

**REGISTERED
SPEED POST**



**F.No.195/339-377/12-RA-Cx
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..25/2/14

ORDER NO. 29-67/14-CX DATED 24.02.2014 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 LTU/ITL/03-41/2012/11 dated 5.3.2012 passed by the Commissioner of Central Excise (Appeals), LTU, New Delhi

Applicant : M/s International Tractors Ltd., Vill. Chak Gujran, Jalandhar Road, Hoshiarpur (Pb)

Respondent : Commissioner of Central Excise & Service Tax, New Delhi

ORDER

These revision applications have been filed by the applicant M/s International Tractors Ltd., Hoshiarpur against orders-in-appeal No. LTU/ITL/03-41/2012/11 dated 5.3.2012 passed by the Commissioner of Central Excise (Appeals), LTU, New Delhi.

2. Brief facts of the case are that the applicants are engaged in the manufacture and export of goods falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986). The applicants had exported goods i.e. tractors which attracted Nil rate of Central Excise Duty. The said goods were exported on ARE-2 forms under input rebate claim in terms of rule 8 of Central Excise Rules 2002 read with Notification No.21/2004-CE(NT) dated 06.09.04. They filed rebate claim in the LTU, New Delhi of duty paid on inputs used in the manufacture of goods i.e tractors exported under Notification No. 21/2004-CE(NT) dated 06.09.04. Show cause notices were issued to the applicant on the ground that the applicants have exported the goods under Advance Licence issued under Customs Notification No.93/2004-Cus dated 10.09.04; that as per clause (v) of the Notification ibid the export obligation as specified in the said licence (both in value and quantity terms) is discharged within the period specified in the said licence or within such extended period as may be granted by the Licensing Authority by exporting resultant products, manufactured in India which are specified in the said licence and in respect of which facility under Rule 18 or sub-rule (2) of 19 of the Central Excise Rules, 2002 has not been availed; that since the applicant has exported the goods under Advance Licence and as per the condition of the Advance Licence mentioned above, the applicant is not entitled for rebate claim of duty paid on inputs used in the manufacture of finished goods under Rule 18 of Central Excise

Rules, 2002. After following due process of law, the original authority rejected the rebate claims vide impugned orders-in-original.

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

4. Being aggrieved by these orders-in-appeal, the applicant has filed these revision applications on the following grounds:

4.1 The Commissioner (Appeals) has grossly erred in holding that benefit of duty paid on indigenous materials/inputs used by the petitioner along with other duty free material in the manufacture of export goods i.e. tractors would not be available to the petitioner in view of condition no. (v) of Notification No. 93/2004-Cus dated 10.9.2004 as amended. The Commissioner (Appeals) has failed to appreciate Notification No. 93/2004-Cus dated 10.09.2004 (as amended) which has been issued by the Central Government in exercise of powers conferred under Section 25 (2) grants total exemption from customs duty and additional duty on materials imported under the Advance Licence and used in the manufacture of article of exports of the Customs Act, 1962. The Commissioner (Appeals) ought to have appreciated that the said exemption was conditional i.e. subject to fulfillment of certain conditions as mentioned in the said Notification. In other words, so long as the importer who wants to avail the benefit of said notification, the said importer is required to fulfil conditions as stipulated in the notification failing with the benefit availing under the notification would not be available to the importer. In the present cases, it is submitted that the case of the department in the present proceedings is not to deny the benefit of Notification No. 93/2004-Cus dated 10.09.2004 (as amended) but rejection of the rebate claims filed under Rille 18 of the CER, 2002, which is against spirit of the law laid. That being so the impugned order merits vacation.

4.2 The Commissioner (Appeals) erred in relying upon condition No. (v) of Notification No. 93/2004-Cus dated 10.09.2004 (as amended) to reject the rebate claims of the applicant which were filed under the provisions of Rules 18 of the CER, 2002. The Commissioner (Appeals) ought to have appreciated that rebate claim cannot be denied by relying upon condition No. (v) of Notification No.93/2004-Cus 10.09.2004 (as amended) which only concerns duty free import (raw material) by following the said condition along with other conditions as provided in the said Notification.

4.3 The Commissioner (Appeals) ought to have appreciated that the non-fulfillment of condition no. (v) of the Notification No.93/2004-Cus dated 10.09.2004 (as amended) would only lead to consequence of denying the benefit of exemption granted to the inputs imported under the said Notification. That being so, the same in any event, cannot be used to deny the rebate claim filed under Rule 18 of CER, 2002.

