

REGISTERED  
SPEED POST



F.No. 195/450/11-RA-Cx  
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.....4/12/12

ORDER NO. 1645/12-Cx DATED 04-12-2012 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** : ORDER IN REVISION APPLICATION FILED,  
UNDER SECTION 35 EE OF THE CENTRAL EXCISE  
ACT, 1944 AGAINST THE ORDER-IN-APPEAL No.  
72/CE/D-II/11 dated 21.02.2011 passed by  
the Commissioner of Central Excise (Appeals) Delhi-II

**APPLICANT** : M/s SGI Sales Corporation, Shahdra.

**RESPONDENT** : The Commissioner, Central Excise, Delhi-II, C.R.  
Building, New Delhi.

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ORDER

This revision application has been filed by M/s SGI Sales Corporation, Shahdra, against the order-in-appeal No. 72/CE/D-II/11 dated 21.02.2011 passed by the Commissioner of Central Excise (Appeals) Delhi-II, with respect to Order-in-Original passed by the Assistant Commissioner(Tech) of Central Excise, Delhi-II.

2. Brief facts of the case are that the Applicant, a merchant exporter has filed rebate claim in respect of export goods procured from M/s Sadhu Forging Ltd., Gear Division, Faridabad. On scrutiny of documents i.e. ARE-1 manufacturer's invoices etc., it was observed that the said goods had been procured from M/s Sadhu Forging Ltd., Faridabad against the CT 1 issued by the Maritime Commissioner, Central Excise, Delhi II with whom B-1 Bond for this purpose has been executed and, subsequently, the goods were cleared for export under ARE 1. Thus the goods were cleared from the factory of production without payment of duty on the strength of above CT-1's/Notification No. 42/2001-CE(NT) dated 26.06.2001. As per provisions contained in para 1(ii) of the Notification ibid it was mandatory on the part of the exporter to export the goods within 6 months from the date on which these were cleared for export from the factory. It was observed that the applicant had not followed scrupulously the procedure prescribed under Notification No. 42/2001-CE(NT) dated 26.06.2001 in as much as the said goods had not been exported by the due date as stipulated in the provisions contained in the said notification ibid. Therefore, they were issued a Memorandum for payment of duty along with interest in terms or provision to Part-II of Chapter 7 of the CBEC's Central Excise Manual of Supplementary Instructions, 2005 and accordingly, the applicant paid the amount. Thereafter, the present claim of rebate has been filed by the applicant under Rule 18 of the Central Excise Rules, 2002 on the grounds that the goods exported were duty paid. Original authority observed that the exporter/merchant exporter should have given the declaration to this effect

(claiming rebate under rule18) on the face of the ARE-1 concerned. In the instant case, no duty was paid on the goods when cleared for export, nor has the above said declaration to this effect been given by the applicant. More-over, the excisable goods had not been exported within 6 months from the clearance from the factory. The adjudicating authority rejected their claim vide impugned Order-in-Appeal.

3. Being aggrieved by the said Order-in-Original, Applicant filed appeal before Commissioner (Appeals), who rejected the same.

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 In the instant case the excisable goods were exported and excise duty with interest was paid as advised by the Assistant Commissioner of Central Excise (Tech). When the applicant approached him to extend the time period for export under rule, 19, it was advised by the Assistant Commissioner verbally that the extension of the export period will not be granted and applicant is free to file rebate claim after effecting the export of goods after payment of excise duty. It is also submitted that it is fact that originally the applicant chose to export the goods under rule 19 without payment of duty by procuring the goods directly from the manufacturer premises after observing the procedure prescribed in the Notification No. 42/2001-CE(NT) dated 26.06.2001 issued under rule 19 but due to the situation beyond their control could not export the goods within six month from the date on which these were cleared for export from the factory of the manufacturer.

4.2 Original authority in his order while rejecting the applicant application for grant of rebate of duty has wrongly held that the goods had not been cleared form the factory after payment of duty and have not been

exported directly from the factory within six month of the clearance from the factory as required under para 2(a) and (b) of Notification No. 19/2004-CE(NT) dated 06.09.2004. In this regard it is submitted that the goods have actually been procured for export directly from the factory and it is also fact that the goods could not be exported due to the valid reason as mentioned above within six month from the date on which they were cleared for export from the factory of manufacturer but the applicant request for extension was not at all entertained. Under such circumstances, it is clear that whatever duty is taken by the department is the duty which is applicable from the date of removal of the goods directly from the factory of the manufacturer. It means the duty paid by the merchant export (Applicant) should be taken as payment of duty for the excisable goods which was cleared directly from the factory of the manufacturer and thus provisions of 2(a) (b) of the Notification No. 19/2004-CE(NT) dated 06.09.2004 should be treated to have been fulfilled by the applicant substantially in the true spirit of the said rule and Notification issue thereunder.

