

REGISTERED
SPEED 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, Cuffe Parade,
Mumbai- 400 005

F. No. 198/26/17-RA/1247 Date of Issue: 28.03.2022

ORDER NO. 313/2022-CX (WZ)/ASRA/MUMBAI DATED 24.03.2022
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 : Commissioner of Central Excise, Mumbai-IV

Respondent : M/s. Gala Shrink Fit

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
SK/32/M-IV/2016 dated 22.11.2016 passed by
Commissioner (Appeals), Central Excise, Mumbai-I.

ORDER

This Revision Application is filed by Assistant Commissioner of Central Excise, Kandivali Division, Mumbai-IV (hereinafter referred to as "the Applicant" against Order-in-Appeal No. SK/32/M-IV/2016 dated 22.11.2016 passed by Commissioner (Appeals), Central Excise, Mumbai-I.

2.1 Brief facts of the case are that M/s. Gala Shrink Fit, 15, ABCD Government Industrial Estate, Kandivali (West), Mumbai - 400067 (hereinafter referred to as the Respondent) had exported 9574 pcs of 'Heat Shrinkable Components' falling under Ch. 85 of the Central Excise Tariff Act, 1985 on payment of duty, and had filed a rebate claim for a total amount of Rs.1,76,032/-. On verification of the said rebate claim, it was noticed that, 3799 Pcs of goods which were shown on the second page of the Commercial Invoice were not covered in corresponding ARE-1 No. 220/2013-14 and Excise Invoice No. 220 both dated 26.02.2014. The respondent had issued another Excise Invoice No.63 dated 15.07.2014, for clearance of 3799 Pcs of goods. Therefore, the rebate sanctioning authority sanctioned an amount of Rs.97,920/- only (for 5776 Pcs) against the claim of Rs.1,76,032/- and rejected remaining amount of Rs.78,112/- (for 3799 Pcs), as the invoice No.63 dated 15.07.2014 issued by the claimant for export of the balance quantity of goods was not mentioned on the export documents dated 26.02.2014.

2.2 Aggrieved, the respondent filed an appeal, which was allowed by the Commissioner (Appeals) vide impugned Order-in-Appeal interalia on the basis of following findings:

"the goods cleared were on 18 nos. pallets having gross weight 2137.22 Kgs and net weight 1592.200 Kgs., valued at Rs.17,09,052/- (USD 27,587.60) and exported under Shipping Bill No.1276652 dated 26.02.2014 on vessel name Athens Trader. The said Shipping Bill is having reference of ARE-I No.220 dated 26.02.2014 of exporter appellant, Kandivali Dn., Mumbai-V, export invoice No.C/E/215/13-14

dated 24.02.2014 and Mate Receipt No. 118297 sailed on 14.03.2014. Vice-versa, the details of goods shown on Mate receipt, match with the same shown in Shipping Bill and corresponding ARE-I. Further the Sea Way Bill No.BOM148234036 dated 14.03.2014 of M/s. Pyramid Lines confirmed that the 1-18 (18 Pallets) content 160 c/boxes shipped in the container No.BAXU9672668 matches with the same shown in Shipping Bill. From the above, it is confirmed that the goods viz., Heat Shrinkable Components (CSH No.85469010) in total quantity 9574 pieces valued Rs.17,09,052/- were exported from Nhava-Sheva port to the port of discharge Jebel Ali on 14.03.2014. Vide letter dated 22.07.2014 submitted to the jurisdictional AC, the appellant informed about their mistake and their issue of supplementary invoice and payment of differential duty with interest. They further submitted that, mistake is bonafide since the full quantity has been exported and full amount has been realized. The appellant vide their further letter dated 20.09.2016, submitted a copy of BRC for full payment, USD 27,587.60 for export consignment. They further stated that, the respondent not called for their defense or no personal hearing was given to them and such act is violation of principal of natural justice. Had the opportunity been given the appellant to be heard, the matter would have been settled earlier."

3.1 Hence, the Applicant filed the impugned Revision Application mainly on the grounds that:

- i) The rejected rebate claim of Rs.78,112/- is towards the removal of 3799 Pcs., of goods valued at Rs.7,58,367/-, which had been removed by the assessee on 26.02.2014, has not been covered under the ARE-1 No. 220/2013-14 dated 26.02.2014 as well as the Excise Invoice dtd. 26.02.2014. Neither, any entry has been made in the RG1 account. 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. The condition "payment of duty" is satisfied once the exporter

records the details of removals in the Daily Stock Account maintained under rule 10 of the said rules, whereas the duty may be discharged in the manner specified under rule 8 of the said rules, i.e., monthly basis. In the instant case, it is seen that the assessee had neither recorded the details of manufacture and removal of 3799 pcs. of goods on the date of removal nor had paid the duty on the goods exported at the time of removal (i.e. 26.02.2014) or on or before the due date (i.e. 05.03.2014) for payment of duty. Instead, has made the entry in the RG1 account and had paid the duty on 15.07.2014 i.e., almost 5 months after removal and 4 months after the date of export of goods on 14.03.2014.

