

REGISTERED
SPEED POST



F.No. 198/02-10/2015—R.A.
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. 164-172/18-CX dated 5-4-2018 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.66 to 74/CE/ALLD/KNP/2014 dated 30/10/2014, passed by the Commissioner (Appeals), Customs & Central Excise, Allahabad.

Applicant : Commissioner, Central Excise & Service Tax, Kanpur

Respondent : M/s Kanpur Plastipack Ltd., Kanpur

ORDER

A Revision Application No. 198/02-10/2015-R.A. dated 16/02/2015 has been filed by the Commissioner, Central Excise & Service Tax, Kanpur (hereinafter referred to as the applicant) against the Order-in-Appeal No. 66 to 74/CE/ALLD/KNP/2014 dated 30.10.2014, passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Allahabad, whereby the applicant's first appeal has been rejected.

2. The brief facts leading to the present proceeding before the Government are that the respondent M/s Kanpur Plastipack Ltd., Kanpur, had filed rebate claims for duty of excise paid on exported goods and the same were sanctioned by the original adjudicating authority. Being aggrieved, the department filed appeal against this order before Commissioner (Appeals) and the same was rejected by the Commissioner (Appeals) vide the above said order-in-appeal dated 30.10.2014.

3. The revenue has filed the present revision application mainly on the ground that respondent had already availed the facility of obtaining duty free materials under Advance Licenses and Notification No. 96/2009-CUS dated 11.09.2009 and, therefore, rebate of duty under Rule 18 of the Central Excise Rules, 2002 could not be given to the respondent.

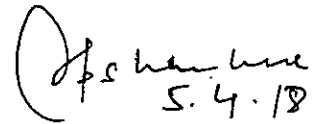
4. A personal hearing was offered on 19.03.2018 which was attended by Sh. Ashutosh Agarwal, Advocate, and Shri Narendra Kumar Soni, Authorised Signatory, for the respondent. They opposed revenue's revision application for several reasons discussed in their reply dated 13.05.2015. They also placed Government of India's Orders in the cases of Aclobex Metals Ltd. [2012(07)LCX0281], Shubhada Polymers Products P. Ltd. [2009(01)LCX0017] & Duke Consumer Care Ltd. [2012(04)LCX0142]. However, no one availed Personal hearing for the applicant and instead the Assistant Commissioner of Division-I, Kanpur, vide his letter dated 16.03.2018, informed that they did not want to add any more in their case.

5. The Government has examined the matter and has found that there is no dispute regarding export of duty paid goods by the respondent in this case and fulfillment of all conditions stipulated in Rule 18 Central Excise 2002 and Notification No. 19/2004 dated 06.09.2004. Despite of this, revenue has questioned the admissibility of the rebate of duty to the respondent mainly on the ground that the respondent had imported duty free raw material under Advance Licenses, they were not required to pay Central Excise duty on the goods exported against advance licenses and accordingly the duty paid on the exported goods can not be considered as proper payment of duty for the purpose of granting of rebate of duty under Rule 18. However, the Government finds that the applicant has not cited any legal provision to support its above case that the Central Excise duty on the exported goods was

paid erroneously. The applicant has made general reference to Notification No. 96/2009-CUS dated 11.09.2009, Notification No. 43/2001 CE(NT) and Rule 19(2) of Cenvat Credit Rule 2004. But these provisions do not provide any condition regarding non payment of Central Excise duty on the exported goods when these were manufactured from the duty free raw materials procured under Advance Licenses. On the contrary, payment of duty on clearance of manufactured goods is a general rule as per Section 3 of the Central Excise Act and Rule 4 of the Central Excise Rules, 2002. Compulsory availment of exemption from Central Excise duty is stipulated in Section 5A(1A) of the Central Excise Act only when absolute exemption is provided. But the applicant has not made out any such case here. Accordingly, no error can be attributed to the respondent if they paid duty on the exported goods. Thus, even if the respondent had option to export the goods without payment of Central Excise duty under Rule 19 of Central Excise Rules, they were also free to pay duty on the exported goods. As regards availment of cenvat credit and its utilization for clearance of the exported goods, it is obvious that the cenvat credit was availed by the respondent on the inputs etc. other than the duty free goods obtained under Advance Licenses and even the applicant has not doubted the correctness of the cenvat credit availed by the respondent. When the validity of the cenvat credit is not in doubt, the respondent was fully eligible to utilize it for payment of Central Excise duty on exported goods and get the rebate of duty under the Rule 18 Cenvat Credit Rules 2004 and Notification No. 19/2004-CE(NT) dated 06.09.2004. In fact,

in the present case, which is entirely relating to rebate of excise duty in respect of finished goods, Notification No. 96/2009-CUS dated 11.09.2009, Rule 19(2) of Cenvat Credit Rules 2004 and Notification No. 43/2001 CE(NT), relied upon by the revenue, are not relevant at all as these provisions can be pertinent only when rebate of duty in respect of inputs is claimed and duty free inputs are procured from indigenous sources. Thus, the applicant has not made out any case to warrant any revision in the order passed by the Commissioner (Appeals).

6. Accordingly, the Revision application filed by the revenue is rejected.


5.4.18

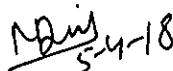
(R. P. Sharma)

Additional Secretary to the Government of India

The Commissioner of Central Excise & Service Tax,
117/7, Sarvodaya Nagar, Kanpur-208005

Copy to:-

1. M/s Kanpur Plastipack Ltd., D-19-20, Panki Industrial Area, Udyog Nagar, Kanpur.
2. The Commissioner (Appeals) Customs, Central Excise & Service Tax, 38, Mahatma Gandhi Marg, civil lines, Allahabad-211001
3. PA to AS(Revision Application)
- ✓4. Guard File


5.4.18

NIRMALA DEVI
(Section officer)

(Revision Application unit)