



F.No. 195/627/11-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... 7/5/13

ORDER NO. 226/2014-CX DATED 01.05.2014 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 Act, 1944 against the Order-in-Appeal No.SB(213-214)Th-I/10 dated 10.10.10 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I,

Applicant : M/s Oleofine Organics India (Pvt.) Ltd., Thane

Respondent : The Commissioner of Central Excise, Thane-I

ORDER

This Revision Application is filed by M/s Oleofine Organics India (Pvt.) Ltd., Thane against the Order-in-Appeal No.SB(213-214)Th-I/10 dated 10.10.10 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I with respect of Order-in-Original No.1042/09-10 & 1044/09-10 both dated 7.12.09 passed by the Assistant Commissioner (Rebate) of Central Excise, Kalyan-IV Division.

2. Brief facts of the case are that the applicant had filed two rebate claims by submitting only Form 'C' with the details of rebate with the respondent office on 13.08.2007 and 13.03.2008, under Rule 18 of the Central Excise Rules, 2002, read with Notification No.19/04-CE(NT) dated 06.09.04, as amended. Thereafter, vide letter dated 22.05.2009 and 17.06.2008 respectively, the appellant further furnished the mandatory documents. Since the appellant had filed all the mandatory documents on 22.05.2009 and 17.06.2008 respectively, the date filing of rebate claims will be treated on that particular date. Further, on scrutiny of rebate claims, it was observed that the rebate claims were filed after one year from the date of shipment. The respondent, after going through the case records, rejected both the claims as hit by limitation of time as per Section 11B of the Central Excise Act, 1944. After following due process of law, original authority rejected the two rebate claims of Rs.197729/- and Rs.292151/- as time barred.

3. Being aggrieved by the said orders-in-original, applicant filed appeal before Commissioner (Appeal), who rejected the appeal and upheld impugned orders-in-original.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The applicants beg to differ from the said common Order-in-Appeal passed by the Commissioner (Appeals) without considering the various submissions made in their

appeals and without considering the various decisions so referred and relied upon by them.

4.2 The Applicants humbly submit that they had submitted their rebate claim on 13.8.2007 & 31/03/2008 and certain supporting documents under letters dtd 22.4.2007 & 09/06/2008. There has been no communication from the office of the Assistant Commissioner i.e. the Rebate Sanctioning Authority during the said period nor there is any communication before rejecting Applicants rebate claim under impugned orders-in-original No.R-1042/09-10 & No.R-1044/09-10 both dtd 07/12/2009.

The rebate claim of the Applicants has been rejected without issuing any Show Cause Notice and without granting the Applicants to chance to content their claim on merit. The said order-in-original deserved to be quashed and set aside on the ground that it is passed against the principle of Natural Justice.

4.3 The applicants differ from the said presumption that the rebate claim has been filed on 22.5.2009 & 17/06/2008 and humbly submit that the same has been submitted on 13.8.2007 & 31/03/2008 with all the available documents and the balanced document on receipt from the Custom Authority were submitted on 22.5.2009 & 17/06/2008. The whole proceedings based on said incorrect presumption leading to incorrect findings and incorrect conclusion deserves to be set aside.

4.4 The Applicants humbly submit that goods were cleared from factory on 18.8.2006 & 12/04/2007 and were shipped on 20.8.2006 & 20/04/2007. The original and duplicate copy of ARE-1 along with duplicate copy of excise invoice was detained at the Customs Office due to a Custom case. The said documents were lying with the Custom Authority and after passing of Custom Order No.41/2008/ADC(MS) dtd 28/04/2008 the said original document were received by the Applicants in the month of March 2009 and they were furnished with the Division Office on 22.5.2009 & 17/06/2008. The said document could not be furnished with the rebate claim on 13.8/2007 & 31/03/2008 due to reasons beyond their control.

4.5 The Applicants submit that the rebate claim so filed by them on 13.8.2007 & 31/03/2008 along with all the available documents referred in the statement of fact was filed to safeguard the time period of limitation under Section 11B of Central Excise Act, 1944. In fact in the letter they had clarified that all documents are submitted except the original and duplicate ARE-1 and duplicate excise invoice which would be submitted on receipt of Custom Authority. Under such circumstances the rebate claim has to be considered as filed on 13.8.2007 & 31/03/2008 and the impugned orders holding to the contrary deserve to be quashed.

5. Personal hearing in this case on 11.4.14 at Mumbai was attended by Shri Vinay S.Sejjal, Advocate on behalf of the applicant, who reiterated the grounds of revision application.

6. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned Orders-in-Original and Order-in-Appeal.

7. On perusal of records, Government observes that the instant two rebate claims of Rs.197729/- and Rs.292151/- were rejected as time barred on the ground that thought incomplete rebate claims were initially filed within one year, yet certain documents like ARE-1 original/duplicate copies were filed after expiry of one year. Now, applicant has contested the impugned orders-in-appeal on the grounds stated above.

