



**REGISTERED  
SPEED POST**

F.No. 195/620/12-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue...9-4-14

Order No. 148/14 dated 07.04.2014 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.19/2012 dated 16.3.12 passed by the Commissioner of Central Excise (Appeals), Madurai

Applicant : M/s Meenasankar Enterprises, Sivakasi

Respondent : Commissioner of Central Excise, Tirunelveli

\*\*\*\*\*

**ORDER**

This revision application is filed by M/s Meenasankar Enterprises, Sivakasi against the order-in-appeal No.19/2012 dated 16.3.12 passed by the Commissioner of Central Excise (Appeals), Madurai with respect to order-in-original No.50/11 (Rebate) dated 29.4.11 passed by the Deputy Commissioner of Central Excise Tuticorin Division.

2. Brief facts of the case are that M/s. Meenasankar Enterprises, Sivakasi-626123 have purchased excisable goods viz. Potassium Chlorate falling under Central Excise Tariff heading No.28291920 from the first stage dealer M/s MACS Agencies, Sattur Road, Sivakasi and exported the same without subjecting the same to any process. Thereafter, the applicants have claimed Rebate of Rs.2,67,713/- being the duty of excise paid for the same under Notification No.19/2004-CE(NT) dated 06.09.2004. It was considered by the department that in terms of the said notification dated 06.09.2004, merchant exporters are eligible for rebate only if the goods have been exported after payment of duty directly from a factory or warehouse whereas in the instant case the same has been purchased from the first stage dealer and therefore the applicants are not entitled for the rebate.

2.1 In view of the above position, the Deputy Commissioner of Central Excise, Tuticorin Division have after due process of law rejected the refund claim vide impugned order-in-original No.50/2011(Rebate) dated 29.4.2011.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who uphold the impugned order-in-original and rejected the appeal.

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 The applicant wish to submit that Chapter 8 of the Central Excise Manual of CEC Instructions deal with exports under rebate. Para 1.1 of Part I of the said chapter provides for as under:

*"1.1 Conditions relating to the said export are, as follows:*

*1. Export of excisable goods to all countries except Nepal and Bhutan:*

*(i) It is essential that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse. The condition of "payment of duty" is satisfied once the exporter records the details of removals in the Daily Stock Account maintained under rule 10 of the said Rules, whereas the duty may be discharged in the manner specified under rule 8 of the said Rules, i.e. monthly basis.*

*(ii) In certain cases, the Board may issue instructions/procedures for exporting the duty paid goods from a place other than the factory or the warehouse. In this regard, a general permission has been granted in respect of goods where it is possible to correlate the goods and their duty paid character."*

4.2 The above clause (ii) clearly supports the aforesaid provisions contained in the Notification 19/2004 CE(NT) and clarifies the intention of the Government. Further, the above clause clearly states that a general permission has been granted in respect of goods where it is possible to correlate the goods and their duty paid character. The same will apply to this instant case also in as much as there is no allegation in the impugned notice against us that the identity of the goods export and their duty paid character has not been established.

4.3 The applicant had contested the show cause notice before the lower authority on the above grounds but in vain and the lower authority, though have reproduced the contents of the reply filed by the applicant which contained the aforesaid contentions of the applicant, have neither appear to have considered the same nor recorded any

finding and merely relying on Condition No.2(a) of the Notification No.19/2004-CE(NT) had held that the said condition strictly stipulates that the goods are to be exported directly from a factory or warehouse, as such rebate claim stands disqualified, which is not at all legally sustainable.

4.4 The lower appellate authority in his impugned order in appeal had accepted that a rebate is permissible even in case where the duty paid goods are exported from a place other than the factory or warehouse but has proceeded to uphold the order of the lower authority on the ground that the applicants have to correlate the goods and their duty paid characteristics and so far the applicant have not established the duty paid characteristics of the goods exported. In this regard the applicant wishes to submit that the lower adjudicating authority had denied the rebate claim of the applicant only on the ground that in terms of Condition 2(a) of Notification 19/2004-CE(NT) dated 6.9.2004 rebate is permissible only when the goods are exported directly from the factory or warehouse. Accordingly, when the lower appellate authority had accepted that the rebate claim is permissible even when exported from place other than factory or warehouse, then the question of upholding the order of the lower authority is not at all sustainable.

4.5 In view of the above findings recorded by the lower adjudicating authority, duty paid character of the exported goods stands proved beyond doubt and there is no dispute in this regard. Accordingly, the applicant wishes to submit that order of the lower appellate authority is erroneous in denying the rebate claim for the reason that the duty paid character of the exported goods has not been established, when the above findings of the lower adjudicating authority clearly establishes the duty paid nature of the goods.

