F.No.195/657/06-RA

REGISTERED
SPEED POST

F.No. 195/657/06-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 22/8/13

ORDER NO. 287/2013-Cx DATED 21.03.2013 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	:	Order in revision application filed under Section 35 EE of the Central Excise Act, 1944 against the order-in-appeal No.337-346 (HKS)/CE/JPR-II/2006 dated 31.5.06 passed by Commissioner of Custom & Central Excise, (Appeals-II), Jaipur.
Applicant	:	Banswara Syntex Ltd. Banswara
Respondent	:	Commissioner of Central Excise, Jaipur-II

****

ORDER

This revision application is filed by M/s. Banswara Syntex Ltd., Banswara against the Order-in-Appeal No.337-346 (HKS)/CE/JPR-II/2006 dated 31.5.06 passed by Commissioner of Customs & Central Excise, (Appeals), Jaipur with respect to order-in-original No.37-38/06 dated 2.2.06 passed by Deputy Commissioner of Central Excise, Chittorgarh Division.

2. Brief facts of the case are that the applicants are engaged in manufacture of manmade blended yarn falling under Chapter 54 & 55 of Schedule to the Central Excise Tariff Act. They were issued two show cause notices both dated 24.8.04 in which it was alleged that an amount of Rs.196422/- had been erroneously sanctioned and paid to them due to reason that they had paid duty on FOB value (including local freight) instead of transaction value and thus they had made encashment of cenvat credit by way of paying duty on local freight charges. After due process of law the original authority confirmed the demand with interest in terms of Section 11A of Central Excise Act 1944 read with Section 11AB of the Act ibid. He however gave option to the applicants to take cenvat credit of an equal amount of Rs.196422/- after deposit of the same through TR-6 challan.

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

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

4.1 According to the department rebate to the extent of Rs.1,96,422/- is demanded back because duty was paid on local freight from factory to port rather than transaction value at factory gate. The clearance was made under the signature of Range Superintendent and Inspector and the value in this regard was accepted by the Range. There is no dispute that the duty of Rs.196244/- was paid by the

applicant at the time of removal and the range office has not challenged payment of such duty and therefore the rebate sanctioning authority does not have any jurisdiction to reject the rebate claim for the reason that duty was paid on a value in excess than the transaction value. The Circular No.510/06/2000-CX dated 03.02.2000 of the Board which states that if duty is paid, rebate has to be allowed equivalent to the duty paid. It further states that the duty element shown in AR-4 has to be rebated. There is no question of re-quantifying the amount of rebate by sanctioning authority. It is also clarified in the Circular that the rebate sanctioning authority should not examine the correctness of assessment.

4.2 Various circulars, which have been issued from time to time would clearly show that even if the duty on the final product exported has been paid by debit of the cenvat credit account or Modvat account, the rebate has to be sanctioned in cash only. The impugned order which has failed to take into consideration the aforesaid binding circulars of the Board is therefore unsustainable and liable to be set aside.

4.3 Rebate of duty paid is to be granted and not that of duty payable. Without prejudice to above, it is submitted that the provisions of rebate are contained in Rule 18. The applicant has filed rebate claim under Rule 18. Rule 18 inter-alia provides that where any goods are exported, rebate of duty paid on such excisable goods shall be granted. Such rebate shall be subject to such conditions or limitations and fulfilment of such procedure as may be specified in the Notification No.19/04-CE(NT) dated 06.09.04. So according to Rule 18 rebate has to be granted if excise duty is paid and goods are exported and conditions mentioned in the Notification No. 19/04 are fulfilled. In the present case there is no allegation at all about not fulfilling of any of the conditions as specified in Rule 18 read with Notification No. 19/04. The applicant paid excise duty as evidenced in relevant ARE-1. The export took place as per proof of export submitted and all other conditions have been fulfilled. In such circumstances denying of a valid rebate claim is unjustified and illegal. It is a settled principle of law that duty actually paid is to be rebated and that too in cash. If it is established that duty was paid then rebate cannot be denied on the ground that duty was wrongly paid or paid in excess than what was payable.

Case laws relied upon by the applicants are:

- UOI Vs. Kamalakshi Finance Corporation Limited 1991 (55) ELT 433 (S.C.)
- Ranadey Microneutrients Vs CCE 1996 (87) ELT 19 (SC)
- Grasim Industries Limited VS. CCE 1996 (82) ELT 457 (Madras H.C.)
- CCE Vadodara Vs Dhiren Chemical Industries 2002 (139) ELT 3(SC)
- Bharat Chemical Vs CCE Thane 2004 (170) ELT 568

5. Applicant has produced copy of order dated 14.2.13 in W.P.No.1066/2013 in the case of Banswara Syntex Ltd. Vs UOI passed by Hon'ble High Court of Judicature for Rajasthan at Jodhpur. In the said order, Hon'ble High Court has directed this authority to decide the revision application pertaining to orders-in-original No.37-38/06-CE (Delhi) dated 31.1.06 as stated in recovery notice F.No.V(55)04-66/2004/PE/308 dated 2.1.13 of Deputy Commissioner, Central Excise, Chittorgarh. Applicant vide letter dated 7.3.13 has clarified that they had filed a revision application RA No.649-657/06 against common O-I-A No.337-346 (HKS)/CE/JPR-II/2006 dated 31.5.06 which was passed in respect of 9 order-in-original. They had vide letter dated 14.11.07 withdrawn 8 Revision Applications only and had not withdrawn one revision application with reference to order-in-original No.37-38/06-CE dated 31.1.06. In view of Hon'ble High Court order dated 14.2.13, the said revision application is now taken up for decision.

