

REGISTERED

SPEED POST



F.NO. 198/248/11-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...09/1/13

ORDER NO. 16 /2013-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 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. SKSS/249/Surat-II/10 dated 31.12.10 passed by the Commissioner of Central Excise & Customs (Appeals), Surat-II

APPLICANT : The Commissioner of Central Excise & Customs, Surat-II

RESPONDENT : M/s Sayan Greenochem(P) Ltd., Ankleshwar

ORDER

This revision application is filed by CCE , Surat-II against the order-in-appeal No. SKSS/249/Surat-II/10 dated 31.12.10 passed by Commissioner of Central Excise (Appeals) Surat-II with respect to order-in-original No. 378/SRT-II/Ank-II/Rebate/08-09 dated 5.6.09 passed by ACCE Division-II Ankleshwar, Surat-II.

2. Brief facts of the case are that M/s Sayan Greenochem (P) Ltd., Plot No. 6001/1&2, GIDC, Ankleshwar (hereinafter referred to as the 'claimant') has filed rebate claim for Rs.43,575/- with the Assistant Commissioner, Central Excise & Customs, Div.-II, Ankleshwar. The rebate claim filed by the claimant has been processed after usual scrutiny and has been sanctioned by the Assistant Commissioner, Central Excise & Customs, Div.-II, Ankleshwar vide OIO No.387/SRT-II/ANK/REBATE/09-10 dated 05.06.2009. The legality and propriety of the order-in-original dated 05.06.2009 was examined and it was found that present OIO was not correct, legal and proper hence appeal was filed.

3 Department being aggrieved with said order-in-original, filed appeal before Commissioner (Appeals) who after considering the submissions made therein, rejected the appeal and upheld the impugned order-in-original.

4. Being aggrieved by the impugned order-in-appeal, the applicant department has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds :-

4.1 That the Commissioner (Appeals) has not assigned cogent and valid reasons and justification for the impugned decision and rejecting the applications filed by the Department against the sanction of rebate. The order has been passed by the Commissioner (Appeals) on and observations made there under are based on inadequate or absence of facts.

4.2 That Commissioner (Appeals) failed to take note that goods were not directly dispatched to the port of export as required under Notification No. 19/2004-CE(NT) dated 06.09.2004 read with procedure prescribed under Chapter 8 Part-I sub para (i) and (ii) of Para 1 of CBEC's Excise Manual of Supplementary Instructions 2005. The exporter in the present cases were the merchant exporter and merchant exporter has the characteristic of procuring the goods from different part of the country (some time it may be obtained from manufacturer as also from open market) and consolidating them and exporting them. There is no evidence on record to prove that the goods originally removed have not been exported and some other goods have been exported.

4.3 The Commissioner (Appeals) erred in holding that the circular No. 294/10/04-Cx dated 30.01.97 specified the procedures for removal of excisable goods to which the warehousing provisions have been extended. The warehousing provision in turn relate to movement of goods without payment of duty. However, in present case, the goods are being exported after payment of duty. Here is no allegation and averment in the departmental appeal about duty having not been paid on the related goods. Though this circular is for the period prior to Notification No.19/2004-CE(NT) dated 06.09.2004 and CBEC's Excise Manual of Supplementary Instructions 2005, the same is squarely applicable for the current period and in present case in view of transitional provision (Rule 33 of Central Excise Rules, 2002). The Are-1 in the present case is neither prepared at the end of exporter nor the goods is examined by Range Superintendent in whose jurisdiction the godown/warehouse of the exporter is situated.

4.4 The Commissioner (Appeals) failed to appreciate that goods under export were dyes and pigments, is commodity prone to evasion and is not easily identifiable in nature and the procedure prescribed as stated above is at all not followed by the exporter/claimant. When a substantive procedure prescribed is not followed, the burden of proof always stands shifted on the exporter/claimant to prove beyond doubt that goods were ones which were duty paid and as cleared from the factory of manufacture.

5. A show cause notice was issued to the respondent under Section 35 EE of Central Excise Act, 1944 to file their counter reply. Respondent has not filed any counter reply till date.

6. Personal hearing was scheduled in this case on 11.10.12 and 20.12.12. Nobody attended hearing on these dates on behalf of the applicant as well as respondent.

7. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

8. On perusal of records, Government observes that rebate claims in question were initially sanctioned by original authority i.e. Assistant Commissioner of Central Excise & Customs. The department being aggrieved of the said-order-in-original filed appeal before Commissioner (Appeal) who after due process of law upheld the said order-in-original and rejected the appeal of the department. Now department has filed revision application on the grounds stated in para 4 above. Department has mainly contended that goods were not directly dispatched to the port of export as required under Notification No. 19/04-CE(NT) dated 6.09.04 read with procedure prescribed under Chapter 8 Part-I, Para (1)(i) and (ii) of CBEC Excise Manual of Supplementary Instruction 2005. They further submitted that in the present case the goods were exported by the merchant exporter and the merchant exporter has the characteristic of procuring the goods from different part of the country/from open market and consolidating them and exporting them. These are the numbers of factors which have a bearing to prove that goods are not one which is cleared from the factory. Further the ARE-1 is neither prepared at the end of exporter nor the goods is examined by Range Superintendent in whose Jurisdiction the godown/warehouse of exporter is situated.

