

SPEED POST
REGISTERED POST



**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India**
8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005

F. NO. 198/27/WZ/17-RA / 8431

Date of Issue: 01.04.2023

ORDER NO 240/2023-CX (WZ) /ASRA/Mumbai DATED 26.04.2023 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : The Commissioner of Central Excise, Mumbai V

Respondent: M/s Periclave,
63-A, Kandivali Co-op Industrial Estate,
Charkop, Kandivali (East), Mumbai 400 067

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. SK/33/M-IV/2016 dated 24.11.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai-I.

ORDER

This Revision Application is filed by Commissioner of Central Excise, Mumbai - V (hereinafter referred to as the "Applicant-department") against the Order-in-Appeal No. SK/33/M-IV/2016 dated 24.11.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai-I.

2.1. Brief facts of the case are that the Respondent filed a rebate claim for Rs. 3,67,147/-for goods cleared for export on payment of Central Excise duty, the details of which are as under:

Sr.No	ARE1No. and date	Shipping Bill No and date	Date of shipment	Date of payment of duty	Date of filing rebate claim	Amount of rebate claimed
1	02/14-15 dated 27.08.2014	4799908/ 03.09.2014	24.09.2014	13.09.2014	03.12.2014	3,67,147

2.2. On scrutiny of the rebate claim it was observed that the rebate claim was not admissible as the duty payable was paid after the date of export. Pursuant to following the provisions of the law, the adjudicating authority i.e the Assistant Commissioner, Central Excise, Kandivali Division, Mumbai IV, vide Order-in-Original No. 57-R/L/AC/KDN/2015 dated 20.04.2015 rejected the rebate claim on the grounds that the Respondent had removed the goods for export without payment of duty and thus contravened the provisions of Rule 18 of the Central Excise Rules, 2002 read with Notification No 21/2004-CE(NT) dated 06.09.2004.

3. As errors were noticed in the impugned Order-in-Original, corrigendum dated 24.06.2015 was issued correcting the date of filing rebate claim to 03.12.2014 instead of 03.12.2015, date of Central Excise invoice to 27.08.2014 instead of 28.08.2014, date of shipment to 24.09.2014 instead of as 09.09.2014 and manner of payment of duty to PLA account instead of Cenvat account.

4. Being aggrieved by the Order-in-Original, the Respondent filed an appeal before the Commissioner of Central Excise (Appeals), Mumbai-I. The

Appellate Authority vide Order-in-Appeal No. SK/33/M-IV/2016 dated 24.11.2016, allowed the appeal and set aside the Order-in-Original.

5. Being aggrieved with the impugned Order-in-Appeal, the Applicant-department filed the Revision Application on the following grounds:

5.1. That one of the conditions relating to export is that the export shall be made after payment of duty on the excisable goods, directly from a factory or warehouse;

5.2. That the condition 'payment of duty' is satisfied once the exporter records the details of removals in the Daily Stock Account whereas the duty may be discharged on a monthly basis and That in the instant case, the Respondent has neither paid the duty on the goods exported at the time of removal nor on or before the due date i.e 05.09.2014 for payment of duty but has made late payment;

5.3. That, as held in Writ Petition No (C) 2469/2014 in the case of M/s Sandhar Automotives vs. Jt Secy. Deptt of Revenue, GOI, the mandatory conditions for availing the rebate cannot be waived on any equitable consideration and that sub rule (3) of Rule 8 of the Central Excise Rules only provides for payment of interest if excise duty is not deposited within the specified time, however delayed payment of interest on delayed payment after goods have been cleared cannot be construed to mean that the condition of payment of duty prior to export of goods has been complied;

Under the circumstances, the Applicant-department prayed to set aside the Order-in-Appeal and restore the Order-in-Original.

6. The Respondent filed their reply to the Revision Application as under:

6.1. That the Show Cause Notice dated 03.03.2015 and the impugned Order dated 20.04.2015 proceeds on the mistaken belief/interpretation that duty was paid after the date of export;

6.2. That the Appellate Authority, vide his Order dated 24.11.2016, has correctly recorded that the goods were exported only on 24.09.2014, i.e. payment was made prior to the date of export and thus there was no contravention of the Rules;

6.3. That the impugned Order dated 20.04.2015, nowhere states that rebate claim is rejected as payment was paid after the due date (i.e. 05.09.2014) nor has this ground been taken up before the Appellate authority and thus no such new ground can be added in Revision;

6.4. That the Revision Application erroneously relies on the Judgment of the Hon'ble Delhi Court in the case of M/s Sandhar Automotives vs. Jt Secy. Dept. of Revenue GOI in WP(C)/2469 of 2014 as in the said case the Excise Duty was clearly paid beyond the period of thirty days from the due date and the provisions of Rule 8(3A) clearly deem that such goods have been cleared without excise duty and the Rebate Claim was rejected in that case and that in the resent case, excise duty has been paid prior to export and there has not been any breach of Rule 8(3A) and hence, the aforesaid Judgement of M/s Sandhar Automotives has no applicability to the facts of the present case.