- ii) The appellate authority in the subject order under review has stated that, the details of goods shown on Mate receipt, match with the same shown in Shipping Bill and corresponding ARE-I. However, the details of removal of 3799 Pcs were not covered under the ARE-I and the Excise Invoice. The assessee had made the entry for the manufacture and removal of 3799 Pcs., in RGI account, only on 15.07.2014. In fact, the details of the removal of 3799 Pcs., for export, had not been informed to the Department at all, though the duty on the same had been debited vide RG Pt.II entry No.67/2013 dated 15.07.2014, and therefore, the assessee is not eligible for grant of rebate claim of Rs.78,112/- which had been paid for removal of 3799 Pcs for export, but not intimated to the Department.
- iii) Further, the ratio of judgment of Hon'ble High Court, Delhi in the case of M/s. Sandhar Automotives V/s. Jt. Secy., Deptt. of Revenue, G.O.I., [W.P.(C)2469/2014] is squarely applicable in the instant case. In the said case it is held that, as per Notification No. 19/2004-CEX(NT) one of the conditions for grant of rebate under Rule 18 of the Central Excise Rules, is that the excisable goods be exported after payment of duty. The

mandatory conditions for availing of the rebate cannot be waived on any equitable consideration. It has also been held 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, payment of interest on delayed payment after the goods have been cleared cannot be construed to mean that the condition of payment of duty prior to the export of goods has been complied. In view of the above, the Hon'ble High court, Delhi, had upheld the order of rejection of the rebate claim and dismissed the writ petition.

The applicant therefore prayed for setting aside the impugned order.

3.2 The Respondent vide letter dated 10.07.2017 filed their reply wherein they interalia submitted that:

a. They have already filed reply with Hon'ble Commissioner (Appeal) Central Excise Mumbai Zone I. From which it can be seen that full quantity of 9574 valued at Rs.17,09,052/- involving duty amount Rs 1,76,032/- have been paid and full quantity stands exported and full amount stand realised however part of the duty was paid later due to oversight with interest for such delay is bona-fide mistake.

b. They strongly feel that when goods are exported on payment of duty rebate claim is admissible under law and disallowance of incentive given to exporter by the Government may amount to injustice to bona-fide exporter.

4. Personal hearing in the case was fixed for 2.2.2022 and on 9.2.2022. However, neither the applicant nor the respondent attended on any date nor have they sent any written communication. The matter is therefore taken up for decision based on available records.

5. Government has carefully gone through the relevant case records, perused the impugned Orders-in-Original, Order-in-Appeal, Revision Application filed by the applicant, and the reply filed by the respondent.

6. Government notes that the issue to be decided in this case is whether the respondent who had not deposited the excise duty prior to the export of goods is entitled to rebate under Rule 18 of the Central Excise Rules, 2002.

7.1 Government observes that Rule 18 of the Central Excise Rules, 2002 reads as under:

"RULE 18. Rebate of duty. -- Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.

Explanation. - "Export" includes goods shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft."

Notification No. 19/2004- Central Excise (N.T.) dated 06.09.2004 issued under Rule 18 under clause (a) of "Conditions and Limitations" specifies:

"(2) Conditions and Limitations

(a) that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order;

Thus, the rebate of duty that is contemplated under Rule 18 *ibid* is not unconditional and is subject to prescribed conditions and limitations and one of the conditions is that the excisable goods be exported after payment of duty, which has admittedly not been complied in the instant matter.

7.2 Government observes that Rule 10 of the Central Excise Rules, 2002 reads as under:

Rule 10. Daily stock account.-

(1) Every assessee shall maintain proper records, on a daily basis, in a legible manner indicating the particulars regarding description of the

goods produced or manufactured, opening balance, quantity produced or manufactured, inventory of goods, quantity removed, assessable value, the amount of duty payable and particulars regarding amount of duty actually paid.

(2) The first page and the last page of each such account book shall be duly authenticated by the producer or the manufacturer or his authorised agent.

(3) All such records shall be preserved for a period of five years immediately after the financial year to which such records pertain.

Thus, the details regarding manufacture, clearance and duty payment are to be maintained on daily basis by a manufacturer registered under Central Excise Act, 1944. Government observes from the RG-1 extract submitted by the respondent that on the relevant date viz. 26.02.2014, the opening balance of the goods exported – 'Heat shrinkable components' was nil, quantity manufactured and removed for export was 5775 pcs, and total duty paid was Rs.97,920/-. The claim of respondent that 9574 pcs were cleared for export on 26.02.2014 is therefore disproved.

7.3 Government further observes that the case law of Sandhar Automotives relied upon by the applicant aptly applies in the instant case. In the said judgment, as regards delayed payment of duty alongwith interest under Rule 8 of the Central Excise Rules, 2002, the Hon'ble Delhi High Court has remarked that:

10. We also concur with the view that discharging the liability to pay Excise Duty in the manner as provided under Rule 8 of the Central Excise Rules cannot be construed as compliance of the conditions for availing rebate under Rule 18 of the said Rules. 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, payment of interest on delayed payment after the goods have been cleared cannot be construed to mean that the condition of payment of duty prior to the export of goods has been complied.

8. In view of above findings, the Government sets aside the impugned Order-in-Appeal No. SK/32/M-IV/2016 dated 22.11.2016 passed by Commissioner (Appeals), Central Excise, Mumbai-I and allows the Revision Application.

9. The Revision Application is disposed of on the above terms.

Shrawan
24/3/22
(SHRAWAN KUMAR)

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

ORDER No. 313 /2022-CX (WZ)/ASRA/Mumbai dated -24.3.2022

To,
M/s. Gala Shrink Fit,
15, ABCD Government Industrial Estate,
Kandivali (West), Mumbai - 400067

Copy to:

1. Commissioner of Central Tax & GST, Thane,
5th floor, Accel house, 22nd Road,
Wagle Estate, Thane(W) - 400 604.

2. Sr. P.S. to AS (RA), Mumbai

3. Guard file

4. Notice Board.