

F.No. 198/28-49/2016-RA

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F.No. 198/28-49/2016-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... 12/4/18 *AK*

Order No. ~~186-2-07/18~~ Cx dated ~~17-4-18~~ 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. 46 to 66(AK)CE/JPR/2016 dated 30.03.2016 passed by Commissioner of Central Excise (Appeals), Jaipur.

Applicant : Commissioner of Central Excise, Udaipur

Respondent : M/s Banswara Syntex Ltd.

ORDER

Revision Applications No.198/28-49/2016-RA dated 30.06.2016, are filed by the Commissioner of Central Excise, Udaipur, (hereinafter referred to as the applicant) against the OIA No. 46 to 66(AK)CE/JPR/2016 dated 30.03.2016, passed by the Commissioner of Central Excise (Appeals), Jaipur, whereby the appeals of M/s Banswara Syntex Ltd, (hereinafter referred to as the respondent) are allowed.

2. The brief facts of the case are that respondent had filed rebate claims in respect of exported goods and the same were allowed by adjudicating authority. However, he held that transactional value of the goods was limited to clearance of goods from factory gate and expenses incurred beyond factory gate could not be the part of transactional value. Accordingly, the adjudicating authority restored the CENVAT credit which was utilized earlier towards payment of duty on the expenses incurred beyond factory gate and rebate of duty was granted in cash in respect of the remaining value of the goods cleared from the factory. The respondent challenged the Order-in-Original to the extent of reduction of their rebate claims before the Commissioner (Appeals) and he has allowed the same vide above mentioned order holding that for exported goods the place of removal is the port of export, all the expenses incurred till the port of export are includible in the transactional value and, therefore, the claimant is eligible for rebate of entire duty paid on the exported goods in cash.

3. The revision application is filed mainly on the ground that as per CBEC Circular No. 999/6/2015-cx dated 28.02.2015, the port of export is a place of removal of the goods for the purpose of allowing CENVAT credit of input services only and not for allowing rebate of duty. The revision application has been vehemently contested by the respondent by submitted their defense submissions vide their letter dated 07.12.2016.

4. Personal hearings were offered on 23.03.2018 and on 13.04.2018. However, no one appeared for the applicant on both the dates and no reason for non availment of

the hearing was also informed. But the respondent availed the personal hearing on 13.04.2018 through Sh. Keshav Maloo, CA, who reiterated the defense arguments already furnished vide their letter dated 07.12.2016 and in addition placed reliance on four Orders passed by the Assistant Commissioner (Chittorgarh) and Commissioner (Appeals), Jodhpur, wherein the port of export has been accepted consistently as place of removal.

5. Government has examined the matter and it is found that Commissioner (Appeal) has relied upon Government of India's order No. 287/2013-cx dated 21.03.2013, Board Circular No. 999/6/2015-cx dated 28.02.2015, Commissioner (Appeals)'s earlier Order No. 99-143(DK)CE/JPR-II/2009 dated 31.03.2009 and Supreme Court's decision in the case of CCE, Aurangabad vs rooffit Industries Ltd; 2015(319)ELT221(S.C.) to arrive at a conclusion that for exported goods the place of removal is the port of export and transactional value of the goods is inclusive of all expenses incurred up to the stage the goods are handed over to the shipping lines in the port. These materials have not been questioned by the applicant, but, still the revision applications have been filed merely by misinterpreting the CBEC Circular dated 28.02.2015 to emphasize that port of exported goods is considered as place of removal only for the purpose of CENVAT credit of input services. It is implied from this argument that as per applicant there are two places of removal for the exported goods, one for CENVAT credit purpose and other for rebate of duty which is absolutely absurd. If the port of export is accepted as place of removal for CENVAT credit, there should not be any doubt that for the rebate of duty also the place of removal is same. Even otherwise also it has been consistently held by various courts, tribunals, Government of India and even by CBEC that port of removal is the place of export and it is supported by the Circulars and decisions referred to in the Commissioner (Appeals) order also. The same view is taken even by the Commissioner (Appeals) Jodhpur in their orders dated 26.10.2017 and 05.04.2018 in the case of respondent itself. Therefore, the issue whether port of export is the place of removal for the export goods is no more in dispute and the revision application filed by the applicant is completely unwarranted. Accordingly all expenses incurred from factory

gate to the port of export in relation to exported goods are includible in the transactional value and the rebate of duty is payable in cash against the whole duty of excise paid by the respondent on the exported goods as held by the Commissioner (Appeals).

6. Accordingly, revision application is rejected.

R.P. Sharma
17.4.18

(R.P.Sharma)

Additional Secretary to the Government of India

Commissioner of Central Excise,
Udaipur, 142-B, Hiran Magari,
Sector-11, Near Shahi Bagh, Udaipur.

ATTESTED

Ravi
17/04/18
(RAVI PRAKASH)

OSD (RA)

G.O.I. Order No. 186-207/18-Cx dated 17-4-2018

Copy to:-

1. M/s Banswara Syntex Ltd, Industrial Area, Dahod Road, District- Banswara Rajasthan 327001.
2. The Commissioner of Central Excise (Appeals), Jaipur, New Central Revenue Building, Statue Circles, C-Scheme, Jaipur-302005.
3. Assistant/Dy. Commissioner, Central Excise, Plot No. 168-172, Sector 4, Gandhi Nagar, Chitorgarh, Rajasthan.
4. Keshav Malo & Associates, Chartered Accountants, 238, B Block Ananad Plaza, near Ayad Bridge, Udaipur, Rajasthan, 313001.
5. PA to AS(Revision Application)
6. Guard File
7. Spare Copy.