

REGISTERED
SPEED POST



F.No. 195/339/14-RA-Cx
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHICAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue.. 4/4/18.

ORDER NO. 161/2018-CX dated 2-4-2018 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI RAJPAL SHARMA, 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. 06/Kol-V/2014 dated 01.08.2014
passed by the Commissioner of Central Excise,
Kolkata.

APPLICANT : M/s Malancha Polymers Pvt. Ltd.,

RESPONDENT : Commissioner of Central Excise, Kolkata

ORDER

A Revision Application No. 195/339/14-RA-Cx has been filed by M/s Malancha Polymers Pvt. Ltd., (herein after referred to as the applicant) against Order-In-Appeal No. 06/Kol-V/2014 dated 01.08.2014, passed by the Commissioner of Central Excise (Appeals-1), Kolkata, whereby the order of the original adjudicating authority rejecting the rebate claim of the applicant has been upheld and the applicant's appeal has been rejected.

2. Brief facts leading to the filing of the Revision Application are that the applicant filed a rebate claim for Rs. 33,67,561/- in respect of Excise duty paid on inputs used in the manufacture of exported goods in terms of Notification No. 21/2004 CE(NT) dated 06.09.2004. The claim was rejected by the original adjudicating authority on the ground that the goods were procured from a manufacturer, who had availed exemption under Notification No. 32/99-CE and 33/99-CE, both dated 8.7.1999, which are a disqualification under Notification No. 21/2004 after it was amended by Notification 37/2007 CE (NT) dated 17.09.2007. The applicant's appeal with Commissioner (Appeals) was also rejected. However, the Revision Application filed before the Government against the O-I-A was allowed by the Joint Secretary (RA) Vide Order No. 1457/11 CX dated 04.10.2011 subject to the condition that procedure laid down in Notification No. 19/2004 CE and 42/2001 CE(NT) was followed and export of goods manufactured from the duty paid inputs is established. However, the rebate claim was again rejected by the original adjudicating authority on the ground that the applicant had availed benefit of drawback of duty under Notification No. 68/2007-Cus (NT) dated 16.07.2007 and the rebate of duty in respect of inputs would amount to double benefit. The applicant's appeal with Commissioner (Appeals) has also been rejected once again vide above O-I-A and the applicant has filed the present Revision Application mainly on the ground that avilment of drawback of Customs component is not a disqualification for claiming rebate of duty in respect of raw material under Rule 18 of Central Excise Rules 2002 and notification No. 21/2004-CE(NT) dated

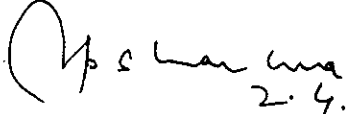
06.09.2004 and they have also remitted the drawback amount alongwith interest to the Customs Department.

3. Personal hearing was held on 06.03.2018 and Sh. Joy Kumar, advocate, appeared on behalf of the applicant and furnished written submissions. However, no one appeared for the respondent and no request for any other date of hearing is also made from which it is implied that the respondent is not interested in availing hearing.

4. The Government has examined the matter in the light of the revision application and the orders passed by the lower authorities and it is observed that the rebate of duty has been denied to the applicant on a fresh ground that the applicant had availed drawback of duty as well as rebate of duty in respect of inputs used in the exported goods and, therefore, the drawback of duty will not be admissible to the applicant by virtue of para 7(e) of Notification No. 68/2007-Cus (NT) dated 16.07.2007. The applicant has challenged the correctness of the order in appeal mainly on the grounds that the admissibility of rebate of duty on inputs used in manufacturing of exported goods is governed by notification 21/2004 dated 6.9.2004 and Rule 18 of Central Excise Rules 2002 and not by Drawback Rules, 1995. The Government finds that this contention is full of legal force and no objective reason has been given in the order of the lower authority to provide any basis to apply the condition of Drawback Rules to the matters relating to rebate of duty. As regards the conditions stipulated in Rule 18 of Central Excise Rules and notification 21/2004, no allegation has been made with regard to non-compliance of any condition stipulated in these legal provisions and even Government of India had examined this matter earlier and held that rebate of duty in respect of inputs used in the manufacturing of exported goods was admissible. After the said order of the Government of India the jurisdictional authorities were only to recheck whether the applicant had followed the procedure laid down in Notification No. 42/2001-CE (NT) dated 26.6.2001 and not to issue a fresh show cause notice on a different ground. But instead of compliance of the Government's order, the Assistant Commissioner digressed from the main issue and rebate of duty was denied on entirely different ground of simultaneous availment of drawback of duty. The Commissioner (Appeals) also, instead of rectifying the error on the part of the Assistant

Commissioner, has upheld the order in original on the basis of condition 7(e) of Drawback Rules. Thus, both the lower authorities have breached the judicial discipline in this case by not complying the Government's earlier order dated 4.10.2011. As regards the merit of the fresh reason given for rejection of rebate of duty to the applicant also, the Government fully agrees with the applicant that while availment of rebate of duty on inputs used in the manufacturing of exported goods is a disqualification for availment of the drawback of duty under Drawback Rules, availment of drawback per se is not a disqualification for availment of rebate of duty under Rule 18 of Central Excise Rules or notification 21/2004-CE. Moreover, the applicant has claimed to have paid the drawback of duty amount alongwith interest to the Custom House, Kolkata and thereby it cannot be stated that double benefit will be available to the applicant in the event of grant of rebate of duty in respect of the inputs. The applicant has produced a copy of Custom receipt no. M2161 dated 26.03.2013 which has not been questioned by the respondent in any form. Thus, in this situation no revenue loss also will be caused by allowing rebate of duty to the applicant. Considering these facts and the legal provisions, the Government is convinced that the Commissioner (Appeals) has committed an error by rejecting the appeal of the applicant by referring to the above mentioned condition specified at para 7(e) of Notification No. 68/2007.

5. In view of the above discussions, the order in appeal is set aside and the Revision Application is allowed.


2.4.18

(RAJPAL SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

M/s Malancha Polymers Pvt. Ltd.,
Central Ware House (Import- Export)
Godown No. B- 1/1 CGR Division Road,
Kolkata-700-043

ORDER NO. 161/2018-CX dated 2-4-2018

Copy to:-

1. The Commissioner of Central Excise Kolkata-V Kendriya Utpad Shulk Bhawan
Front Block 3rd Floor 180, Shantipally Rajdangha Main Raod Kolkata-700-107.
2. The Commissioner of Central Excise (Appeals-I), Kolkata, Bamboo Villa (4th Fl.),
169, AJC Bose Road, Kolkata-14.
3. The Assistant Commissioner, Central Excise, Khidirpur Division 180, Shantipally,
Rajdanga, R.B. Connector, Kolkata-700 107.
4. Mr. Joy Kumar, Advocate, Flat No. 261/1, Sector 45-A Chandigarh.
5. PS to AS(RA)
- ✓ 6. Guard File.

ATTESTED

(Debjit Banerjee) *2.4.2018*
STO (REVISION APPLICATION)