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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, Cuffe Parade,
Mumbai- 400 005

F.No.195/12/2014-RA / 425

Date of Issue:

~~07.2021~~
12.08.2021

ORDER NO. 254 /2021-CX (WZ)/ASRA/MUMBAI DATED 28.07.2021
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.

Applicants : M/s Rollwell Forge Limited,
Survey No. 239/1, Behind GEB Substation,
National Highway 8B,
Village Shapar- (Veraval)-
Rajkot- Gujrat-360 024.

Respondents : Commissioner of CGST, Rajkot.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. RJT-EXCUS-
000-APP-407-13-14 dated 30.09.2013 passed by the
Commissioner of Central Excise (Appeals-I), Rajkot.

ORDER

This Revision Application is filed by M/s Rollwell Forge Limited, Survey No. 239/1, Behind GEB Substation, National Highway 8B, Village Shapar (Veraval)- Rajkot- Gujrat-360 024 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. RJT-EXCUS-000-APP-407-13-14 dated 30.09.2013 passed by the Commissioner of Central Excise (Appeals-I), Rajkot.

2. The issue in brief is that the applicants had cleared 3982 pieces of Carbon Steel Forged Flanges for export under cover of ARE-1 No. 109 dated 31.10.2010 and filed the claim of rebate on 28.11.2011 for Rs. 1,31,849/- (Rupees One Lakh Thirty-One Thousand Eight Hundred Forty-Nine Only) in respect of the Central Excise Duty paid on exported goods. The impugned goods were cleared under Shipping Bill No. 1748408 dated 01.11.2010 and the Customs Authority granted Let Export Order on 02.11.2010 to allow the export goods to be shipped on vessel ASTERIA Voyage No. 03. However, the goods cleared for export were not allowed clearance by the Canadian Customs Department on account of lapses in fumigation compliance and therefore, the Container No. MEDU 298714(7) was re-imported vide Bill of Entry No.330905 dated 27.04.2011 at Mundra SEZ Port, Mundra. After completion of fumigation treatment, the said container was again exported under Shipping Bill No. 3793467 dated 24.05.2011. On completion of such export, the impugned rebate claim was submitted to the department. The rebate sanctioning authority vide Rebate Order No. 1778 dated 09.11.2012 issued under F. No. V/18-1128/REF/2012 rejected the impugned rebate claim on the grounds that the same was time barred in terms of Section 11B of the Central Excise Act, 1944.

The rebate sanctioning authority observed that the export goods cleared under cover of ARE-1 No. 109 dated 31.10.2010 were exported which sailed and left India on 05.11.2010, whereas the applicant filed rebate claim only on 28.11.2011, therefore, the said rebate claim is time barred.

3. Aggrieved by the Order in Original, the applicants filed an appeal before the Commissioner of Central Excise (Appeals-I), Rajkot. The appellate authority vide Order in Appeal No. RJT-EXCUS-000-APP-407-13-14 dated 30.09.2013 upheld the Original Order. The appellate authority while passing the impugned Order in Appeal observed that :-

- a) Even if the date of exportation is considered as 06.06.2011, the provisions of Notification No. 19/2004-CE dated 06.09.2004 had been violated and breached in as much as the applicant could not produce the proof to the effect that the goods cleared from the factory gate under cover of above said ARE-1 were exported within period of six months.
- b) This apart it was evident that when the goods had been exported on the first occasion through in MSC Discovery Voyage 11R, the applicant had failed to produce the documents relating to proof of export of the same. Instead of producing the proof of export, the same goods had been stated to have been re-imported on account of denial by the Canadian Customs on the grounds of fumigation non-compliances. Therefore, on the very same ground, the applicant's appeal was not sustainable.
- c) Notwithstanding above, presuming that in the first condition when the goods covered under ARE-1 No. 109 dated 31.10.2010 were exported and left India on 05.11.2010. The applicant had filed the rebate claim on 28.11.2011. Therefore, the said rebate claim was time barred in terms of Section 11B of the Central Excise Act, 1944, as rightly held by the lower authority in his impugned order. In the second eventuality, presuming that when the export goods covered under ARE-1 No. 109 dated 31.10.2010 were exported and left India on 06.06.2011, after re-import and proper Bill of Entry for warehousing had been filed by the applicant, in that condition, also as observed, the applicant had failed to comply with the provisions of Notification No. 19/2004-CE (NT) dated 06.09.2004 especially condition (ii) of the said Notification pertaining to exportation of goods within six months from the date on which they were cleared for export from the factory, nor they applied to the competent authority for extension of time limit.

4. Aggrieved by the impugned Order in Appeal, the applicant have filed the instant Revision Application on the following grounds :-

a) The appellate authority had erred in rejecting the refund on the ground that the goods under consideration were not exported within the period of limitation and hence is barred by limitation. The goods cleared with the payment of duty were re-imported and if the said goods had been brought within the factory premises then the duty paid would have been allowed as credit under Rule 16 of Central Excise Rules, 2002 and on re-export the said duty could have been utilized for payment of duty and the department would have sanctioned the refund.

b) The refund as claimed cannot be treated as bared by limitation and the applicant had not violated any of the provisions of Notification No. 19/2004-CE (NT) dated 06.09.2004 and the defect if any was of procedural in nature and therefore, the same was ought to have been condoned and the refund as claimed was ought to have been sanctioned.