Under the circumstances the Respondent prayed that the Revision Application be dismissed.

7. Personal hearing in the case was scheduled for 13.10.2022 or 03.11.2022, 09.12.2022 or 23.12.2022, 12.01.2023 or 23.01.2023, 10.02.2023 or 17.02.2023. Mr Zoru Bhathena, proprietor and Mr C.M.Salian Accountant of the Respondent, appeared for the personal hearing on behalf of the Respondent and reiterated their earlier submissions. They further submitted that duty was paid on 13.09.2014 and the goods were exported on 24.09.2014 and thus duty being paid before export of goods, there should have been no dispute. They further submitted that grounds on (i) duty paid after export is incorrect (ii) duty was paid after 05.09.2014 for which interest was paid from 05.09.2014 to 13.09.2014 (iii) judgement quoted is not applicable. They requested to uphold the order of Commissioner (Appeals).

No one appeared for the personal hearing on behalf of the Applicant-department.

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

8.1. Government observes that in the instant case the rebate claim was rejected by the Original Adjudicating Authority on the grounds that the duty was paid after the date of export which was not as per the provisions of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004 C.E. (N.T) dated 06.09.2004. Government further observes that subsequent to the issue of the corrigendum by the original adjudicating authority by which the date of export was corrected to read as 24.09.2014, the Appellate Authority correctly held that the duty was paid on 13.09.2014 whereas the goods were finally exported on 24.09.2014 and therefore they are eligible to claim rebate. The Appellate Authority at Para 8 of the OIA has stated as under:

"8. I observe it is not in dispute that the goods covered under the impugned rebate claim have been exported and all other documents as stipulated under the notification 19/2004-CE dated 06.09.2004 are submitted along with the rebate claim. The only question remains is to ascertain whether said goods were exported without payment of duty or otherwise. From the Corrigendum to the impugned order dated 24.06.2015, issued by the adjudicating authority, the date of shipment stands corrected as 24.09.2014, whereas appellant had paid Excise duty of Rs. 3,67,147/- vide PLA Entry No.68/36 dated 13.09.2014 on the said goods exported. As per Section 11B (a) (i) of the C. Excise Act, 1944, relevant date in case of goods exported out of India by sea or air, is date on which the ship or the aircraft in which such goods are loaded, leave India. I, therefore find that the date of shipment in the instant case is actual date export i.e 24.09.2014. Since appellant paid duty on goods exported on 13.09.2014 i.e prior to export, they are rightly eligible for grant of rebate on the impugned A.R.E.1"

8.2. As regards the additional issue raised in the Revision Application of the duty having been paid after the due date, Government notes that the

Respondent in the personal hearing has stated that the interest for the period 05.09.2014 to 13.09.2014 had been paid.

9. Government holds that the rejection of the rebate claim, solely on the mistaken ground that the duty was paid after the date of export, which was not as per the provisions of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004 C.E. (N.T) dated 06.09.2004, while the facts of the case as reflected in the Order-in-Appeal points out to the contrary, is not just and proper.

10. In view of the above discussion, Government upholds the impugned Order-in-Appeal No. SK/33/M-IV/2016 dated 24.11.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai-I and rejects the Revision Application.

11. The Revision Application is dismissed as being devoid of merit.


(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 240/2023-CX (WZ) /ASRA/Mumbai DATED 26.04.2023

To,

1. The Commissioner of CGST, Thane Commissionerate, 3rd & 5th Floor, ACCEL House, Road No. 22, Wagle Industrial Estate, Thane (West), 400 604.

Copy to:

1. M/s Periclave, 63-A, Kandivali Co-op Industrial Estate, Charkop, Kandivali (East), Mumbai 400 067
2. The Commissioner of CGST, Thane Appeals, 12th Floor, Lotus Info Centre, Near Parel Station (East), Mumbai 400 012
3. Sr. P.S. to AS (RA), Mumbai
4. Notice Board