

REGISTERED
SPEED POST



F.No.198/19/2015-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:

Order No. 147/2018-Cx dated 01-03-18 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional 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.NOI/EXCUS/000/APPL/341/2014-15 dated 30.1.2015, passed by the Commissioner of Central Excise (Appeals), Noida

Applicant : Commissioner of Central Excise, Now NOIDA

Respondent : M/s N.T.L.Lemnis India Pvt. Ltd., NOIDA

ORDER

A Revision Application No.198/19/2015-RA dated 21.5.2015 is filed by the Commissioner of Central Excise, NOIDA, (hereinafter referred to as the applicant) against the order-in appeal No.NOI/EXCUS/000/APPL/341/2014-15 dated 30.1.2015, issued by the Commissioner of Central Excise (Appeals) Noida, who has allowed the rebate of Central Excise duty to M/s N.T.L.Lemnis India Pvt. Ltd., Noida (hereinafter referred to as the respondent) on their appeal and set aside the order of the Deputy Commissioner, Central Excise, Noida, rejecting the rebate of duty to the respondent.

2. The respondent has contested the above revision application by submitting a reply dated 29.12.15 running into 78 pages and their main contentions are that they have manufactured the LED bulbs at their end by undertaking incidental and ancillary processes to the completion of the manufactured product as envisaged in Section 2(f) of the Central Excise Act, the Cenvat credit on the LED bulbs manufactured by the job workers was correctly availed by them, the LED bulbs have been exported by them on payment of duty from Cenvat credit available to them after making them marketable for the international market, they are eligible for rebate of duty on the exported goods as per Rule 18 of Central Excise Rules, 2002 and the applicant has not given any ground for revision in the Commissioner (Appeals)'s order.

3. A personal hearing in this case was held on 14.12.17 and it was attended by Shri D.D.Mangal, Deputy Commissioner of Central Excise, Noida, who reiterated the grounds of revision already pleaded in their application. The hearing by the respondent was availed on 8.2.18 through Shri Amit Jain, Advocate, and a synopsis along with compilation of case laws was submitted during the personal hearing. Shri Jain raised the following contentions in their synopsis to support their case that the revision application filed by the Revenue is not maintainable:

- i. The Commissioner (Appeals) has issued 2 Orders-in-Appeal Nos.NOI/EXCUS/001/APPL/ 341/2014-15 dated 30.1.15 arising out of OIO No.R-

083A/DC/N-II/ 2014-15 dated 30.6.2014, sanctioning 4 rebate claims to the respondent, and another OIA No. NOI/EXCUS/001/APPL/342/2014-15 dated 30.1.15 arising out of OIO No.R-083B/DC/ N-II/2014-15 dated 30.6.2014, sanctioning 7 rebate claims to the respondent. But the Department has filed only one revision application against OIA No.341 and no revision application has been filed by the department against OIA No.342 from which it is implied that OIA No.342 allowing the rebate of duty to them on the basis of same facts is accepted by the Department. Therefore, the application filed by the Department is liable for rejection for this reason alone.

- ii. Two identical rebate claims for Rs.67,44,858.87 & Rs.39,90,664/- (for the earlier period) were sanctioned to the Respondent by the Assistant Commissioner, Central Excise, Division-II, Noida. However, no proceeding has been initiated by the department in respect of these already sanctioned claims.
- iii. The Revision Application filed by the department is a mere reproduction of certain paragraphs extracted from the findings of the Order-in-Original and Order-in-Appeal without enumerating any logical reasoning/rebuttals to the finding to the Order-in-Appeal.
- iv. Denial of rebate of the duty paid is against the policy of the Government and also against the internationally accepted practice of relieving exports of taxes paid.
- v. The processes of testing, quality control and packing carried out by the respondent on the assembled goods received from the job worker amounts to manufacture under Section 2(f) (i) of the Central Excise Act, 1944
- vi. Processes undertaken by the Respondent at their factory, post receipt of the goods from the job worker, were incidental or ancillary to the completion of a manufactured product, to impart marketability to the

product, hence, the same amounted to manufacture in terms of Section 2(f)(i) of the Central Excise Act, 1944.

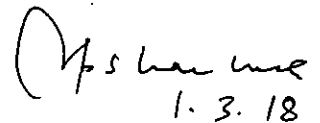
- vii. The expression 'manufacture' needs to be construed liberally in the context of export.
- viii. Provisions of Section 5B of the Excise Act not invocable.
- ix. Issue of manufacture is irrelevant, as far as admissibility of rebate claims under Rule 18 of Central Excise Rules, 2002 is concerned, once it is undisputed that duty paid goods stand exported.
- x. When duty was paid on the final product, Credit cannot be denied
- xi. Payment of duty at the time of clearance of the goods ought to be considered as reversal of cenvat credit
- xii. When duty paid on the final product, Cenvat Credit admissible irrespective of whether the activity amounts to manufacture or not.