- 4.3 Some case laws were relied upon by the applicant in their appeal before Commissioner (Appeals), but the same has not at all been discussed by the Commissioner (Appeals) in his order as to why the same are applicable or not in the facts and circumstances of the case.
- 4.4 The goods under export are for purpose of export promotion incentive therefore, such incentive should not have been denied and the same could have been extended to the applicant. The following principles and judgement are being relied upon to substantiate that the export benefit to the merchant exporter should be liberally interpreted:-

- (i) Harishan Chemicals, Joint Sec, RA, 2006(200) ELT 171(GOI)
- (ii) Audhler Fasteners, Joint Sec, RA, 2007(216) ELT 465(GOI)

- (iii) Mangalore Chemicals & Fertilizers Ltd, Vs. Deputy Commissioner 1991(55) ELT 437(SC)
- (iv) CCE, Jaipur Vs. Global Overseas 2005(192) ELT 334 (Tri.Del)
- (v) Uttam Steel Ltd. Vs. UOI 2003(158) ELT 274(Bomb)
- (vi) Upkar International Vs. CCE, Rajkot, 2004(169) ELT 240(Tri.Mum)

4.5 In the following judgment in the similar facts and circumstances highly technical view was not taken into but beneficial provisions to the assessee were extended by the department. The applicant has relied upon some case laws in favour of their contention.

5. Personal hearing scheduled in this case on 10.10.2012 was attended by Shri Anil Kumar Shrivastava, Export Manager and Shri G.P. Singh, consultant on behalf of the Applicant who re-iterated the grounds of Revision Application. Nobody attended hearing on behalf of respondent department.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that the applicant a merchant exporter initially cleared the goods for export under Bond under CT-1 without payment of duty. The applicant failed to export the goods within six months time in terms of Notification No. 42/2001-CE(NT) dated 26.06.2001. They paid duty applicable on such exported goods along with interest. The applicant subsequently exported the goods and filed rebate claim of duty paid on account of failure to export the goods cleared under Bond, within six months time. Original authority rejected the said rebate claim on the ground that no duty was paid when the goods were cleared for export, that the failed to give necessary declaration of claiming rebate under Rule 18 of the Central Excise Rules, 2002 on the face of ARE-1 concerned and also that the excisable goods had not been exported within 6 months from the clearance. Commissioner (Appeals) upheld the impugned Order-in-Original.

Now, applicant has filed the revision application on ground mentioned in para (4) above.

8. Government observes that the applicant initially exported the goods under Bond without payment of duty. However, they failed to export the goods within six months time. They filed application for extension of time, however, no intimation of decision on their request for extension was communicated to them. The applicant accordingly, paid applicable duty along with interest. Government finds that since, the applicant failed to export the goods within six months time and no extension of time was granted to them, they were liable to pay duty with applicable interest, in terms of Notification No. 42/2001-CE(NT). As such duty was rightly paid by the applicant.

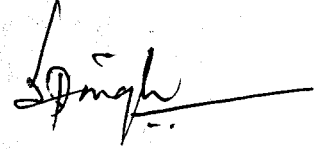
9. The applicant contested that once they have paid duty before exports, their payment of duty should be taken as payment of duty for excisable goods which was cleared directly for factory. Initially the goods were cleared from factory for export through merchant exporter vide different ARE-1 under bond without payment of duty. When goods were not exported within six month, exporter was asked to pay duty alongwith interest. Exporter paid the duty alongwith interest and exported the goods. Thereafter he claimed rebate of duty paid on the exported goods. Government notes that applicant was required to export goods within six months of their clearance from factory as per conditions laid down in both Notification No. 19/2004-CE(NT) dated 06.09.2004 as well as 42/2001-CE(NT) dated 26.06.2001. Applicant has not produced any documentary evidence that competent authority had granted extension of time beyond six month's time limit to export said goods. The non compliance of said condition can not be treated as a mere procedure lapse. The conditions laid down in the said notifications are to be complied with mandatorily. Applicant has cited case law where procedural lapses were condoned. The said case laws are not

applicable to this case as the violations involved here are not mere procedure lapses.

10. In view of above position, Government finds no legal infirmity in the impugned Order-in-Appeal and therefore upholds the same.

11. The revision application is rejected being devoid of merit.

12. So, ordered.



(D.P. SINGH)

JOINT SECRETARY TO THE GOVT. OF INDIA

M/s SGI Sales Corporation,  
A-15, Mansarover Park Shadra,  
Delhi-110032.


(ATTESTED)

(भागमल शर्मा/Bhagmal Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C B E 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

Order No. 1645/12-Cx dated 04-12-2012

Copy to:-

1. The Commissioner, Central Excise, Delhi-II, C.R. Building, New Delhi.
2. The Commissioner of Central Excise (Appeals), Delhi-II, C.R. Building, I.P. Estate, New Delhi.
3. The Additional Commissioner of Central Excise Commissionerate, Delhi-II, C.R. Building, I.P. Estate, New Delhi
4. Shri G.P. Singh, Consultant, B-67, Flatted Factory Complex, Okhla Phase-III, New Delhi 110020
5. PS to JS(Revision Application)
6. Guard File
7. Spare Copy.

  
(Bhagwat P. Sharma)  
OSD-I (Revision Application)