



REGISTERED
SPEED POST

F.No.195/742/11-RA-CX
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...07/11/13

ORDERS NO. 15/13-Cx DATED 07.01.2013 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF
INDIA, UNDER SECTION 35 FF OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : ORDERS IN REVISION APPLICATION FILED,
UNDER SECTION 35 EE OF THE CENTRAL EXCISE
ACT, 1944 AGAINST THE ORDERS-IN-APPEAL No.
167-CE/GZB/2011-12 dated 18.08.2011
passed by the Commissioner of Customs
& Central Excise (Appeals), Ghaziabad.

APPLICANT : M/s Met Trade India Ltd., Delhi.

RESPONDENT : The Commissioner of Central Excise, Ghaziabad,
(Uttar Pradesh)

Orders

This revision application is filed by M/s Met Trade India Ltd., Ghaziabad against Order-in-Appeal No. 167-CE/GZB/2011-12 dated 18.08.2011 passed by the Commissioner of Customs and Central Excise (Appeals), Meerut-I, with respect to Orders-in-Original dated 20-10-10 passed by the Assistant Commissioner, Central Excise Division-IV, Ghaziabad.

2. The Applicants exported Antimoni Lead Alloy on payment of Central Excise duty and filed rebate claims under Rule 18 of the Central Excise Rules, 2002. The claims were sanctioned by the adjudicating authority vide the Orders-in-Original No. 304-R/2008-09 & 305-R/2008-09 both dated 23-12-2008.

3. Being aggrieved by the said Orders-in-Original, the Respondent department filed appeals before Commissioner (Appeals). Commissioner (Appeals) after considering all the submissions allowed the departments appeal vide Order-in-Appeal Nos. 119-126-CE (GZB) 09 dt. 19-06-2009 and 149-150-CE/GZB/09 dt. 19-06-2009. Applicant filed revision applications against the said Orders-in-Appeal dt. 19-06-2009 which was allowed by Government vide Order No. 1253-1254/11-CX dt. 30-09-2011 by setting aside the impugned Orders-in-Appeal. Meanwhile, the department had issued show cause notice proposing recovery of rebate sanctioned vide said orders dated 23-12-2008 and subsequently vide impugned Order-in-Original dt. 20-10-2010 confirmed the demand of rebate alleged to have been paid erroneously sanctioned vide above said Orders-in-Original, dated 23-12-2008.

3.1 Being aggrieved by impugned Order-in-Original, dt. 20-10-2010 the applicant filed appeal before Commissioner (Appeals), who rejected the same vide Order-in-Appeal dt. 18-08-2011.

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 They have complied with the conditions and limitations as prescribed in the Notification No. 19/2004-CE(NT) dated 06.09.2004. It is the conditions and limitations which determine the entitlement of the exporter to rebate claim. The procedures are not mandatory. The procedure simply lays down a sequence of activities or tasks to accomplish a particular act. The procedure in a given situation may vary.
- 4.2 The identity of the goods and co-relation between the goods which moved from the factory and the goods which have been exported is conclusively determined by the papers presented to the Customs authorities and the same has nowhere been disputed by any customs authorities at ICD.
- 4.3 Trade notice No. 10/2004 dated 3.8.2004 issued by the Commissioner Central Excise, Tirunelvile that the manufacturer exporters who are not desiring to opt for self sealing of containers and other exporters may avail the facility of nearest Inland Container Depot/CFS for stuffing containers and other customs clearance requirements. In the case reported in 2003(151) ELT 208 (Tri. – Bang.) Commissioner of Central Excise, Bangalore-II Vs. Maruti Embroideries, it was held that departmental instructions – Trade notice issued by Baroda Collectorate held to be binding in Bangalore Collectorate since no contrary instructions were issued by latter. In Poulouse and Mathen 1997 (090) ELT 0264 case, the Hon'ble Supreme Court has held that the trade notices issued by one Commissionerate are binding on other Commissionerates also.