4. On examination of the revision application, the Government has noticed that revision application in EA-8 is found only in 2 pages containing details at S.No.1 to 10 in tabular form like name and address of the applicant, address of the Commissioner (Appeals), Number and date of the order, date of communication of the order, period of dispute, amount of refund and relief claimed in the application etc. But the background of the case and the grounds of revision are not found incorporated in EA.8 Form. While at S.No.10 of EA-8 Form the Statement of Facts and Grounds of Revision are stated to be enclosed, no such Statement of Facts and Grounds of Revision are actually found to be enclosed along with the said form EA-8. Even in Index to the aforesaid form EA-8 at page I, Revision Application is stated to be at pages 1-3 which is inclusive of Index page and thereafter pages 5-21 are mentioned for Prayer and Authorization. The Authorization of the Commissioner issued to the Assistant Commissioner to file a revision application before the Government cannot be considered as the Statement of Facts and the ground of revision as its language is directional in nature to the Assistant Commissioner and it does not have any Prayer Portion. Hence, the revision application

in this case is manifestly not complete and liable to be rejected on this ground alone. Further, even if Authorization of the Commissioner of Central Excise is considered as part of the revision application to ascertain the grounds of revision by the Government in this matter, no ground of revision is found in the Authorization Order also, running from pages 7 to 21. In the entire Authorization dated 18.5.15, the Commissioner has only cited the observations of the Deputy Commissioner for rejection of the rebate claims of the respondent and the reasoning given by the Commissioner (Appeals) in his Order for allowing the rebate of duty to the respondent under the heading 'Grounds of Appeal' in para 3.0 to 3.4. But no reason/ground has been given in the entire Authorization for disagreeing with the order of the Commissioner (Appeals) and for justifying the filing of the revision application with the Central Government for seeking annulment of the Commissioner (Appeals)'s order. It is also noticed by the Government that while a conclusion has been drawn in para 3.5(ii) of the Authorization that the duty paid by the job worker is not proper and hence cenvat credit availed by the respondent of the said duty paid by the job worker is not proper, in para 3.1 of the same Authorization the Deputy Commissioner's observations, as recorded in para 27.3 of her Order in Original, have been cited wherein it is clearly stated that the activity from import of components to manufacture of product at the hand of job worker who happens to be the supporting manufacturer amounts to manufacture in terms of FTP as well as under Section 2(f)(i) of the Central Excise Act 1944; that the role of respondent is limited to testing, QC and packing which also qualifies as manufacture under the FTP and that the payment of central excise duty by the job worker was not irregular. Thus the conclusion drawn in para 3.5(ii) of the Authorization that the duty paid by the job worker is not supported by any reason and is completely misplaced. Even the contention of the respondent that while the revision application has been filed in this case by the Revenue against one OIA No.341 dated 30.1.15 and no appeal has been filed against other OIA No.342 dated 30.1.15 is also apparently true as per records of this Office and if it is so it amounts to acceptance of admissibility of rebate of duty on the exported goods to the applicant by the respondent himself. Hence, there is

a force in the respondent's argument that the revision application filed in this case is not maintainable for this reason alone. It can also not be denied that the issues regarding non-manufacturing of goods at the end of the respondent and non-admissibility of cenvat credit were not elaborated in the show cause notice and no convincing findings have been given in the OIO on these two crucial issues before drawing a conclusion that the respondent was not eligible to avail cenvat credit and was not required to pay duty on exported goods. Thus, the revision application filed in this case is not complete, the Authorization of the Commissioner of Central Excise also does not provide any basis for questioning the correctness of the Order of the Commissioner (Appeals), the facts narrated in the Authorization are vague and non filing of a revision application against other identical OIA No.342 passed in reference to OIO R-083B/DC/N-II/2014-15 dated 30.5.2014 directly contradict the present revision application. Considering all these lacunae, the Government is convinced that the applicant has not made out any case for warranting any revision in the above Commissioner (Appeals)'s Order.

5. Accordingly, the revision application is rejected.


1.3.18

(R.P.Sharma)

Additional Secretary to the Government of India

Commissioner of Central Excise, Noida-I,
C-56/42, Renu Tower, Sector-62
Noida-201307

Order No. 197 /2018-Cx dated 01-03-2018

Copy to:

1. M/s N.T.L.Lemnis India Pvt. Ltd., C-3, Sector-65, Noida,
2. Commissioner of Customs & Central Excise (Appeals), Noida, C-56/42, Renu Tower, Sector-62, Noida-201307
3. Assistant Commissioner, Central Excise, Division-III, Noida-1
4. PA to AS(RA)
- ✓ 5. Guard File.
6. Spare Copy

ATTESTED

(Ravi Prakash)
OSD (RA)

Ravi
1-3-2018

(निर्मला देवी/NIF SA DEVI)
अनुपम अधिकारी / Section Officer
वित्त विभाग (राजस्व विभाग)
Ministry of Finance (Dept. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi