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SPEED POST



F.No.195/135/2015-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.....5/1/18.....

Order No. 17/2018 -~~Ex~~ dated 04-01-18 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.29(SLM)CE/JPR/2015 dated 04.02.2015
passed by the Commissioner (Appeals) Jaipur-I

Applicant : M/s Amtek India Ltd., Bhiwadi

Respondent : Commissioner of Central Excise, Jaipur-I

ORDER

A revision application No. F.No.195/135/2015-RA dated 5.5.2015 is filed by M/s Amtek India Ltd., Bhiwadi (hereinafter referred to as the applicant) against OIA No. 29(SLM)CE/JPR/2015 dated 04.02.2015, passed by the Commissioner of Central Excise (Appeals), Jaipur-I, who has upheld the Assistant Commissioner's Order rejecting the applicant's rebate claims and rejected the applicant's appeal before him.

2. The revision application is filed mainly on the following grounds:

- (i) The applicant had claimed rebate of duty of Rs.2802750/- against the export of duty paid goods under 18 ARE-1s. Whereas they received a show cause notice proposing rejection of rebate claims against 3 AREs No.129, 132 and 135/2012 involving rebate of duty of Rs.140743/- only and no objection was raised regarding remaining 15 ARE-1s. But in the OIO all rebate claims for Rs.2802750/- relating to 18 ARE-1s have been rejected which is against the principle of natural justice and beyond the scope of the show cause notice. This aspect is not even examined by the Commissioner (Appeal) and has upheld the order of the Assistant Commissioner ignoring their submission before him.
- ii) In reference to above 3 ARE, the Assistant Commissioner has observed in his order that the exported goods, turbine housing, have been classified under chapter heading 87089900. Whereas in the corresponding invoices and shipping bills the same have been classified under heading No.73259910 and thus the export of goods cleared from the factory premises has not been established. The Commissioner (Appeals) has also accepted the above finding of the Assistant Commissioner. However, the adjudicating authority and Commissioner (Appeals) have committed an error by concluding non-export of goods merely on the basis of two different chapter headings mentioned in the export documents and by ignoring other evidences such as the goods were stuffed and sealed in presence of central excise officers who did not find any discrepancy, they have only claimed rebate of duty against

the actual duty paid by them as per ARE-1 and excise invoices, the foreign remittances have been received against the export of goods, the admissibility of rebate of duty against 15 ARE-1s has not been examined at all and the containers stuffed with the goods covered under the above mentioned 3 ARE-1s also had the goods relating to other ARE-1s for which the export of the goods has not been disputed.

3. A personal hearing was held in this case on 6.12.17 and it was attended by Mr. M.S.Hasan, Consultant for the applicant, who reiterated the above grounds of revision. However, no one appeared for the respondent.

4. On examination of the show cause notice, the OIO and the Commissioner (Appeals)'s order, it is evident that the show cause notice was issued by raising objections relating to the export of goods covered under 3 ARE-1s No.129,132 and 135/2012 and no reference is made regarding remaining 15 ARE-1s in para 3 of the show cause notice. But in para 4 of the same show cause notice the rebate claims for Rs.2802750/- is proposed to be rejected as if the above 3 ARE-1s involved the rebate of duty of the said amount. Whereas on examination of the copy of the above 3 ARE-1s it is noticed that these 3 ARE-1s involved the central excise duty of Rs.140743/- only from which it is explicit that the remaining amount of rebate of duty is related to other 15 ARE-1s for which no objection was raised by the Assistant Commissioner in the show cause notice. In the OIO also, the Assistant Commissioner has discussed the objection relating to the above referred 3 AREs only and no hint has been made with regard to non-admissibility of rebate of duty in respect of remaining amount involved in 15 ARE-1s. Accordingly, the Assistant Commissioner committed a grave mistake by extending the show cause notice to the amount of rebate of duty not involved in the above mentioned 3 AREs and by rejecting all rebate claims for the total amount of Rs.2802750/-. Since no objection is mentioned regarding 15 ARE-1s either in the show cause notice or in the OIO, it is manifest that the rebate of duty of Rs.2662007/- involved in remaining 15 ARE-1s was admissible from the beginning and the same has been rejected by the Assistant Commissioner and upheld by the Commissioner (Appeals) erroneously by clubbing the same with the 3 ARE-1s.

5. As regards rejection of rebate claim for Rs.140743/- pertaining to the 3 ARE-1s No.129,132 and 135/2012, it is found that rebate of duty has been rejected solely on the ground that these 3 ARE-1s and the related shipping bills had different chapter headings and as a result the export of goods is not established. While the applicant has not denied that two different chapter headings were given in ARE-1s and shipping bills, they have pleaded that it has happened due to unintended error and no malafide intention or mis-declaration is on their part. However, the Government finds that even if the ARE-1 and shipping bills have two different sub-headings for the exported goods, in both the documents the description of the goods is turbine housing, part No.316431. Further the gross weight, net weight and the number of goods mentioned in all export documents namely ARE-1s, packing list, shipping bills and export invoices tallies. Moreover, the goods mentioned in all the 3 ARE-1s were cleared for export under the supervision of the Range Officers, the Custom Officer has certified the export of goods and sale proceeds have been received by the applicant from the foreign buyer in U.K. The rate of duty under sub-heading 7325 and 8708, which are mentioned in shipping bills and ARE-1s respectively for classification of the exported goods, is also the same and the rebate of duty is undoubtedly claimed for the amount of central excise duty actually paid by the applicant in respect of the turbine housing. Therefore, apparently no ulterior motive can be attributed to the applicant in mentioning the above two different sub-headings in the export documents and on the face of it is due to unintended error as is claimed by the applicant. When all these facts are considered impartially, the Government does not have any doubt in this case and agrees with the applicant that the goods covered under ARE-1s No.129,132 and 135/2012 have been exported on payment of duty. Thus, the export of goods is fairly established in this case in reference to the above 3 ARE-1s also and the applicant is eligible for rebate of duty for the whole amount of Rs.2802750/-.

6. Accordingly, the Commissioner (Appeals)'s Order is set aside and the revision application is allowed.

(R.P.Sharma)
4.1.18

(R.P.Sharma)

Additional-Secretary to the Government of India

M/s Amtek India Ltd. (Unit-II),
SPA-502, RIICO Industrial Area,
Phase-IV, Bhiwadi-301019

Order No. 17/18-Cx dated 04-01-2018

Copy to:

- ✓ 1. Commissioner of Central Excise, Jaipur-I, New Central Revenue Building, "C" Scheme, Jaipur-302505
- ✓ 2. Commissioner of Central Excise & Customs (Appeals), Jaipur-I, New Central Revenue Building, "C" Scheme, Jaipur-302505
- ✓ 3. The Assistant Commissioner, Central Excise Division, Bhiwadi
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED

(Ravi Prakash)
OSD (Revision Application)