4.4 It is respectfully submitted that the Central Government has issued Notification No. 21/2004-CE(NT) dated 6.9.2004 (as amended) providing for certain conditions and procedures to be followed as specified in the said Notification. Admittedly, applicant has complied with all the conditions and procedures stipulated under the said Notification No. 21/2004-CE(NT) dated 06.09.2004 (as amended), Therefore, the rebate claim has been erroneously rejected.

4.5 The Commissioner (Appeals) has failed to appreciate that CBEC Manual in para 1.5 (Part V) clearly provides for the situations under which the benefits of input stage rebate cannot be claimed, which are as under:-

- (a) Where the finished goods are exported under the claim for Duty Drawback.

- (b) Where the finished goods are exported in the discharged of export obligation under a Value based Advance Licences or a Quantity Based Advance Licences issued before 31.3.1995;
- (c) Where facilities of input stage credit is availed under Cenvat Credit Rules, 2002;
- (d) the market price of the goods is less than the rebate amount.
- (e) the amount of rebate admissible is less than Rs. 500/-.

Admittedly, in the present case, none of the said conditions exists. For this reason also, the rebate of duty paid by the applicant on the indigenous inputs used in the manufacture of Tractors which were ultimately exported, cannot be denied to the applicant.

4.6 Without prejudice to the aforesaid submissions it is to further submit that the applicant is entitled to claim refund on the inputs used in export of tractors as provided under Rule 5 of Cenvat Credit Rules, 2004 as the Government over a number of years has formulated different schemes to neutralize various duties and taxes which go into exports with a motive to effectively compete in the international market for earning Foreign Exchange for the country. In support reliance is placed upon the decisions of the Hon'ble Tribunal:

- a. Punjab Stainless Steel Industries Versus Commissioner of Central Excise Delhi-I [2008 (226) E.L.T. 587 (Tri. -Del.)]
- b. Malbros Stone Exports Versus Commissioner Of C. Ex., Jaipur [2007 (217) E.L.T. 289 (Tri. - Del.)]

5. The cases were listed for personal hearing on 27.1.13 and 30.1.13. Shri Joy Kumar, Advocate and Shri Arvind Kumar Puri, Joint General Manager of the applicant company appeared on behalf of the applicants and reiterated the grounds of revision application. Nobody appeared on behalf of the respondent department.

6. Government has considered oral and written submissions of the applicant as well as respondents, the available case records and also perused the orders passed by the lower authorities.
7. Government observes that the applicant's rebate claims were rejected by the original authority mainly on the ground that applicant exported the said goods in discharge of export obligation as specified in the Advance Licence and as per clause (v) of Notification No.93/2004-Cus dated 10.09.04 as amended by corrigendum F.No.605/50/05-DBK dated 17.5.05, in such cases of export rebate of duty paid on raw materials/inputs used in manufacture of exported goods is not admissible under rule 18 of Central Excise Rules 2002. Commissioner (Appeals) upheld the impugned orders-in-original. Now, the applicant has filed these revision applications on the grounds mentioned in para (4) above.
8. Government notes that the said issue has already been decided vide GOI Revision Order No.09-37/11-Cx dated 18.1.11 (F.No.195/473-501/08) in the applicant's own case. In the said case, applicant had filed revision applications against O-I-A No.371-399/CE/JAL/08 dated 26.8.08 passed by the Commissioner of Central Excise (Appeals-II) Jalandhar.
 - 8.1 The operative portion of said GOI Revision Order dated 18.1.11 is extracted as under:
 - "5. *Govt. has considered both oral and written submissions of both the applicant and the respondent and also perused the orders passed by the lower authorities.*
 6. *From the perusal of records, Govt. observes that the applicant has exported the resultant products to meet the export obligations of the Advance Licence as they had imported raw material duty free under Notification No. 93/2004-Cus dated 10.09.04. They had also procured the indigenous inputs/ material locally on payment of duty which were used in the manufacture of*

exported goods. The applicant admitted that they have used 10% to 15% of the so imported inputs(duty free under Notification No. 93/2004-Cus dated 10.09.04) in the manufacture of impugned exported goods. They had claimed the rebate of duty paid on said indigenous input/material under rule 18 of Central Excise Rules 2002. In this regards, government notes that Advance Licence Scheme is governed by Customs Notification No. 93/04-Cus dated 10.09.04. The Conditions laid down in para V of said Notification as amended vide Corrigendum dated 17.05.05 to Notification No. 93/2004-Cus dated 10.09.04 issued from F.No. 605/50/2005-DBK is as under :-

"The export obligation as specified in the said licence i.e Advance Licence (both in value and quantity terms) is discharged within the period specified in the said licence or within such extended period as may be granted by the licencing authority by exporting resultant products, manufactured in India which are specified in the said licence and in respect of which facility under Rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub rule (2) of Rule 19 of the Central Excise Rules, 2002 has not been availed."

