

REGISTERED

SPEED POST



F.No. 198/68/2018-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... 9/7/21.....

Order No. 160/21-CX dated 8-7-2021 of the Government of India passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under Section 35EE of the Central Excise Act, 1944.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 78/HWH/CE/2018-19 dated 14.05.2018 passed by the Commissioner Central Excise (Appeals), Kolkata-II.

Applicant : Commissioner of CGST & CE, Howrah.

Respondent : M/s Sonali Polyplast Pvt. Ltd., Hooghly.

ORDER

A Revision Application No. 198/68/2018-R.A. dated 04.10.2018 has been filed by the Commissioner of CGST & CE, Howrah (hereinafter referred to as the Applicant) against Order-in-Appeal No. 78/HWH/CE/2018-19 dated 14.05.2018, passed by the Commissioner of CGST & CX (Appeals-II), Kolkata, wherein the Order-in-Original No. 04/Singur/17-18/Rebate dated 11.08.2017, passed by the Assistant Commissioner of Central Goods of Services Tax, Singur Division, Howrah, has been set aside and remanded to the original authority for consideration afresh.

2. The brief facts of the case are that the respondents, M/s Sonali Polyplast Pvt. Ltd., Hooghly, had filed rebate claim of Rs. 90,000/- under Rule 18 of Central Excise Rules, 2002 read with notification no. 19/2004-CE (NT) dated 06.09.2004 against ARE-1 No. 16-17/042 dated 16.05.2016 in respect of export goods, i.e., Calcium Carbonate (FMB) manufactured in their factory. The original authority rejected the said rebate claim as the respondents could not produce original copy of the said ARE-I as required under the provisions of Para 8 of Chapter 8 of the CBEC Manual governing conditions and procedures relating to 'Export under claim of rebate' read with provisions of Notification no. 19/2004-CE (NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002. Aggrieved, an appeal was filed before the Commissioner (Appeals), which was allowed, by way

of remand. The Applicant department has filed the revision application on the ground that Section 35A of the Central Excise Act, 1944 has been amended with effect from 11.05.2001, withdrawing the powers of remand, which were earlier vested with the Commissioner (Appeals). Hence, the Commissioner (Appeal)'s Order needs to be set aside. A reply dated 31.12.2018 has been filed by the respondents.

3. Personal hearing, in virtual mode, was held on 05.07.2021. Sh. Apurba Swarnakar, AC, attended the hearing on behalf of the Applicant and reiterated the contents of the revision application and highlighted that the Commissioner (Appeals) was statutorily barred from remanding a case. Hence Order-in-Appeal cannot be sustained. Sh. Shyam Sunder Bajaj, Director, appeared for the respondents and submitted that the rebate claim was rejected only for non-production of original copy of ARE-1 and Bill of Export, which were lost in courier. They had, however, submitted the reconstructed copies. Non-submission of original documents is merely a procedural infraction and substantial right of rebate cannot be denied due to such procedural infraction.

4.1 The Government has carefully examined the matter. It is observed that there is no dispute regarding export of goods and the Applicants have duly acknowledged that the reconstructed copies of ARE-1 and Bill of Export have been submitted. The requirement of submitting the original copy of the ARE-1 is specified in Para 3(b)(i)

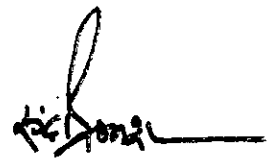
of the notification no. 19/2004-CE (NT) dated 06.09.2004. Hon'ble Bombay High Court has, in the case of UM Cables Limited Vs UOI [2013(293) ELT 641 (Bom)], held that

“12. The procedure which has been laid down in the notification dated 6 September, 2004 and in CBEC's Manual of Supplementary Instructions of 2005 is to facilitate the processing of an application for rebate and to enable the authority to be duly satisfied that the two fold requirement of the goods having been exported and of the goods bearing a duty paid character is fulfilled. The procedure cannot be raised to the level of a mandatory requirement. Rule 18 itself makes a distinction between conditions and limitations on the one hand subject to which a rebate can be granted and the procedure governing the grant of a rebate on the other hand. While the conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory.”

Further, in the case of Zandu Chemicals Ltd. vs. UOI [2015 (315) ELT 520 (Bom)], Hon'ble Bombay High Court has followed the judgment in UM Cables (supra) and held that *“The procedural provisions are capable of substantial compliance.”* The Government finds that in the present case, the respondent exporter has, by producing reconstructed copies of the ARE-1 and Bill of Export, substantially complied with the procedural requirement.

4.2 In respect of powers of remand, the Government is in agreement with the Applicants about non-existence of remand powers of the Commissioner (Appeals) at the relevant time. However, as held hereinabove, the rebate cannot be denied to the respondents on the basis of mere procedural infraction. In the circumstances, the Commissioner (Appeals) had only given a fair chance to the department to verify the claims afresh by remanding the matter to the original authority. Since the Applicant department has repelled this opportunity and no other findings of the Commissioner (Appeals) have been assailed, it is apparent that on merits, no issue survives against the respondents. Thus, in view of the findings above, the Government holds that the rebate claim is admissible to the respondent.

5. The revision application is disposed of in above terms, with consequential relief to the respondent herein.



(Sandeep Prakash)

Additional Secretary to the Government of India

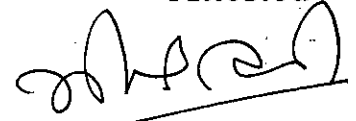
The Commissioner of CGST & CE, Howrah
Commissionerate, MS Building, 15/1,
Strand Road, Kolkata- 700 001.

Order No. _ 160/21-Cx dated 8-7-2021

Copy to:

1. M/s Sonali Polyplast Pvt. Ltd., Village-Ajabnagar, P.O.-Malla Shimla, P.S.-Singur, Distt.- Hooghly-712223.
2. Commissioner Central Excise (Appeals-II), Kolkata.
3. PA to AS(RA)
5. Guard File.
6. Spare Copy

Attested



(Ashish Tiwari)

Assistant Commissioner (Revision Application)