



**REGISTERED
SPEED POST**

F.No. 198/36-38/12-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... 6-1-14

Order No. 02-04/14-Cx dated 01.01.2014 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, Under Secretary 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under section 35 EE of the Central Excise Act., 1944 against the Orders-in-Appeal No. 227 to 229/2011/Commr(A)/RBT/RAJ dated 08.12.2011 passed by the Commissioner of Central Excise (Appeals), Rajkot.

Applicant : The Commissioner, Central Excise & Customs, Rajkot.

Respondent : M/s Vinergy International Pvt. Ltd. Mumbai.

ORDER

These revision applications have been filed by the applicant Commissioner of Central Excise & Customs, Rajkot against orders-in-appeal No. 227 to 229/2011/Commr(A)/RBT/RAJ dated 08.12.2011, passed by the Commissioner of Central Excise (Appeals), Rajkot with respect to Orders-in-Original passed by the Assistant Commissioner of Central Excise, Division-Jamnagar.

2. Brief facts of the case are that the respondents filed three rebate claims of Central Excise duty paid on excisable goods viz. 'Furnace oil' by the manufacturer M/s Essar Oil Ltd. Khambalia Dist. Jamnagar which was subsequently exported. The rebate claims were rejected by the lower authority vide the impugned order mainly on the grounds that claims were time barred as the claims were received by the department with all the documents after expiry of one year and also on the grounds that the respondents failed to export the goods directly from the factory of manufacturer as prescribed in Board's Circular No.294/10/97-Cx dated 30.01.1997.
3. Being aggrieved by the said Orders-in-Original respondent filed appeals before Commissioner (Appeals) who decided the same in favour of respondents.
4. Being aggrieved by the impugned Orders-in-Appeal, the applicant department has filed these revision applications under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds.
 - 4.1 The appellate authority at para 7.3 of the impugned order, by relying upon the case laws of (i) Cotfab Exports reported in 2006 (205) ELT 1027 (ii) Modern Process Printer reported at 2006 (204) ELT 632 and Barot Exports reported at 2006 (203) ELT 321, held that the procedural lapses as reasoned by the lower authority while rejecting the claims can be condoned, since the

payment of duty has not been doubted and the goods were exported under statutory documentation.

4.2 It is pertinent to mention that rebate of Central Excise duty paid on the goods exported out of India, is granted in terms of Notification No. 19/2004-CE/(NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002. The said notification prescribes procedures, conditions and limitations for granting rebate to the manufacturer/exporter. The said notification stipulates conditions/limitations as well as prescribes procedures to be followed, while claiming rebate of duty on export of goods. The condition stipulated at para 2(c) of the Notification No. 19/2004-CE/(NT) dated 06.09.2004 read as under:-

"2 (c) that the excisable goods supplied as ship's stores for consumption on board a vessel bound for any foreign port are in such quantities as the Commissioner of Customs at the port of shipment may consider reasonable."

The adjudicating authority vide letters dated 18.02.2010 asked the said exporter to submit the quantification certificates issued by the Commissioner of Customs at the port of shipment. However, the said exporter ignored the condition stipulated in the said notification and instead contended that CBEC's Excise Manual of Supplementary Instruction did not list any such certificate. As can be seen, the said exporter had not fulfilled vital condition stipulated in Notification No. 19/2004-CE/(NT) dated 06.09.2004. It appears that the appellate authority has overlooked the fact that the said exporter has, apart from non fulfilling procedural requirement, also not fulfilled essential condition stipulated in the said notification. It thus appears that the appellate authority has not considered entire facts of the case and arrived at a conclusion, which is not according to law.

4.3 It appears that the Appellate Authority has not considered the finding of the Adjudicating Authority that the excisable goods cleared from the factory of

manufacturer were not directly cleared for export but were first stored at the premises of the exporter M/s Vinergy International Pvt. Ltd. Bunkar Division, C/s Ruchi Infrastructure Ltd. Ruchi Oil Jetty, Jamnagar, and subsequently prepared ARE-1 and exported the goods in contravention of the provisions of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE/(NT) dated 06.09.2004. Further, the said exporter had also not followed the procedures prescribed under the Circular No. 294/10/94-CX dated 30.01.1997.

