SPEED POST

F. No. 195/45/2019—R.A.
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...16.8.21....

Order No. 178/2021-CX dated 13-8-2021 of the Government of India, passed by Shri Sandeep Prakash, 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. JNK-EXCUS-000-APP-264-266-16-17 dated 24.08.2016 passed by Commissioner, Central Excise (Appeals), Chandigarh.

Applicant: M/s Eastman Reclamations, Kathua, J&K.

Respondent: Commissioner of CGST, Jammu.

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ORDER

A Revision Application Nos. 195/45/2019-R.A. dated 23.07.2019 has been filed by M/s Eastman Reclamations, Kathua, J&K (hereinafter referred to as the Applicants) against Order-in-Appeal No. JNK-EXCUS-000-APP-264-266-16-17 dated 24.08.2016 passed by the Commissioner (Appeals), Central Excise, Chandigarh, wherein the appeal filed by the Applicants against Order-in-Original No. 330-332/CE/Rebate/CE/AC/J/15 dated 16.01.2015, passed by the Assistant Commissioner, Central Epxcise, Jammu, has been rejected.

2. The brief facts leading to the present proceedings are that the applicant was availing the benefit of Area Based Exemption in terms of Notification No. 01/2010-CE dated 06.02.2010 and also exporting their goods. In the instant case, they filed rebate claims with the jurisdictional Central Excise authorities in terms of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004 in respect of the central excise duty paid on the exported goods. The said claims amounting to Rs. 4,13,361/- were rejected by the original authority on the ground that

simultaneous benefit of area based exemption in terms of Notification No. 01/2010-CE dated 06.02.2010 and rebate under Notification No. 19/2004-CE (NT) dated 06.09.2004 is not admissible in view of the debarring provisions as contained in Para 2(h) of said notification no. 19/2004. It was further held that double benefit, i.e., the area based exemption and rebate under Rule 18, cannot be allowed. Aggrieved, the Applicants filed appeals before Commissioner (Appeals) who rejected the appeals. Instant revision application has been filed, mainly, on the ground that since notification no. 01/2010-CE dated 06.02.2010 has not been included in Clause 2(h) of notification no. 19/2004, there cannot be any bar for the applicant to take rebate of the duty suffered on exported goods. Hence, the impugned Order-in-Appeal may be set aside.

3. Personal hearing was held on 09.07.2021 and on 13.08.2021, in virtual mode. In the hearing held on 13.08.2021, Sh. Shrey Ashat, Advocate, appeared for the Applicants and re-iterated the submissions made in the revision application and written submissions filed thereafter. With reference to the Synopsis filed on 20.07.2021, Sh. Ashat confirmed that no case for

any of other periods is pending with the Hon'ble High Court or the Hon'ble Supreme Court. On merits, he highlighted that:

(i) The benefit had been denied to them on the basis of Para 2(h) of the notification no. 19/2004-CE(NT) that bars availment of rebate to the manufacturers availing the benefits of the notifications specified therein. The notification no. 1/2010-CE, the benefits whereof were availed by them, is not mentioned/specified therein. Therefore, there is no authority in law to deny them rebate.

(ii) The notification no. 1/2010-CE grants refund only to the extent of duty paid on value addition component. The notification also specified that the duty payable on value addition shall be equivalent to the amount calculated as a percentage of the total duty payable on the goods exported specified in the Table therein. Since the refund is limited to duty paid on value addition only, the question of double benefit does not arise. In any case, at the relevant time, the duty paid on inputs used in manufacture of excisable goods was also rebatable as per notification no. 21/2004-CE(NT) dated 06.09.2004.

No one attended the personal hearing for the Respondents and no request for adjournment has been received. Hence, the matter is being taken up for disposal on the basis of facts available on record.

4. The impugned Order-in-Appeal was received by the Applicants on 01.09.2016 whereas the instant revision application has been filed on 23.07.2019. It has been explained that the Applicants had filed appeal against Order-in-Appeal before CESTAT, which was dismissed as withdrawn since appeal was not maintainable before CESTAST, vide Final Order No. 60481 dated 09.05 2019. Instant revision application has been filed thereafter. Delay is condoned.

5.1 The Government has carefully examined the issues involved. It is not disputed that:

(i) The Applicants were working under Notification no. 01/2010-CE dated 06.02.2010.

(ii) The applicant had filed rebate claims under Rule 18 ibid read with notification no. 19/2004-CE (NT) dated 06.09.2004. This notification lays down 'terms and conditions' and 'procedure' for availment of

rebate under Rule 18. Clause 2(h) of the notification, inserted by an amendment vide notification no. 37/2007-CE (NT) dated 17.09.2007, bars the manufacturers from availing rebate, if they are availing the benefit of any of the notifications listed therein.

(iii) Notification no. 1/2010-CE dated 06.02.2010 which was availed by the Applicants in this case, is not listed in the above said Clause 2(h) of notification 19/2004-CE (NT) dated 06.09.2004.

Therefore, it is clear that rebate cannot be denied to the Applicants by virtue of provisions of notification 19/2004-CE (NT). It is trite to say that the notifications have to be construed strictly and there is no scope of intendment therein.

5.2 Another factor leading to the rejection of subject claims is that, since the Applicants were availing the benefits of Notification 01/2010-CE (NT) dated 06.02.2010, the duty paid was refunded to them. Thus, grant of rebate would amount to double benefit. However, the Government observes that the said notification dated 06.02.2010 provides for refund of only that part of duty which is payable on value addition. Hence, the grant of rebate under Rule 18 ibid cannot be termed as double benefit.

6. In view of the foregoing, the revision application is allowed with consequential relief.

(Sandeep Prakash)
Additional Secretary to the Government of India

M/s. Eastman Reclamations,
SIDCO Industrial Complex, Kathua,
Jammu & Kashmir.

G.O.I. Order No. 178 /21-Cx dated 13-8-2021

Copy to:-

1. Commissioner of CGST, Jammu.
2. Commissioner, Central Excise (Appeals), Chandigarh.
3. AM Legal Attorneys, Office No. 01-107, We Work, Blue One Square, Plot No. 246, Udyog Vihar Phase-IV, Gurugram-122 016.
4. PA to AS (Revision Application)
5. Spare Copy
6. Guard File

ATTESTED

(Ashish Tiwari)
Assistant Commissioner (R.A.)