6. Personal hearing scheduled in this case on 7.3.2013. Shri Om Prakash Sharma, Manager appeared on behalf of the applicant who reiterated the grounds of revision application.

7. Government has carefully gone through the relevant case records and peruse the Impugned Order-in-Original and Order-in-Appeal.

8. On perusal of records, Government notes that the original authority observed that the applicants were entitled for cash rebate to the extent of duty paid by them on transaction value of the export goods in terms of Section 4(1)(a) of Central

Excise Act 1944 and the excess duty paid on account of local freight charges had to be allowed as cenvat credit. He accordingly confirmed the demand of erroneously sanctioned rebate with interest giving option to the applicants to take cenvat credit of an equal amount of Rs.196422/- after deposit of the same through TR-6 challan. The Commissioner (Appeals) has upheld the impugned orders-in-original. Now the applicants have filed these revision applications on the grounds stated at para (4) above.

9. Government observes that the relevant statutory provisions for determination of value of excisable goods are as under:-

9.1 As per section 4(1) (a) of Central Excise Act, 1944 where duty of excise is chargeable on any excisable goods with reference to their value, then on each removal of said goods such value shall:

(a) In a case where the goods are sold by the assessee, for delivery at time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value.

(b) In other case, including the cases where the goods are not sold be the value determined in such manner as may be prescribed.

9.2 The word 'Sale' has been defined in Section 2(h) of the Central Excise Act, 1944, which reads as follows:

" 'Sale' and 'Purchase' with their grammatical variations and cognnate expression, mean any transfer of the possession of goods by one person on another in ordinary course of trade or business for cash or deferred payment or other valuable consideration."

9.3 Place of Removal has been defined under Section 4(3)(c) (i),(ii), (iii) as:

(i) A factory or any other place or premises of production of manufacture of the excisable goods;

(ii) A warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) A Depot, Premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory.

9.4 The rule 5 of Central Excise Valuation (Determination of Price of Excisable Goods) rules, 2000 is also relevant which is reproduced below:-

"Rule 5. Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal upto the place of delivery of such excisable goods.

Explanation 1. – "Cost of transportation" includes –

(i) The actual cost of transportation; and

(ii) In case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

Explanation 2. - For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purpose of determining the value of the excisable goods."

9.5 Further, CBEC vide it (Section) 37B order 59/1/2003-CX dated 03-03-2003 has clarified as under:-

"7. 'Assessable value' is to be determined at the "place of removal". Prior to 1-7-2000, "Place of removal" [section 4(4)(b), sub-clauses (i),(ii) and (iii)], was the factory gate, warehouse or the depot or any other premises from where the goods were to be sold. Though the definition of "place of removal" was amended with effect from 1-7-2000, the point of determination of the assessable value under section 4 remained substantially the same. Section 4(3) (c) (i) [as on 1-7-2000] was identical to the earlier provision contained in section 4(4)(b)(i), section 4 (3)(c)(ii)

was identical to the earlier provision in section 4(4)(b)(ii) and rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, took care of the situation covered by the earlier section 4(4)(b)(iii). In the Finance Bill, 2003 (clause 128), the definition "place of removal" is proposed to be restored, through amendment of section 4 to the position as it existed just prior to 1-7-2000.

8. Thus, it would be essential in each case of removal of excisable goods to determine the point of "sale"."

10. From above, it is clear that expenses incurred upto the place of removal/point of sale are includible in the value determined under Section 4 of Central Excise Act 1944. In this case, there is no dispute about place of removal which is stated as port of export where ownership of goods is transferred to the buyer. Applicant's claim that in this place of removal is not factory but the port of export is not disputed by department. Since applicant has included only local freight for transportation of export goods from factory to port of export and not the ocean freight or freight incurred beyond port of export, there is no reason for not considering the local freight as part of value in view of above discussed statutory provisions. As such the demand of duty & interest as confirmed with the impugned orders is not sustainable. Government therefore set aside the impugned orders and holds that initial sanction of rebate claims was in order.

11. Revision application is thus succeeds in terms of above.

12. So ordered.

(D.P. Singh)
Joint Secretary to the Govt. of India

M/s Banswara Syntex Ltd.,
Industrial Area, Dhoad Road
Banswara-327001

Attested

ई. ज. रामेश्वरम/P K. RAMESHWARAM
शिरोष कार्य अधि./OSD-II (RA)
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली / New Delhi

Order No. 287/2013-Cx dated 21.03.2013

Copy to:

1. Commissioner of Central Excise, Jaipur
2. Commissioner (Appeal-II), Customs & Central Excise, N.C.R.B, statue Circle, C-Scheme, Jaipur.
3. Deputy Commissioner of Central Excise & Service Tax Division, Chittorgarh, Rajasthan.
4. PS to JS (RA)
5. Guard File.
6. Spare Copy

ATTESTED

(P.K.Rameshwaram)
OSD (Revision Application)