4.4 It appears that the appellate authority has erred on facts as well as on law. It is on record that the said exporter had not submitted the original and duplicate copy of the Central Excise invoices raised by the manufacturer i.e. M/s Essar Oil Ltd., at the time of filing of their claims on 16.12.2009. The adjudicating authority vide deficiency memos dated 18.02.2010 asked the exporter to submit the Central Excise invoices raised by the manufacturer. The said duty paying documents are essential for claiming refund of duty under section 11B of the Central Excise Act, 1944. The said exporter had submitted duplicate copy of Central Excise invoice only on 18.04.2011. Hence, the appellate authority's findings that "the respondent initially filed their claims within statutory time limit of one year along with all the relevant documents statutorily required to be submitted", is erroneous. The appellate authority at para 9.2 of the impugned order observed that the Hon'ble High Court of Gujarat vide order dated 28.06.2011 in SCA No. 15212/2010 filed by M/s Shakti Shipping International, allowed the appeal of the party and set aside the order No.188/09-CX dated 10.07.2009 passed by the Revisionary Authority. In this regard, it is pertinent to mention that the Department has not accepted the said judgement of Hon'ble High Court and SLP has been preferred before the Hon'ble Supreme Court, which is pending decision. Similarly, the Department has not accepted the order dated 21.07.2011 of the Hon'ble High Court setting aside the order No. 1743/10-CX dated 03.12.2010 passed by the Revisionary Authority in the case of Shakti Shipping International, and has preferred SLP before the Hon'ble Supreme

Court, which is pending decision. Hence, it appears that the issue is not finally settled.

4.5 It appears that the appellate authority has also erred in granting interest on delayed payment of rebate under section 11BB of the Central Excise Act, 1944, from the date of receipt of rebate application. It appears that the appellate authority has failed to observe that all the three rebate claims filed by the said exporter on 16.12.2009, were not complete in all respect and the same were returned to them immediately along with deficiency memo. The said exporters re-submitted the rebate claims only on 18.04.2011. Even the resubmitted rebate claims were not found complete by the adjudicating authority and the same were rejected vide Orders-in-Original dated 06.07.2011. Since the rebate claims were not sanctionable as held by the adjudicating authority as well as reasoned above, there is no question of granting interest to the said claims. Further, the judgement dated 29.09.2011 of the Hon'ble High Court of Gujarat rendered in the case of M/s Welspun Trading Ltd. has not been accepted by the department and has submitted proposal to the Board for filing SLP before the Hon'ble Supreme Court. Thus, it appears that the issue is not finally settled.

5. A Show Cause Notice was issued to the respondent under Section 35EE of the Central Excise Act, 1944 to file their counter reply. The respondents vide their written submission dated 16.05.2012 mainly reiterated contents of impugned Orders-in-Appeal. The respondent further vide their written submission, submitted during the course of personal hearing on 28.11.2013 mainly stated as under:-

5.1 Para 2(c) stipulates that "*the excisable goods supplied as ship's stores for consumption on board a vessel bound for any foreign port are in such quantities as the Commissioner of Customs at the port of shipment may consider reasonable.*"

i. It may be seen from its language itself that this is **not a condition but a limitation** and it is an **enabling provision** to authorize the Commissioner of Customs at the port of shipment to limit or restrict a particular item or items of ship stores upto certain quantity which **he may consider reasonable**. It does not require the claimant of rebate to get a certificate from the Commissioner to this effect. The Commissioner may however impose restrictions in this regard wherever he deems it necessary to avoid any misuse. The said provision **does not stipulate** or lay any condition that a certificate from the Commissioner of Customs will be submitted along with the rebate claim. The adjudicating authority has tried to broaden the scope of the provision by reading between the lines as per his convenience or understanding.