7. The plain reading of said condition makes it clear that rebate of duty paid as raw materials used in the manufacture of resultant products is not admissible under Rule 18 of Central Excise Rules, 2002. In the instant case, the respondent in addition to material imported under Advance Licence had also procured various input material used in the exported goods locally and claimed rebate of duty paid on inputs. The amended condition V of notification No. 93/2004-Cus dated 10-09-04 specifically debars the applicants to avail rebate of duty under Rule 18 (rebate of duty paid on materials used in the manufacture of the resultant product). Government herein is in conformity with the views of Commissioner (Appeals) in this case that such benefit of rebate of duty paid on indigenous materials/inputs used in addition / alongwith impugned duty free material for the manufacture of resultant product exported in discharge of export obligation as per condition of para (v) of the Notification No. 93/04-Cus dated 10.09.04, is not admissible to applicants.

8. *In view of the above discussions and findings, Govt. upholds the impugned order-in-appeal being legal and proper and rejects these revision applications."*

8.2 Government observes that ratio of above order is squarely applicable to these cases as facts of cases are identical.

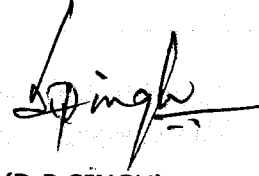
8.3 The cases cited by the applicant are not applicable to the present case since none of the case laws pertain to the Not. No. 93/04-Cus dated 10.09.2004. Hon'ble Supreme Court has held in the case of Mihir Textile Ltd. vs. CCE, Bombay 1997 (92) ELT(SC) that exemption/benefit depending upon satisfaction certain conditions cannot be granted unless such conditions are complied with even such conditions are only directory. Hon'ble Supreme Court has also held in the case of M/s ITC Ltd. Vs. CCE 2004(171) ELT 433 (SC) and in the case of M/s Paper Products Vs CCE 1999 (112) ELT 765 (SC) that plain and simple meaning of the wordings of statute are to be strictly adhered to.

8.4 Applicant has requested during hearing held on 30.1.14 that cases may be kept pending since the writ petition No.15943/11 filed before Hon'ble High Court of Punjab & Haryana against GOI Revision Order No.09-37/11-Cx dated 18.1.11 is still pending. They have also informed that Hon'ble High Court has not granted any stay till date against the said GOI Revision Order. In this regard, Government observes that applicant had filed writ petition in 2011 and no stay has been granted by Hon'ble High Court till date. As such there is no reason to keep the case pending.

9. In view of above position, Government holds that Commissioner (Appeals) has rightly disallowed the said input rebate claims in view of para (v) of Notification No.93/04-Cus dated 10.9.04 as amended vide corrigendum F.No.605/50/2005-DBK dated 17.5.2005. Government do not find any infirmity in the said orders-in-appeal and therefore upholds the same.

10. The revision applications are rejected being devoid of merit.

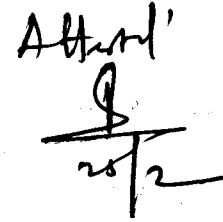
11. So ordered.



(D.P.SINGH)

JOINT SECRETARY TO THE GOVT. OF INDIA

M/s International Tractors Ltd.,
Vill. Chak Gujuran,
Jalandhar Road,
Hoshiarpur (Pb.)



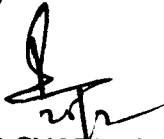
(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
दिल: मंत्रालय (राजस्व विभाग)
Ministry of Finance (Dept. of Rev.)
भारत सरकार/Govt. of India
पद दिल्ली/New Delhi

Order No. 29-67/2014-Cx dated 24.02.2014

Copy to:

1. Commissioner of Central Excise & Service Tax, Large Tax Payee Unit, NBCC Plaza, Pushp Vihar, Saket, New Delhi-110017
2. Commissioner (Appeals-I) Central Excise & Service Tax, Large Tax Payee Unit, NBCC Plaza, Pushp Vihar, Saket, New Delhi-110017.
3. Asstt. Commissioner of Central Excise, Division Phagwara.
4. PS to JS(RA)
5. Guard File.
6. Spare copy.

ATTESTED



(B.P.SHARMA)
OSD (Revision Application)