

**REGISTERED
SPEED POST**



**F.No. 195/138/11-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... 18/12/12

ORDER NO. 1753/12-Cx DATED 17-12-2012 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,
1944 AGAINST THE ORDER-IN-APPEAL No.
394(DKV)CE/JPR-I/10 dated 31/08/2010 passed by
Commissioner of Customs & Central Excise (Appeals),
Jaipur-I.

APPLICANT : M/s. Dynamic Engineers,
Kota.

RESPONDENT : Commissioner of Central Excise,
Jaipur.

o/c
Issued
D. P. Singh
18/12/12

ORDER

This revision application is filed by M/s. Dynamic Engineers, Kota against the Orders-in-Appeal No. 394(DKV)CE/JPR-I/10 dated 31-08-2010 passed by Commissioner of Customs & Central Excise (Appeals), Jaipur-I with respect to Order-in Original passed by the Assistant Commissioner of Central Excise, Kota (Rajasthan).

2. Brief facts of the case are that the applicant engaged in the manufacture of Glued Insulated Rail. The applicant had filed a rebate claim under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 21/2004-CE (NT) dated 06-09-2004. During the course of preliminary scrutiny of the said claim, some discrepancies were noticed and the said claim was returned back to the applicant. The said claim was again filed by the applicant on the ground that they had undertaken a contract for providing and fixing permanent way work at railway siding at Reliance SEZ, with Reliance Jamnagar Infrastructure Ltd., who are the developers of the SEZ. For the purpose of the execution of the said contract the Appellate purchased certain items on payment of Central Excise duty and brought the said purchased items in their factory at Kota and cleared to Reliance Jamnagar Infrastructure Ltd. under cover of ARE-I. After scrutiny of the said claim filed by the exporter, a Show Cause Notice was issued to them calling upon them to explain as to why the refund claim amounting to Rs. 2,15,459/- should not be rejected on the grounds that in the instant case no manufacturing/processing activity was carried out on the goods purchased by the applicant which is the requirement of avilment of rebate claim under notification No. 021/2004-CE (NT); that the goods were cleared by them under cover of ARE-I instead of ARE-2 and also that there were some discrepancy in details in applicant's documents. The original authority rejected the rebate claim subsequently.

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 The Commissioner (Appeals) has erred in rejecting the claim on the ground that the procedure enumerated under Notification No. 21/2004-CE (NT) dt. 06-09-2004 was not complied with by the applicant. The Commissioner (Appeals) has failed to appreciate that the goods were exported after following the procedure prescribed for clearance of goods to SEZ area under Rule 30 of SEZ Rules, 2006 and therefore, the procedure enumerated under Notification No. 21/2004-CE (NT) was not required to be complied with. The goods exported were to be used in laying the track in SEZ area therefore; question of approval input output ratio does not arise.

4.2 The Commissioner (Appeals) has failed to accept the argument that the CBEC has already granted a general permission for claiming rebate of duty paid on goods procured from the market where it is possible to correlate the goods and their duty paid character. The appeal has been rejected mainly on the ground that the general permission was not placed before him by the applicant. Further it is submitted that the Commissioner (Appeals) have failed to consider the special procedure prescribed for export of Tea under claim of rebate published on page NO. 6.9, Part-IV of CBE & C's Manual chapter 8 published in Central Excise Manual- 2010-11- 51st edition of R.K. Jain, wherein it is clearly provided that procurement of goods from factory of a manufacture and from open market is also allowed under Notification No. 21/2002. The department is fully aware of the said circulars of the board but the Commissioner has failed to follow the said circular. Therefore the order of the Commissioner is not tenable and deserves to be quashed.

4.3 The procedure of exporting the goods under cover of ARE-2 was for the direct export, in case of export to SEZ unit a special procedure has been prescribed in which the export is to be affected under cover of ARE-1. It was submitted that it is a general principle of laws that any specific law/procedure prescribed will prevail over

the general principle/procedure prescribed therefore when a specific procedure has been prescribed under the law, the general will not be prevalent.

5. Personal hearing was scheduled in this case on 07-08-2012 & 09-10-2012. Shri Vijay Kumar, advocate attended hearing on 09-10-2012 on behalf of the respondent and reiterated the grounds of Revision Application.