5. The personal hearings in the matter were fixed on 17.04.2018, 05.12.2019, 12.12.2019, 07.01.2021, 14.01.2021, 21.01.2021 12.02.2021, 18.03.2021 and 25.03.2021. However, the neither the applicant nor their representative attended any of the hearings fixed as above. The department vide letter dated 03.12.2019 furnished their submissions in the matter and further vide letter dated 18.03.2021 expressed their inability to attend the hearing in virtual mode and reiterated that the department stand already furnished may be relied upon. Since sufficient opportunities have been offered to the applicant for personal hearing, the Government takes up the matter for decision on the basis of the documents available on records.

6. 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.

7. Government observes that in the instant case, the applicants had procured the duty paid goods from different manufacturers and said goods were exported under the ARE-1s from their premises i.e. dealer's premises. The rebate claim filed by the applicants under Rule 18 of the Central Excise Rules, 2002 in respect of impugned goods was rejected by the Rebate Sanctioning Authority for the reasons as discussed in the foregoing paras. The appeal filed by the applicants against impugned Order in Original was rejected by the Appellate Authority. As such, the applicants have filed the instant Revision Application contesting the impugned Order in Appeal on the grounds as mentioned in the forgoing paras.

8. The Government finds that in the instant case, the goods were cleared for export under ARE-1 No. 109 dated 31.10.2010. The Customs Authority cleared the consignment under Shipping Bill No. 1748406 dated 01.11.2010 and as per the endorsement thereof the Let Export Order dated is found to be 02.11.2010. It is further noted that the impugned goods were not allowed clearance by the Canadian Customs Department on account of lapses in fumigation compliance and therefore, the Container No. MEDU 298714(7) was re-imported vide Bill of Entry No.330905 dated 27.04.2011 at Mundra SEZ Port, Mundra. After completion of fumigation treatment, the said container was again exported under Shipping Bill No. 3793467 dated 24.05.2011. On completion of such export, the impugned rebate claim was submitted to the department on 28.11.2011.

8.1 The Government notes that Section 11B of the Central Excise Act, 1944 is significant in the instant case. Therefore, the Government deliberates upon the issue of "relevant date" for the purpose of calculating the stipulated period of one year for making the prescribed application of rebate claim herein. In this

regard, the statutory provisions of Section 11B (1) and 11B (5) of Central Excise Act, 1944 are as under :

“Section 11B : Claim of refund of duty. - (1) Any person claiming refund of duty of excise may make an application for refund of such duty to the Assistant Commissioner Central Excise & Deputy Commissioner of Central Excise before expiry of one year from the relevant date.....”

Section 11B (5) - Explanation (A) :

'Refund' includes rebate of duty of excise on excisable goods exported out of India or excisable materials used in the manufacture of such goods.

Section 11B(5) - Explanation (B) :

“relevant date” means -

(a) in case of goods exported out of India where a refund of excise duty is available in respect of goods themselves or as the case may be, the excisable materials used in the manufacture of such goods -

(i) if the goods are exported by Sea or Air, the date on which the ship or aircraft in which such goods are loaded leaves India, or

(ii)

(iii)....”

8.2 In view of above. Government notes that the time limitation period of one year stipulated under Section 11B(1) is to be computed from the relevant date on which the ship carrying load of impugned export goods left India. In the instant case, the goods were initially cleared for export under Shipping Bill No. 1748408 dated 01.11.2010 wherein the Let Export Order date endorsed by the Customs Authority was 02.11.2010. The fact that the customs authority had allowed the re-import of impugned goods substantiates that the export of the goods had taken place on 02.11.2010 and the transaction was qualified for claim of rebate under Rule 18 of the Central Excise Rules, 2002. Subsequent re-entry of the goods in India was covered under re-import of the exported goods on various grounds i.e. compliance of fumigation process in the instant case. In this regard, it is found that the procedure for re-import of

goods exported under claim of rebate has been laid down under various notifications and the applicant were expected to ensure strict compliance of the conditions attached to the said Notifications. However, it is observed that the applicant had failed to comply with such procedure laid down under the relevant notifications at the time of re-import of impugned goods. In view of above, the Government holds that the relevant date of export in the instant case was 02.11.2010. Further, since the condition of limitation of filing the rebate claim within one year under Section 11B of the Central Excise Act, 1944 is a mandatory provision and the impugned rebate claim was filed on 28.11.2011 i.e. beyond the period of one year from the relevant date i.e. 02.11.2010, the rebate claim was hit by time limit stipulated under Section 11B of the Central Excise Act, 1944. The Government, therefore, holds that the impugned rebate claim was correctly rejected by the rebate sanctioning authority.

9. In view of the above, Government does not find any infirmity in the Order-in-Appeal No. RJT-EXCUS-000-APP-407-13-14 dated 30.09.2013 and, therefore, upholds the impugned order in appeal.

10. The Revision Application is disposed off on above terms.

Shrawan
28/07/21
(SHRAWAN KUMAR)

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

ORDER No. 254 /2021-CX (WZ)/ASRA/Mumbai DATED 28 .07.2021.

To,
M/s Rollwell Forge Limited,
Survey No. 239/1, Behind GEB Substation,
National Highway 8B,
Village Shapar- (Veraval)-
Rajkot- Gujrat-360 024.

Copy to:

1. The Principal Commissioner of GST & CX, Rajkot, Central GST Bhavan, Race Course Ring Road, Rajkot- 360001.
2. The Commissioner of GST & CX (Appeals), Rajkot, 2nd floor, Central GST Bhavan, Race Course Ring Road, Rajkot- 360001.
3. The Deputy Commissioner, Rajkot Division II, 2nd floor Central GST Bhavan, Race Course Ring Road, Rajkot- 360001.
4. ~~Sr. P.S. to AS (RA), Mumbai~~
5. ~~Guard file.~~
6. Spare Copy.