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SPEED POST

F.No. 195/140/11-RA-Cx
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 11/12/12

ORDER NO. 1745/12-Cx DATED 10-12-2012 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 : REVISION APPLICATION FILED, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944 AGAINST THE ORDER-IN-APPEAL No.482/CE/D-II/10 dated 27.08.2010 passed by the Commissioner of Central Excise (Appeals), Delhi-II

APPLICANT : M/s Gold Star Impex, Delhi.

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 Gold Star Impex, Delhi, against the order-in-appeal No. 482/CE/D-II/10 dated 27.08.2010 passed by the Commissioner of Central Excise (Appeals) Delhi-II, with respect to Order-in-Original passed by the Assistant Commissioner of Central Excise (Tech), Delhi-II.

2. Brief facts of the case are that the Applicant filed rebate claim on 17.11.2008 in respect of excisable goods namely Brass Rods and Brass Profile Hollow and other goods falling under Chapter heading no 74072190 and 74072120 of the Central Excise Tariff Act, 1985 exported out of India under claim of rebate under Rule 18 of the Central Excise Rules, 1944. On scrutiny of the said rebate claims, it was observed that the applicant had not scrupulously followed the procedure prescribed under Notification No. 19/2004-CE(NT) dated 06.09.2004 in as much as (i) the goods have not been exported directly from the factory; (ii) the goods have not been examined by the Central Excise Officer; and (iii) triplicate copy of ARE-1 have not been submitted to the jurisdictional Central Excise Officer. Accordingly, the applicant were issued Show Cause Notice 06.01.2009 proposing to reject the said claim for the contravention of the provisions of Rule 18 of the Rules ibid read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The Assistant Commissioner (Tech.), Central Excise, Delhi-II vide impugned Order-in-Original rejected the rebate claim.

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 Common/Identical grounds:-

4.1 It is submitted that the rebate claim of the applicants had been rejected by the Commissioner (Appeals) for the non fulfillment of

certain conditions under Notification No. 19/2004-CE(NT) dated 06.09.2004.

4.2 The applicants submit that Para 3(a)(ii) of Notification No. 19/2004-CE(NT) dated 06.09.2004 provides an option to the manufacturer-exporter and merchant-exporters of exporting the goods, sealed at the place of dispatch by a Central Excise Officer or under self-sealing and self certification. The applicants submit that they opted for exporting the goods under self sealing and self certification. It is further submitted that in a case where the Merchant exporter opts for the procedure of self sealing and self certification, there is no requirement for sealing of goods by the Central Excise Officers at the place of dispatch. Therefore, the rejection of rebate claim of the applicant on the ground that goods exported were not sealed at the place of dispatch is not sustainable.

4.3 the applicants submit that the ARE-1 applications were certified by the authorized signatory of the manufacturing unit i.e. M/s Senor Metals Pvt. Ltd. The applicants further submit that original and duplicate copies of ARE-1 were presented to the customs authority along with the goods. The authorized custom officer certified the copy of ARE-1 and mentioned the Shipping Bill number and date on it.

4.4 The applicants submit that in accordance with the procedure in the said Notification, the manufacturer, i.e. M/s Senor Metals Pvt. Ltd. had sent the triplicate and quadruplicate copies of ARE-1 to their jurisdictional Range Officer. The said factual position may be verified by the department. Therefore, the finding in the impugned order that procedure prescribed in the said Notification was not followed is without any basis.

4.5 The Commissioner (Appeals) in the impugned order has given a finding that excisable goods were not exported directly from the

factory or warehouse. In this regard applicants submit that the impugned goods were exported directly from the factory of the manufacturer at Jamnagar to ICD, Patpar Ganj. The goods were never stored in the godowns of the applicant.

4.6 The applicants submit that, in any case, it is an undisputed fact that the export proceeds in relation to the impugned goods have been realized. In this regard applicants had already submitted a copy of the Bank Realization Certificate along with the rebate claim.