ii. Though the Furnace Oil (Bunker Fuel) broadly falls in the category of Ship Stores, it is not required for consumption on board by the crew or passengers like other consumer goods e.g. food, water, drinks, soaps, toiletries etc. It is essentially required for running of the ship and a ship cannot take the bunker fuel more than the Fuel Tank capacity of the ship. Hence there is no possibility of a ship taking quantity more than the fuel tank capacity and no Commissioner will consider that quantity unreasonable. We confirm that the quantity of Furnace Oil (Fuel) supplied was less than the Fuel Tank capacities of the vessels. For instance the Fuel tank capacities of MT Neverland and MT Maersk Progress were 3029 KL (Approx 2938 MTs) and 3583 KL (Approx 3475 MTs) whereas the quantities of the FO supplied was 370.08 MTs & 390.01 MTs respectively. The Chartering Questionnaire 88 (Q88) of these ships are enclosed where all details including Capacities of bunker tanks are mentioned.

5.2 As per the procedure prescribed under Notification No. 19/2004 CE (NT) dated 06.09.2004 a manufacturer exporter registered under the Central Excise

Rules, 2002 and merchant exporters who procure and export goods directly from the factory or warehouse can exercise the option of exporting the goods sealed at the place of dispatch by a central excise officer or under self sealing.

5.3 It is well established from the documents submitted like each invoice issued by manufacturer bearing the tanker number and seal number that the goods have moved directly from the refinery / factory of the manufacturer in duly sealed tankers to the port of export, Lorry receipts are already available on record. The said material is procured from Essar Oil Limited, leading Oil Refining & Marketing Company and as per the petroleum norms no Oil Marketing company will remove any material without proper sealing. Thus there is no violation or contravention of any provision prescribed under Notification No. 19/2004 CE (NT) dated 06.09.2004. The allegation that the goods were not directly cleared for export but were first stored at the premises of the exporter M/s Vinergy International, Bunker Division, C/o M/s Ruchi Soya Infrastructure Ltd, Ruchi Oil Jetty, Jamnagar is factually incorrect. This was just a billing address and not the consigned address where the goods were actually delivered. Hence the question of referring to procedure laid down in Board's Circular No. 294/10/94-CX dated 30.01.1997 does not arise which in any case was otherwise also not relevant as the same was issued under Central Excise Rules, 1944 which were replaced by new Rules in 2001 and which too were replaced by Central Excise Rules, 2002.

6. Personal hearing scheduled in this case on 28.11.2013 was attended by Shri Vinod Kumar, Deputy Commissioner on behalf of the applicant department who reiterated the grounds of revision application. Shri Ashok Agrawal, Consultant and Shri Manav Purohit, Consultant attended the hearing on behalf of respondent and reiterated submission made in their reply dated 28.11.2013.

7. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.
8. Government observes that the respondents rebate claims were rejected by the original authority on the ground that the rebate claims with all the documents were filed after expiry of one year and also that the respondents failed to follow the procedure as prescribed in Notification No. 19/2004-CE/(NT) dated 06.09.2004 Board's Circular No. 294/10/97-CX dated 30.01.1997 Commissioner (Appeals) decided the cases in favour of respondents. Now, the applicant department has filed these revision applications on grounds mentioned in para (4) above.
9. The applicant department has challenged the said Order-in-Appeal mainly on the ground, that respondent failed comply the provisions of Notification No. 19/2004-CE/(NT) dated 06.09.2004 & CBEC Circular dated 30.01.97 as the goods were not exported direct from factory, the quantification certificate for supply of tanker fuel i.e. furnace oil was not submitted and though the complete rebate claim was filed on 18.4.11 yet Commissioner (Appeals) allowed payment of interest the from the date of expiry of 3 months after filing the initial rebate application.
10. The respondents have contended that it was factually incorrect on the part of applicant department to state that the goods were not directly exported from manufacturer premises; the goods were procured from M/s Essar Oil Limited and exported in tankers against ARE-1 and Invoices, bearing tanker No. and seal number and exported directly from factory; that lorry receipts clearly show that goods were taken directly from manufacturer premises to the port of export; that the endorsement of custom officer on ARE-1 prove that goods cleared from manufacture premises were ultimately exported.