4.6 Further, the applicant also wishes to place reliance on the Judgment of the Hon'ble High Court of Mumbai in the case of Micro Inks Ltd reported in 2011-TIOL-199-

HC-MUM-CX wherein it has been categorically held that rebate claim is permissible in respect of inputs exported as such after reversal of cenvat credit taken. In the said judgement it has also been held that the manufacturer of final products who has taken credit of duty paid on inputs should be deemed as manufacturer of inputs. Further, the applicants wish to place reliance on the judgement of the Hon'ble High Court of Punjab & Haryana in the case of Simplex Pharma Pvt. Ltd. reported in 2008-TIOL-106-HC-P&H-CX wherein it has been categorically held that the CVD paid on inputs is also a duty of excise and the same can be given as rebate in case in terms of Rule 18 of the Central Excise Rules.

4.7 Based on the above grounds, the Hon'ble Revisionary Authority may kindly be pleased to set aside the impugned orders with consequential relief of pass any other order that it may deem, fit under the circumstances of the case and thus render justice.

5. Personal hearing scheduled in this case on 20.3.14 at Chennai was attended by Shri M.Karthikeyan, Advocate on behalf of the applicant who reiterated the ground of revision application. The learned advocate has sought 10 days time to file further written submissions but no submissions are filed by applicant till date.

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

7. On perusal of records, Government notes that in the instant case applicant has exported the potassium chlorate after purchasing the same from 1<sup>st</sup> stage dealer. Since the goods were not exported direct from factory of manufacture the condition No.2(a) of Notification No.19/04-CE(NT) dated 6.9.04 stands violated.

8. In this case, goods are not exported direct from factory of manufacture as required under condition 2(a) of Notification No.19/04-CE (NT) dated 6.9.04. However, CBEC vide Circular No.294/10/94-Cx dated 30.1.97 has relaxed the condition of direct export of goods from factory of manufacture subject to the condition that procedure prescribed in the said circular is followed. As per said circular, the exported desiring to export duty paid excisable goods (capable of being clearly identified) which are in original factory packed condition/not processed in any manner after being cleared from factory, stored outside the place of manufacture should make an application to the Superintendent of Central Excise In-charge of Range under whose jurisdiction such goods are stored. On receipt of such application and particulars of goods lying stored should be verified with particulars given in application and ARE-1 form. If the Central Excise Officer deputed for verification of goods for export 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 given in para 8.1 to 8.6 of said circular. In this case, no such procedure is followed as there is no endorsement from Central Excise Officers in Part-A of ARE-1 form. As such condition 2(a) of Notification No.19/04-CE(NT) dated 6.9.04 stands violated. The Central Excise office has not certified the identity of goods and its duty paid character. As such duty payment on exported goods is not proved.

9. Applicant has relied upon the judgement cited by him in the grounds of revision application. But the facts & issues involved in instant case are altogether different and therefore said judgement are not applicable to this case. The applicant has failed to establish the identity of goods exports with the duty paid goods cleared from factory of manufacture as there is no way to correlate the goods.

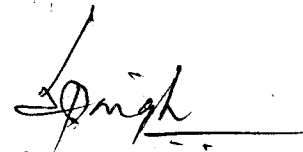
10. In view of above position, the export of duty paid excisable goods cleared from factory cannot be established. The lower authorities have rightly concluded that export of duty paid goods is not established in this case. As such, the rebate claim is not

admissible to the applicant under Rule 18 of Central Excise Rules 2002 read with Notification No.19/04-CE (NT) dated 6.9.04.

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

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

13. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

M/s Meenasankar Enterprises  
Boopathi Buildings  
17-A, Virudhunagar Road  
Sivakasi-626123



(माधवत शर्मा/Dhageswar Sharma)  
सहायक आयुक्त/Assistant Commissioner  
CBFC-OSD (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार/Govt. of India  
नई दिल्ली/New Delhi

G.O.I. Order No. 148/14 dated 07.04.2014

Copy to:-

1. Commissioner of Central Excise, C.R.Building, Tractor Road, NGO 'A' Colony, Perumalpuram, Tirunelveli-627007
2. Commissioner of Central Excise (Appeals), Lal Bahadur Shastri Marg, Central Revenue Buildings, Madurai-625002
3. Deputy Commissioner of Central Excise, C-50, SIPCOT Complex, Tuticorin Division, Tuticorin-8
4. Shri M.Karthikeyan, Advocate, Swamy Associates, Ashoka Avenue, Kodambakkam, Chennai-600024
5. Guard File.
6. PS to JS (RA)
7. Spare Copy

*Attendant*

(भागवत शर्मा/Bhagwan Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C.B.I C-O S D (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार/Govt. of India  
नई दिल्ली/New Delhi