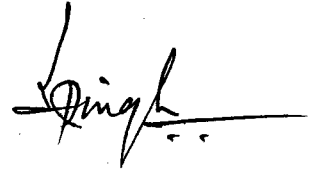
- 4.4 Having cleared the goods from the factory, we presented the goods at place of export. Place of export may be a port, airport, Inland Container Depot, Customs Freight Station or land Customs Station. The goods have been examined there and all the procedural requirements, as specified in the law, were completed at the place of export by the Customs Authorities acting as a representative of the Excise authorities as laid down in Chapter 8 para 7 of Central Excise Manual of supplementary instruction.
5. The personal hearing scheduled in this case on 06-12-2012 was attended by Shri T.K.Chanana, General Manager on behalf of the applicant who mainly reiterated the grounds of Revision Application. Shri T.R Banerjee, Superintendent appeared for hearing on behalf of respondent and stated that the issue has been decided by Government of India vide Revision Order No. 1253-1254/11-Cx dtd. 30-09-2011 and the present, case may be decided accordingly.
6. Government has carefully gone through the relevant case records and perused impugned Orders-in-Original and Order-in-Appeal.
7. Government observes that the rebate sanctioning authority initially sanctioned the rebate claim vide Orders-in-Original No. 304-R/2008-09 & 305-R/2008-09 both dated 23-12-2008. These rebate sanctioning orders were set aside by the Commissioner (Appeals) vide Order-in-Appeal dt. 19-06-2009 while deciding the appeals of department against said Orders-in-Original dt. 23-12-2008. The applicant filed revision applications No. 195/670&671/09-RA-Cx against the said order of Commissioner (Appeals) dt. 19-06-2009. This authority had vide GOI Order No. 1253-54/11-Cx dt. 30-09-2011 decided the case in favour of applicant and allowed the rebate claims. Meanwhile, the department issued Show Cause Notice to the applicant proposing recovery of alleged erroneous payment of rebate. Subsequently, vide impugned Order-in-Original dt.

20-10-2010 the Original authority confirmed the said demand. Commissioner (Appeals) upheld impugned Order-in-Original vide Order-in-Appeal dt. 18-08-2011. Now, applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government observes that Orders-in-Original No. 304-R/2008-09 & 305-R/2008-09 both dated 23-12-2008, wherein rebate claims were sanctioned to the applicant have been upheld by Government of India vide Revision Order No. 1253-1254/11-Cx dt. 30-09-2011. As such, the said rebate sanctioning orders dated 23-12-2008 have attained its finality. Any action taken contrary to said orders dated 23-12-2008, confirming demand of rebate paid vide orders dated 23-12-2008 cannot held to be legal and sustainable. Under such circumstances, in view of Government of India order No. 1253-1254/11-Cx dt. 30-09-2011 the impugned orders does not survive and hence, liable to be set aside. Government therefore sets aside the impugned Orders-in-Appeal and allows the revision application.

9. Revision Application thus succeeds in above term.

10. So, Ordered.



(D. P. Singh)

Joint Secretary (Revision Application)

M/s Met Trade India Ltd.,
138, Ghazipur,
Delhi- 110096.

Attested




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

Orders No. 15 /13-CX dated 07-01-2013

Copy to:-

1. The Commissioner of Central Excise, CGO Complex-II, Kamala Nehru Nagar, Ghaziabad, (Uttar Pradesh)
2. The Commissioner (Appeals), Central Excise & Customs, Meerut-I, Comp. Office Room No. 232, CGO Complex-I, Kamla Nehru Nagar, Ghaziabad – 201 002.
3. The Deputy Commissioner of Central Excise, Division-IV, Ghaziabad (U.P.)
4. Shri T.K.Chanana, General Manager, C/o M/s Met Trade India Ltd., 138, Ghazipur, Delhi-110096.
- ✓ 5. PS to JS(Revision Application)
6. Guard File.
7. Spare Copy.


(Bhagwat P. Sharma)
OSD (RA).