original authority held that if the rebate claims is treated to have been filed under Notification No. 21/2004-CE (NT), then the applicant failed to file the declaration and getting approval of the input-output ratio. If the rebate claims are treated to have filed under Notification No. 19/2004-CE (NT) then the applicants rebate claims is beyond preview of said Notification No. 19/2004-CE (NT) as the export of such inputs i.e. impugned exported goods, as such cannot be treated as excisable goods manufactured by the applicants.

3. Being aggrieved by the said order-in-original, applicant filed appeals 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 In terms of provision of rule 18 of the Central Excise Rules, 2002, rebate claims can be filed for finished products or inputs used in manufacture of finished goods. In this case, we have filed the claim for finished goods and therefore, there is no need to declare input output ratio in this case.

4.2 The applicant are not required to give the declaration before purchasing or Input-output norms as they procure the lecithin by paying the excise duty and export the same on as such basis, so they are not required to fulfil all the conditions of the notification. The adjudicating authority agree on all the points except the filling of the refund claim form under ARE-I. As per the adjudication authority the applicant has to file the refund claim under the ARE-II, which they had not filled and merely on the basis of his ground the adjudicating authority rejected the claim of the applicant. Admittedly the applicant have cleared the goods under ARE-I duty the signed by the customs office, ARE-2 is also prescribed to verify that the goods are exported. Thus the main intention behind ARE-1 or ARE-2 is only to verify that the goods are the exported. When ARE-I is issued duly signed by the custom officer the goods are exported and therefore just claim of the applicant should not be denied only on such hyper technical grounds.

5. Personal hearing scheduled in this case on 21-02-2013 and 14-10-2013. Personal hearing held on 14-10-2013 was attended by Shri Ashutosh Upadhyay, 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.

7. Government notes that the applicant has purchased lecithin on payment of duty and exported the same as such under rebate claim. The original authority held that if the rebate claims is treated to have been filed under Notification No. 21/2004-CE (NT) the applicant failed to file the declaration and getting approval of the input-output ratio and if the rebate claims are treated to have filed under Notification No. 19/2004-CE (NT) then the applicants rebate claims is beyond preview of said Notification No. 19/2004-CE (NT) as the export of such inputs i.e. impugned exported goods as such, cannot be treated as excisable goods manufactured by the applicants. Commissioner upheld impugned Order-in-Original. Now the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government notes that applicant has categorically stated that they had purchased the Licithin on payment of duty and exported the same under claim of rebate of duty in terms of Notification No. 19/04-CE (NT) dt. 06-09-2004. So there is no question of processing the claim as input rebate claim under Notification No. 21/04-CE (NT) dt. 06-09-2004.

8.1 Government notes that as per condition 2(a) of the Notification No. 19/04-CE (NT) dt. 06-09-2004 the goods are to exported direct from the factory of manufacture. In this case applicant has exported bought out goods from his own premises. So the condition 2(a) is not satisfied. However CBEC vide circular No. 204/10/94-Cx dt. 30-01-97 (para 8) has prescribed procedure for export of excisable goods from a place other than factory or warehouse. The applicant in this case is a merchant exporter who has exported the bought out excisable goods. In this case the procedure as laid down in the above mentioned CBEC circular was required to be followed. As per the said procedure the exporter desiring to export duty paid excisable goods (capable of being identified) which are in original factory packed condition/not processed in any manner after being cleared from factory should make an application in ARE-1 form to the superintendent of Central Excise under whose jurisdiction goods are stored. On receipt of said application and particulars the particulars of packages/goods lying stored should be verifies with the particulars given in ARE-I and if the central Excise Officer is satisfied about the identity of

goods, its duty paid character and all other particulars given by exporter, he will endorse such form and permit export. The detailed procedure is prescribed in para 8,8.1 to 8.6 of above said circular.

8.2 On perusal of records it is not known whether the exporter has complied with the laid down procedure. The rebate claim can be allowed only if the export of duty goods which were original cleared from factory of manufacture is established. The adjudicating authority has not examined the case in the light of above said CBEC circular. Therefore case has to be remanded for fresh consideration.

9. In view of above position, Government sets aside the impugned orders and remands the case back to original authority for deciding matter afresh in accordance with law after taking into account the above observations. A reasonable opportunity of hearing will be afforded to the parties.

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

12. So, ordered.

M/s. Kriti Nutrients Ltd.,
Industrial Area-III, A.B. Road,
Dewas.



(D.P. Singh)

Joint Secretary to the Govt. of India

ATTESTED




(शगवान शर्मा/Shagwan Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Dept't of Rev.)
New Delhi/Govt. of India
New Delhi

Order No. 1392/13-Cx dated 26.11.2013

Copy to:

1. The Commissioner of Central Excise and Service Tax, P.B. No. 10, Manikbagh Palace, Indore (MP).
2. The Asstt. Commissioner of Central Excise, Division, Bharatpuri, Ujjain.
3. Shri Ashutosh Upadhyay, advocate, 4, Kishan Colony, 567-MG Road, opp. High Court, Near Rajani Building, I, Indore, (MP).
4. PS to JS (RA)
5. Guard File.
6. Spare Copy

ATTESTED


27/11

(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)