8. Government notes that the export details and dates of filing rebate claim as discussed in para 8 of order-in-appeal are as under:

"8. In this context, I find the appellant had filed two rebate claims and one case, the appellant filed Form C alongwith ARE-1 Triplicate copy, Bill of Lading, Shipping Bill, Rg23A Part-II, Invoice of major Input, Declaration under their letter head dated 13.8.2007 for the export of goods on 20.8.2006 and subsequently filed the required documents on 22.5.2009 and in another case, the appellant vide letter dated 31.3.2008, filed Form C alongwith self attested copy of ARE-1, for the export of goods on 20.4.2007

and the required documents were filed on 17.6.2008. Since the mandatory documents were filed after the expiry of one year from the date of shipment; the respondent, thereby, rejected the said rebate claims. However, the appellant argued that they had submitted all the available documents on 13.8.2007 and 20.4.2007 and the balance document on receipt from the Customs Authority. On perusal of the Order-in-Original No.41/2008/ADC(MS) dated 28.4.2008, passed by the Addl. Commissioner of Customs, Nhava Seva, it speaks about the fine, penalty and the export promotion copy of the shipping bill no.4529310 dated 19.8.2006 shall be issued, after necessary amendments. But, nowhere speaks about the withholding of the Original and duplicate copy of ARE-1. Further, the order was passed on 28.4.2008 and all the required mandatory documents were filed on 22.5.2009, i.e. after the expiry of one year in terms of Section 11B of the Central Excise Act, 1944."

9. Government notes that the rebate claims are initially filed within one year from the date of export of goods and only certain documents procured from Customs late were submitted after lapse of period of one year. This factual position is not in dispute.

10. Government notes that there are catena of judgment wherein it has been held that time limit to be computed from the date on which refund / rebate claim was originally filed. High Court and CESTA Tribunal, have held in following cases that original refund/rebate claim filed initially within prescribed time limit laid down in section 11B of Central Excise Act, 1944 and the claim resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held time barred as the time limit should be computed from the date on which rebate claim was initially filed.

- (i) CCE Delhi-I Vs. Aryan Export & Ind. 2005 (192) ELT 89 (DEL.)
- (ii) A Tosh & Sons Pvt. Ltd. Vs. ACCE 1992 (60) ELT 220 (Cal.)
- (iii) CCE Bolpur Vs. Bhandiguri Tea Estate 2001(134) ELT 116 (T. Kol.)
- (iv) Good Year India Ltd. Vs.CCE Delhi 2002 (150) ELT 331 (T.Del)
- (v) CCE Pune-I Vs. Motherson Sumi Systems Ltd. 2009 (247) ELT 541 (T. Mum.)

Government of India has also held in a case of M/s IOC Ltd. reported as 2007(220) ELT 609 (GOI) as under:-

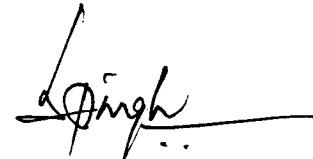
"Rebate limitation-Relevant date-time Limit to be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after remaining defects was submitted section 11B of Central Excise Act, 1944."

In view of above, the said rebate claims cannot be treated as time barred since it was originally filed before department well within the limit period of one year stipulated in section 11B of Central Excise Act, 1944. Government is of considered view that case is required to be remanded back for denovo consideration, for deciding the case on merits.

11. In view of above circumstances, Government sets aside the impugned orders and remands the case back to original authority for deciding the case matter afresh taking into account the above said observations. A reasonable opportunity of hearing will be given to both the parties before deciding the case.

12. Revision application is disposed off in above term.


13. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

M/s Oleofine Organics India (Pvt.) Ltd., Thane
Plot G-1, MIDC, Badlapur
Dist. Thane-421503



GOI Order No. 226/14-CX dated 01.06.2014

Copy to:

1. Commissioner of Central Excise, Thane-I Commissionerate, Navprabhat Chambers, 3rd Floor, Ranade Road, Dadar (West), Mumbai-400028.
2. Commissioner (Appeals), Central Excise Mumbai Zone-I, Meher Building, Dadishet Lane, Chowpatty, Mumbai-400007
3. The Assistant Commissioner of Central Excise (Rebate), Kalyan-IV, 2nd Floor, Bagwandas Mansion, Shivaji Chowk, Kalyan (W)
4. Shri Vinay S.Sejpal, Advocate, 17, Makanji Mansion, Balgovindas Road, Mahim (W), Mumbai-400016
4. Guard File.
- ✓ 5. PS to JS (RA)
6. Spare Copy

ATTESTED



(B.P.Sharma)
OSD (Revision Applicatgion)