

SPEED POST



F.No. 195/03/2020-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... 03/11/21

Order No. 228/2021-CX dated 03-11-2021 of the Government of India, passed by **Sh. 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. 302(CRM)/CE/JPR/2019 dated 22.10.2019 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur.

Applicants : M/s Supreme & Co. Pvt. Ltd., Kolkata.

Respondent : The Commissioner of CGST, Jaipur.

ORDER

A revision application no. 195/03/2020-R.A. dated 23.01.2020 has been filed by M/s Supreme & Co. Pvt. Ltd., Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 302(CRM)/CE/JPR/2019 dated 22.10.2019 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur vide which the Commissioner (Appeals) has upheld the Order-in-Original No. 98/Ref./2018 dated 05.12.2018 passed by the Deputy Commissioner, CGST Division – A, Jaipur.

2. Briefly stated, the Applicants herein had exported certain goods on payment of Central Excise duty, vide ARE-1 No. 03/2014-15 dated 27.09.2014 and Shipping Bill No. 5261973 dated 29.09.2014 and, subsequently, claimed rebate of Rs. 5,80,357/- paid as Central Excise duty on the exported goods, in terms of Rule 18 of the Central Excise Rules, 2002 read with the Notification No. 19/2004 dated 06.09.2014. The rebate claim was rejected by the original authority vide Order-in-Original No. 383/Reb./2016 dated 02.12.2016 on the grounds of limitation. In appeal, the Commissioner (Appeals), vide Order-in-Appeal No. 99(AK)CE/JPR/2017-18 dated 28.03.2018, allowed the appeal with consequential relief. Thereafter, the original authority issued a show cause notice dated 15.11.2018 to the Applicant herein on the grounds that as per the Shipping Bill No. 5261973 dated 29.09.2014, they had claimed drawback under Serial No. 854499A (meant for drawback when Cenvat facility had not been availed) of the Drawback Schedule annexed to the Notification No. 98/2013-CUS (NT) dated 14.09.2013 whereas they had wrongly taken and utilised the Cenvat credit on the goods exported. The original authority, vide Order dated 05.12.2018, disposed of the show cause notice and rejected the

rebate claim on the aforesaid ground. The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals), vide the impugned Order-in-Appeal dated 22.10.2019.

3. The revision application has been filed, mainly, on the grounds that the Commissioner (Appeals) had allowed their appeal with consequential relief vide earlier Order-in-Appeal dated 28.03.2018 which was not appealed against by the department; that, therefore, the department could not have rejected the rebate claim by a subsequent show cause notice on an altogether different ground; that the Rule 18 ibid does not make any reference to the Drawback Schedule thereby implying that rebate is admissible irrespective of whether the goods for export are under category 'A' or 'B' of the Drawback Schedule; that the Drawback Schedule Entry No. 854499 prescribes the same rate of drawback of 2% for both categories, i.e., category 'A' and category 'B'; that, therefore, irrespective of whether Cenvat credit has been utilised or not the same drawback rate applies; that in any case, the Shipping Bill had been amended vide communication dated 02.02.2016 to change the drawback entry under category 'B' instead of category 'A'. Therefore, the rejection of the rebate claim is not sustainable.

4. Personal hearing, in virtual mode, was held on 02.11.2021. Sh. A. K. Das, Counsel appeared for the Applicant and placed on record a written submission dated 22.10.2021. He reiterated the submissions made in the RA and the written submissions dated 22.10.2021. None appeared for the department nor any request

for adjournment has been received. Therefore, the case is taken up for disposal based on records.

5. The Government has examined the matter carefully. It is observed that in the second round of litigation, the instant rebate claim has been rejected on the grounds that the drawback in respect of the exported goods had been claimed under Serial No. 854499A - category 'A' is meant for drawback when Cenvat facility had not been availed, whereas the Applicant herein had, in fact, availed the Cenvat facility. The Applicant has, on the other hand, placed on record a copy of the Amendment Certificate F.No. VIII(20)/329/ICD-KKU/Amend-SB/15/2116 dated 02.02.2016 wherein Deputy Commissioner of Customs, ICD (CONCOR), Kanakpura, Jaipur has permitted amendment in the Shipping Bill No. 5261973 dated 29.09.2014 for drawback under category 'B' instead of category 'A'. Therefore, the very basis of objection of the department to the instant rebate claim has been removed. In this view of the matter, the Government finds that irrespective of rival contentions on the other issues, the rejection of rebate claim cannot be sustained even on the ground finally taken by the department. The Government also notes that this Amendment Certificate was already on the records of the department and finds a specific mention in para 7 of the Order-in-Appeal dated 28.03.2018. Therefore, it was incumbent upon the authorities below to take this position on board rather than proceeding with another round of litigation which was, ab-initio, without any basis, in view of the amendment permitted by the Customs authorities.

7. In view of the above, the impugned Order-in-Appeal dated 22.10.2019 is set aside and the revision application is allowed with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Supreme & Co. Pvt. Ltd.,
33/1, Netaji Subhash Road, Marshal House,
Kolkata – 700001.

G.O.I. Order No. 228/21-CX dated 03-11-2021

Copy to: -

1. The Commissioner of CGST, Jaipur, New Central Revenue Building, Statue Circle, 'C' Scheme, Jaipur – 302005.
2. The Commissioner (Appeals), Central Excise & CGST, Jaipur, New Central Revenue Building, Statue Circle, 'C' Scheme Jaipur – 302005.
3. Sh. A. K. Das, Counsel, FD-469/2, Salt Lake, Kolkata – 700 106.
4. P.S. to A.S. (Revision Application).
5. Guard File.
- ✓ 6. Spare Copy

ATTESTED



(लक्ष्मी राघवन)
(LAKSHMI RAGHAVAN)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi