

REGISTERED
SPEED POST



F.No. 198/69/2014-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.....

ORDER NO. 209/2018-CE dated 01-05-2018 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI R.P.SHARMA, PRINCIPAL COMMISSIONER & ADDITIONAL
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER Section 35EE OF THE CENTRAL
EXCISE ACT, 1944.

SUBJECT : Revision Application filed under Section 35EE of the Central
Excise Act,1944, against the Order-in-Appeal No. 92-
94/RAN/2014 dated 14.08.2014, passed by the
Commissioner of Central Excise (Appeals), Ranchi.

APPLICANT : Commissioner of Central Excise, Ranchi.

RESPONDENT : M/s. Bagadiya Brothers Pvt. Ltd.

ORDER

A Revision Application 198/69/2014-R.A. dated 21.10.2014 is filed by the Commissioner of Central Excise, Ranchi (hereinafter referred to as Applicant) against Order—In—Appeal No. 92-94/RAN/2014 dated 14.08.2014, passed by the Commissioner of Central Excise (Appeals), Ranchi, whereby the appeal of the respondent M/s Bagadiya Brothers Pvt. Ltd., Hoogly, has been allowed and the Order-In-Original of the Jurisdictional Commissioner rejecting the rebate claims of the respondent has been set aside.

2. The brief facts of the case are that the respondent submitted three rebate claims initially through E-filing on 21.02.2014 and 22.02.2014 and its hard copy in Form C was submitted in the Division Office on 06.03.2014. However, the rebate claims were returned to the respondent by the Division Office vide letters dated 14.03.2014 on the ground that four specified documents had not been submitted along with the rebate claims. The respondent resubmitted the rebate claims with the required documents on 03.04.2014. But these were rejected by the Assistant Commissioner on the ground that the rebate claims submitted on 03.04.2014 are time barred under Section 11B of Central Excise Act. The respondent filed an appeal against the Order-In-Original and it was allowed by the Commissioner(Appeal) vide his aforesaid Order-In-Appeal by observing that the respondent had submitted their rebate claims on 03.04.2014 itself and thereby all claims were filed within one year from the export of goods. Being aggrieved, the Applicant has filed the present Revision Application against the order of Commissioner(Appeal) on several grounds such as the scheme relating to electronic filling of rebate claim had not been

implemented, these could be filed with the port of export only, the goods are not exported directly from the factory of JSPL, no certificate for self-sealing is recorded in the body of ARE-1, the goods cleared from the factory were not exported within 6 months period, the duty paid goods cleared from the factory of JSPL cannot be correlated with the exported goods and complete rebate claims along with required documents were filed with the Division Office on 03.04.2014 only by which these became time barred as the goods were exported in all the three cases by 15.03.2013.

3. Personal hearing was fixed earlier on 23.02.2018 in this case. But it remained unavailed by both the Applicant as well as the respondent. Therefore, another personal hearing was offered on 16.03.2018 and it was availed by Miss Rinki Arora, Advocate, for the respondent who reiterated the defense arguments already advanced in their reply dated 04.02.2015. She also relied on five decisions of Supreme Courts, High Courts and government of India in the cases of Commissioner of Customs, Mumbai, Vs Toyo Engineering India Limited [2006 (201) E.L.T. 513 (S.C.)], APAR Industries (Polymer Division) Vs Union of India [2016 (333) E.L.T. 246 (Guj.)], Deputy Commissioner of Central Excise, Chennai Vs Dorcas Market Makers Pvt. Ltd.[2015 (321) E.L.T. 45(Mad.)], Shasun Pharmaceuticals Ltd. Vs. Joint Secretary, M.F. (D.R.), New Delhi [2013 (291) E.L.T. 189 (Mad.)] and in the case of Dagger Forst Tools Ltd.[2011 (271) E.L.T. 471 (G.O.I)]. However, no one from the side of the Applicant availed the hearing on 16.03.2018 also and no reason for non availing the hearing is also received from which it is implied that the applicant is not interested in availing the hearing.

4. The government has examined the matter and it is observed that the Applicant has challenged the Order—In—Appeal on several grounds which are already mentioned above. On the other hand, the respondent has opposed the revenue's Revision Application mainly on the grounds that, except issue relating to time limitation, all other grounds advanced in the Revision Application were never raised earlier in the Show Cause Notice issued to them by the Assistant Commissioner, in the Order-In-Original rejecting their claim and Order—In—Appeal allowing their rebate claims. With regard to time limitation, the respondent has claimed that they had filed rebate claims in the month of Feb, 2014 itself and thereafter physically also these were submitted on 06.03.2014 and thus all claims were filled within one year from export of goods. After having examined the Orders issued by the lower authorities, the government is not left with any doubt that the rebate claims were earlier denied on the sole ground that the rebate claims were submitted in the Division Office on 03.04.2014 by which the claims became time barred and thus the respondent has correctly averred that all other grounds barring ground of time limitation, have been raised for the first time. Since the Commissioner(Appeal) has decided this matter in the context of time limitation only and the present proceeding before the government is only revisionary in nature, it is imperative for the Government to decide the correctness of the Order—In—Appeal with reference to the materials provided before Commissioner(Appeal) only and not by considering the fresh arguments pleaded at this stage. Thus, new grounds of Revision such as the goods were not exported directly from factory or the goods exported were beyond 6 months period cannot be raised at this stage. Hence, the Revision Application is being decided only by considering the issue of time limitation only.