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 purchased certain items from open market on payment of Central Excise duty and cleared the same to M/s. Reliance Jamnagar Infrastructure Ltd., a SEZ and filed rebate claim under rule 18 of Central Excise rules, 2002 r/w Notification No. 21/2004-CE (NT) dt. 06-04-2004. The original authority rejected the rebate claim mainly on the ground amongst others that no manufacturing authority was carried out by the applicant on goods purchased to qualify for rebate benefit in terms of Notification No. 21/2004-CE (NT) dt. 06-04-2004. Commissioner (Appeals) rejected the appeal filed by the applicant. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government observes that the rebate under Notification No. 21/2004-CE (NT) dt. 06-04-2004 is admissible of the duty paid on excisable goods used in manufacture or processing of export goods. In the instant case, the applicant paid the duty on final product which was supplied to the SEZ and not on inputs used in manufacture of such final product. Since, no manufacturing activity has been carried out by the applicants, they cannot claim the benefit of input stage rebate under rule 18 r/w Notification No. 21/2004-CE (NT) dt. 06-04-2004. Government finds that since the applicant paid the duty on final product, they were required to file rebate claim under rule 18 r/w Notification No. 19/2004-CE (NT). But the applicant wrongly chose to file their rebate claim under rule 18 r/w Notification No. 21/2004-CE (NT) dt. 06-04-2004.


8.1 Applicant has contended that CBEC has already granted a general permission for claiming rebate of duty paid on goods procured from the market where it is possible to correlate the goods and their duty paid character. In this regard, Government notes that the procedure laid down in said CBEC circular No. 294/10/97-Cx dt. 30-01-1997 has not been followed, neither the goods were examined by the concerned superintendent Central Excise nor there are any identifiable marks/member on the goods to correlate them with the goods cleared from factory of manufacture on payment of duty. Applicant himself has stated the said requirement of CBEC Circular but failed to give any explanation about compliance of same. Therefore he essential condition of export of duty paid goods for claiming rebate of duty under rule 18 of Central Excise Rules 2002 is not fulfilled. As such said rebate claim was rightly held inadmissible.

8.2. The applicant also contended that the special procedure is prescribed for export of tea under claim of rebate in chapter 8 of CBEC's Excise manual of supplementary instructions where in it is clearly provided that the procurement of goods from factory of a manufacture and from open market is also allowed under the Notification No. 21/2004-CE (NT) dt. 06-04-2004. The applicant contended the said special provisions for tea is applicable for this case also. Government finds that the said special provision has been provided with a specific intention to extend benefit rebate to export of tea only subject to compliance of certain conditions and not to any other products. Hence, this special procedure cannot be extended to any product other then tea. There are catena of judgment that meaning of any statute should be construed strictly accordingly to their grounds. Hon'ble Supreme Court in the case of M/s ITC Ltd. Vs. CCE Delhi 2005 (171) ELT 433 (SC) and M/s. Paper Products Ltd. Vs. CCE Vadodara 1999 (112) ELT 765 (SC) has held that ordinary and natural meaning of words of statutes has to be strictly construed without any intendments or any liberal interpretation. Hence, when the special provision of the notification is applicable to tea, it cannot be construed to have applicability to other products/goods. As such, the original authority had rightly rejected rebate claim filed by the applicant under rule 18 r/w Notification No. 21/2004-CE (NT) dt. 06-04-2004.

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

10. The revision application is thus rejected being devoid of merit.

11. So, Ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Dynamic Engineers,
E-20, Chambal Industrial Area,
Opp. Multimetals, Kota.

ATTESTED



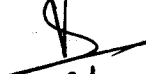
(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
जिला मंत्रालय (सहायक विभाग)
Ministry of Revenue (Dept. of Rev.)
भारत सरकार/Govt. of India
नं. 18/12

Order No. 1753 /12-Cx dated 17/122012

Copy to:

1. The Commissioner, Customs & Central Excise, New Central Revenue Building, Statue Circle, C-Scheme Jaipur.
2. The Commissioner (Appeal-I), Customs & Central Excise, New Central Revenue Building, Statue Circle, C-Scheme Jaipur.
3. The Assistant Commissioner of Central Excise, Kota.
4. Guard File.
5. PS to JS (Revision Application)
6. Spare Copy

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18/12

(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)

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