4.7 The applicant also submit that export incentive schemes like rebate, procedural lapses, if any, not allowed to make a tool of rejection of such schemes. Applicant relied upon some case laws in favour of this contention.

5. Personal hearing scheduled in this case on 07.08.2012, 09.10.2012/11-10-2012. Hearing held on 11.10.2012 was attended by Ms. Reena Khair, advocate, on behalf of the applicant who re-iterated the grounds of Revision Application. Nobody attended hearing on behalf of respondents 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 filed rebate claim in respect of duty paid on exported goods under Rule 18 of the Central Excise Rules, 1944. The original authority observed that the applicant did not follow the procedure prescribed under Notification No. 19/2004-CE(NT) dated 06.09.2004 in as much as the goods have not been exported directly from the factory; that the goods have not been examined by the Central Excise officers and also that triplicate copy of ARE-1 have not been submitted to the jurisdictional Central Excise Officer. The original authority accordingly rejected rebate claim. Commissioner (Appeals) upheld the impugned Order-in-Original.

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

8. Along with this revision application the applicant has filed application for condonation of delay of 73 days. Applicant has stated that Shri Pritam Singh Chawla, Proprietor of the company was under treatment and resumed work on 28-01-2010 only. A copy of medical certificate is also attached. Government notes that there is a genuine reason for said delay which is within condonable limit of 90 days, therefore Government condones the said delay and proceeds to decide the case on merits.

9. The original authority had observed that the goods were not exported directly from the factory/warehouse of the manufacturer, rather the goods were first stored in the warehouse of the dealer. The applicant has contested that impugned goods were exported directly from the factory of manufacturer at Jamnagar to ICD, Patpar Ganj and goods were never stored in applicant's warehouse. The department contented that in such cases, the applicant was required to get the goods examined by the Central Excise authorities in place of following self certification/sealing procedure.

9.1 Government notes that the ARE-I form has signature of the manufacturer as well applicant merchant exporter and goods are stated to be cleared for export under rebate claim but the destination is not mentioned as ICD Patparganj, New Delhi as claimed by applicant. Similarly the transport receipt GR also does not indicate the destination as ICD Patparjang. So the claim of applicant that goods were transported from factory to ICD directly is not supported by documentary evidence.

9.2 It is also observed that applicant has failed to produce the triplicate copy of the ARE-I from. He should have brought it in a sealed cover from Central

Excise, Superintendent, Jamnagar and submitted to rebate sanctioning authority so that duty payment certification could have been place before rebate sanctioning authority. In the absence of triplicate copy of ARE-I duty certified by jurisdictional Superintendent Central Excise, the duty payment in r/o said goods can not be established. Since, the payment of duty is not proved, the rebate claim cannot be held admissible. The case laws cited by applicant cannot be made applicable to this case since it not a case of mere procedural lapse but the duty paid character of goods is also not proved.

9.3 Government notes that fundamental condition for sanction rebate claim is that export of duty paid goods is proved. In this case, this condition is not satisfied and therefore the rebate claim is rightly held inadmissible in terms of rule 18 of Central Excise Rules, 2002 r/w Notification No. 19/04-CE (NT) dt. 06-09-2004.

10. Government therefore finds no legal infirmity in the impugned Order-in-Appeal and therefore upholds the same.

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

12. So, ordered.

(D.P. SINGH)
JOINT SECRETARY TO THE GOVT. OF INDIA

M/s Gold Star Impex,
BH-18, East Shalimar Bagh,
Delhi – 110088.

(ATTESTED)

(भागवत शर्मा/Bhagwat 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.1745/12-Cx dated 10-12-2012

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 Assistant Commissioner of Central Excise(Technical), Delhi-II, C.R. Building, I.P. Estate, New Delhi

4. Ms. Reena Khair, R-163 Second Floor, G.K., Part-I, New Delhi 110048..

5. PS to JS(Revision Application)

6. Guard File

7. Spare Copy.

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