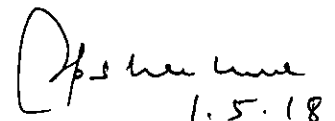
5. As regards the issue whether the respondent had submitted the rebate claim within one year from the export of the goods, it is not denied by the Applicant also that the rebate claims were initially filed electronically on 21.02.2014 and 22.02.2014. However, a point has been raised in the Revision Application that the scheme relating to electronic filling of declaration had not been implemented by that time. But this is self-contradictory on the face of it in as much as if the scheme had not been implemented, then how the respondent was able to submit the rebate claims electronically to the Applicant's office on the above dates the applicant is silent on this point. Further even if the objections regarding electronic filling of rebate claims as raised by the Applicant is accepted as correct, then also it is beyond any doubt that the respondent had filed all three rebate claims on 06.03.2014. While the respondent has claimed throughout that they had submitted all relevant documents along with the rebate claim on 06.03.2014, the Order-In-Original rejecting the rebate claims was passed on the premise that self-attested copy of Shipping Bill, proof of duty payment, Bank Realisation Certificate and declaration regarding self-sealing or departmental sealing were not furnished alongwith rebate claims. But the above named documents demanded by the Assistant Commissioner are not found to be indispensable and are also described vaguely in as much as it is not clear as to which proof of duty payment was required, why a declaration with regard to sealing was required when it could be verified from there ARE-1 itself and why BRC was insisted even when it was not an essential document for sanctioning the rebate claim. Even from demand of self-attested copy of Shipping Bill by the Assistant Commissioner, it is implicit that copies of Shipping Bill had already been submitted along with rebate

claims. It can be further inferred from the Division Office letter 14.03.2014 that all other essential documents like ARE-1, Excise Invoices, Sub invoices, Bonds and Shipping Bill etc. had been furnished by the Applicant along with rebate claim itself. Thus the rebate claims submitted on 06.03.2014 were supported by almost all export documents to establish export of duty paid goods and further if the four listed documents were required by the Assistant Commissioner at all these could be demanded on phone or by writing a simple letter to the respondent at earliest and in the event of non-supplying the same within the specified period the claims could be rejected for non-furnishing of the export related documents. But there was no necessity for returning the rebate claims as such to the respondent at the eleventh hour on 14.03.2014 after wasting 8 days time knowing it fully well that the rebate claims will be time barred from 15.03.2014 itself. Considering these facts, it appears to the government that these claims were returned deliberately with an aim to reject the same subsequently on time limitation. Further in the context of the present case it cannot be accepted that the date of earlier submission of rebate claim cannot be considered at all for limitation purpose and the office of the Assistant Commissioner could return such rebate claims as such merely by mentioning some defects. As mentioned above, in case the specified documents were really required, the same could be demanded from the respondent without returning the claims. But such outright return of rebate claims is certainly hazardous and if this is allowed to be done, there will not be any check and balance over the dealing officers and any rebate claim can be returned on any flimsy ground or no reason. Above all, the respondent has ultimately resubmitted rebate claim on 03.04.2014 along with all required documents and no objection was raised by the Division Office with regard

to maintainability of the rebate claims in reference to compliance of all other conditions specified in Notification No. 19/2004 CE-(NT) dated 06.03.2004. But finally the applicant has considered only the resubmission date of 03.04.2014 as the date of filling of the rebate claim and the earlier filling of rebate claims on 06.03.2014 is completely overlooked to render the whole exercise of seeking documents as futile. But the government does not consider it just and proper as the filling of rebate claims initially on 06.03.2014 is a matter of record and in essence the return of rebate claims on 14.03.2014 for the reason of not providing the forelisted documents was only for demanding these documents only for processing the rebate claims originally submitted on 06.03.2014. Thus, resubmission of rebate claims on 03.04.2014 is in continuation of the initial submission of the claims on 06.03.2014 and thereby the government considers that all the rebate claims were filed by the government well within one year from the export of the goods. The decisions relied upon by the Commissioner(Appeal) in his Order in the cases of M/s R.L. Fine Chem

Vs CCE [2014-TIOL-737-CESTAT-BANG], M/s Bhiwadi Cylinders Ltd. Vs CCE, Jaipur [2011-IST-185-CESTAT-Delhi] and M/s Sasun Pharmaceuticals Ltd. Vs Joint Secretary, M.F. (D.R.), New Delhi [2013(291) ELT 189 (Mad)] and some of the decisions cited by the respondent in their support as mentioned above in Para 3 fully support the Order—In—Appeal.

6. In view of the above discussions, the government does not find any fault in the order of Commissioner(Appeal) and the Revision Application is rejected.


1.5.18

(R.P.Sharma)
Additional Secretary to the Government of India

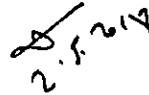
The Commissioner of Central Excise & Service Tax,
C.R. Building, 5-A, Main Road,
Ranchi-834001 (Jharkhand)

ORDER NO.209/17-CE dated 1-5-2018

Copy to: -

1. M/s Bagadiya Brothers Pvt. Ltd., Bagadiya Mansion, Ground Floor, Jawaharnagar, Raipur – 492001.
2. The Commissioner (Appeals), Customs & Central Excise & Service Tax, Room No: 605, Mahabir Tower, Main Road, Ranchi – 834001.
3. The Assistant Commissioner of Central Excise and Service Tax, Mahabir Tower, Behind Glitz Cinemas, Main Road, Ranchi – 834001.
4. PA to AS(RA)
5. Guard File
6. Spare copy

ATTESTED


2.5.2018

(Debjit Banerjee)
S.T.O. (R.A. Unit)