10.1 On perusal of sample excise documents ARE-1, and Excise Invoices, it is noticed that in ARE-1 the destination is mentioned as name of vessel and there is a mention of relevant invoices. Further, in relevant invoices, there is mention of Vessel name, to whom the goods were supplied. They have also submitted copies of lorry receipts [as evident from impugned Order-in-Original] to show that the goods were directly supplied from factory of manufacturer to port of export. Once, the goods found to exported directly from factory of manufacturer to port of export, the provisions of Board's Circular No. 294/10/97-Cx dated 30.01.1997, which is applicable to case where that goods exported otherwise than directly from a factory or warehouse, is not applicable to this case. Commissioner (Appeals) has examined all the relevant document and rightly held that goods were directed exported from factory. There is no dispute that duty was not paid on said exported goods. The customs endorsement on the original and duplicate copy of ARE-1 confirming export of said goods is not challenged by department.

10.2 In the impugned revision applications, the applicant department has also contended that no quantification certificates issued by the Commissioner of Customs have been submitted by the respondents in terms of condition 2(c) of the Notification No. 19/2004-CE/(NT) dated 06.09.2004. In this regard the respondents contended that the said condition do not stipulate that any certificate from Commissioner of Customs will be submitted along with the rebate claim. They also stated that their fuel supply was less than the fuel tank capacity and they submitted chartering questionnaires 88(Q88) giving details of capacity of tank of ships. Government finds that the furnace oil was supplied as tanker fuel to the vessels. During hearing held on 28.11.2013, Shri Vinod Kumar Deputy Commissioner Central Excise was asked to intimate with 15 days the procedure if any prescribed by Commissioner of Customs on this issue. The applicant department has not bothered to send any reply till date even after lapse of a period more than one month. In this case, the respondent has contended that

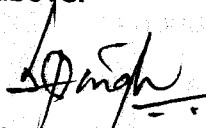
fuel tank capacities of Vessels MT Neverland and MT Maersk Progress were 2938 MT and 3475 Mt whereas quantities of FO supplied were only 370.08 MTs and 390.01 MTs respectively. There is no reason to doubt the reasonableness of this quantity of fuel supplied to the vessels. As such there is no merit in this objection of department.

10.3 As such as regards allowing rebate claims, Government do not find any infirmity in the impugned Order-in-Appeal and upholds the same to this extent.

11. Regarding payment of interest for delayed payment of rebate claim Government notes that respondent though filed claim within one year but the complete claim alongwith requisite document as pointed out in deficiency memo were filed only on 18.4.11. So the interest is admissible only after a period of 3 months from the said date of 18.4.11. As per section 11BB the interest liability will arise only when the rebate claim complete in all respect is not decided within 3 months. As such this contention of department merits acceptance. The impugned Order-in-Appeal is modified to this extent.

12. Revision Applications are disposed off in terms of above.

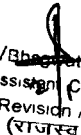
13. So, ordered.


(D P Singh)

Joint Secretary (Revision Application)

Commissioner of Customs & Central Excise,
Central Excise Bhavan,
Race Course Ring Road,
Rajkot – 360001.

(Attested)


(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्ता/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

G.O.I. Order No. 02-04 /2014-Cx dated 1.1.2014

Copy to:-

1. The Commissioner (Appeals), Customs & Central Excise, 2nd Floor, Central Excise Bhavan, Race Course Ring Road, Rajkot- 360 001.
2. The Assistant Commissioner, Central Excise Division, Pritam Chambers, Opp. M.P. Shah Medical College, Jamnagar.
3. M/s Vinergy International Pvt. Ltd., Peninsula Business Park, Unit No. 501(A), 5th Floor, Tower "A", Senapati Bapat Marg, Lower Parel, Mumbai - 400013.
4. Shri Ashok Aggarwal, Consultant, Flat No. 2, Ground Floor, Kanta Nivas, 1st Road, Madhu Park, Khar (West), Mumbai - 400 052.

✓ 1. PS to JS(RA)

2. Guard File

3. Spare Copy.


2/1/2014

(Bhagwat P. Sharma)
OSD(RA)