8.1 Government observes that in the instant case there is no allegation that goods cleared from factory have been diverted to elsewhere. The same goods claimed to be in same packing condition have been exported. The description of goods, gross weight, net weight, quantity mentioned in the ARE-1 and Shipping Bill are tallying. This is not

the case of the department that the merchant exporter has changed the packing of the goods and the same goods in a same packing condition have not been exported. The applicant department did not put forth any evidence of diversion of goods for home consumption. Commissioner (Appeals) has come to conclusion that the goods cleared from factory on payment of duty vide ARE-1 were exported vide relevant Shipping Bills.

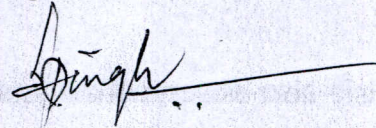
8.2 It is also observed that goods were cleared from factory under the said ARE-1 duly signed by manufacturer and exporter and duty payment was duly verified by Range Superintendent. The export was routed through merchant exporter. The description, weight, No. of packages, quantity and value of goods as given in ARE-1 and the particulars given in relevant shipping bill is tallying and not questioned by the department. Customs officers have certified the ARE-1 to the effect that said goods were exported as per the corresponding shipping bill number mentioned on the ARE-1. The substantial compliance of provision of law has been established since the ARE-1 form prepared at the factory on which goods are cleared for export contains the customs endorsement regarding of export of goods. In view of this position, the correlation of the goods cleared from factory with the goods exported gets established.

9. Government has decided similar case vide Government order No. 419- 428 / 11-CX dated 28.4.11 in the case of M/s. Neal Pigments Limited, Ankleshwar upholding the orders-in-appeal where under rebate claims were held admissible under similar circumstances. In the said case revision application filed by department against orders-in-appeal No.KS/185-194/SRT-II/2008 dated 10.9.09 passed by Commissioner Central Excise (Appeal) Surat-II was rejected and orders-in-appeal were upheld. The ratio of said GOI of order is squarely applicable to this case since facts of the case are exactly identical. However Government is of the opinion that such procedural lapses committed on the part of exporter/claimant cannot be allowed to be repeated time and again. In case of further re-occurrence of non-compliance of prescribed procedure are noticed the department would be justified in viewing such matter as substantial non-compliance of prescribed procedure which may result in rejection of related rebate claim.

10. In view of above discussions, Government finds no infirmity in the impugned order-in-appeal and therefore upholds the same.

11. Revision application is therefore rejected being devoid of merit.

12. So, ordered.



(D P SINGH)

Joint Secretary (Revision Application)

The Commissioner of Central Excise & Customs,
Surat-II, Old Central Excise Building,
Opp Gandhi Baug, Chowk Bazar,
Surat- 395001.

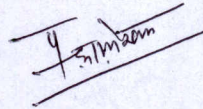
Attended
Y. J. J. J.

K. RAMESHVARAN
अति. / OSD-II (RA)
विशेष कार्य अधिकारी
फिना मंत्रालय, (राजस्व विभाग)
Ministry of Finance (Dept. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

G.O.I. Order No. 16 /2013-Cx dated 07.01.2013

Copy to:

1. The Commissioner of Central Excise & Customs (Appeals), Surat-II, Old Central Excise Building, Opp Gandhi Baug, Chowk Bazar, Surat- 395001.
2. The Assistant Commissioner of Central Excise, Division-II, Ankleshwar, Central Excise Building, Behind Roshan Cinema, Ankleshwar.
3. M/s Sayan Greenochem (P) Ltd., Plot No.6001/1&2, GIDC, Ankleshwar
- ✓ 4. PS to JS(RA)
5. Guard File.
6. Spare Copy



(P.K. Rameshwaram)
OSD (Revision Application)

G.O.I. Order No. 1501-Cx dated 27.11.2013

Copy to:

1. The Commissioner of Central Excise & Customs (Appeals), Surat-II, Old Central Excise Building, Old Gandhi Road, Cross Barar, Surat-392001.
2. The Assistant Commissioner of Central Excise - Division-II, Anandswar, Central Excise Building, Behind Keshavnagar, Anandswar.
3. The Senior Inspector (P) and PRT No. 6001/182, CIDC, Anandswar.

✓ (PRT No. 338A)

2. Found file.

3. Book copy.

(Signature)
Officer in Charge