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F.No. 195/459-461, 635, 636 & 797/11-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...01/4/13

ORDER NO. 323-328 /13-Cx DATED 28.03.2013 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 : Revision Application filed under Section 35 EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.03,04&05
dated 30.3.2011, 16/2011(V-I) CE dated 6.6.2011
27/2011(V-I) CE & 36/2011 (V-I) dated 29.7.2011 passed by
Commissioner of Central Excise & Customs (Appeals),
Visakhapatnam.

Applicant : M/s PPG Coating India Pvt. Ltd., Visakhapatnam.

Respondent : Commissioner of Central Excise & Customs, Visakhapatnam

ORDER

These revision applications are filed by the M/s PPG Coating India Pvt. Ltd., Visakhapatnam, against the orders-in-appeal No. 03,048&05 dated 30.3.2011, 16/2011(V-I) CE dated 6.6.2011, 27/2011(V-I) CE & 36/2011 (V-I) dated 29.7.2011 passed by Commissioner of Central Excise & Customs (Appeals), Visakhapatnam with respect to orders-in-original passed by Assistant Commissioner Central Excise Division-II, Vishakhapatnam.

2. Brief facts of the cases are that the applicants have supplied certain quantities of "Paints & Thinners" as "Ship stores" to foreign going vessels under the above ARE-I's and had claimed rebate of duty paid on the above goods in terms of Notification No. 19/2004-CE(NT) dated 06.09.04. In terms of the condition mentioned in para 2(c) of this Notification, it was envisaged that the quantities of excisable goods supplied as Ship stores for consumption on board a vessel bound for any foreign ports are required to be certified by the Commissioner of Customs at the port of shipment. However it was observed that the applicant had not produced any document in support of fulfillment of the above condition. The applicant submitted that the quantities were certified by the Captain of the ship and the Customs authorities have examined and the passed the supplied quantities which mean that the same was done to the satisfaction of the Commissioner and hence the condition of the notification was satisfied. However the adjudicating authority noted that the applicant had supplied the goods as Ship stores not in accordance with the conditions as stipulated in the Notification No. 19/2004-CE(NT) dated 06.09.2004. He relied on the OIA No.89/2008 (V-I) CE dated 08.09.2008 passed by Commissioner (Appeals), Visakhapatnam rejecting the rebate claims filed by the applicant on similar issue. On these grounds, the adjudicating authority passed the impugned orders rejecting the rebate claim.

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

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

4.1 The objection that there was no endorsement by the Customs authorities that the vessel was on foreign run is meaningless., to say the least, since the Customs authorities would never have allowed the exports under claim for rebate unless the vessel was on foreign run. The applicants have also substantiated the details available on various documents issued by the Customs to the effect that the vessel was on foreign run and the fact that vessel has in fact sailed out of India is not in dispute at all. It was for the Customs to allege and prove otherwise that the vessel is on coastal run which onus has not been discharged by the department.

4.2 The other condition that there was no certificate to the effect that the quantity of paints was so determined by the Commissioner of Customs. This issue is purely academic since no Commissioner of Customs can ever personally verify, satisfy and certify that the quantities supplied as ship stores are as per the determination of the Commissioner of Customs himself. It is submitted that huge number of exports including supply to ship stores are taking place all over the country and if the Commissioner of Customs himself were to satisfy about the Quantities to be supplied/all the Commissioners of Customs in the country, they would only remain engaged for issuing the certificates without doing any other job. Everyday in and out, number of varieties of goods is supplied to ships by different agencies in different parts all over the country and it is not physically possible for the Commissioner of Customs, Visakhapatnam to satisfy himself and

consequently determine the quantities of each variety of goods supplied.

4.3 The further observation of the Commissioner (Appeals) that the quantity of such ship stores were not certified by the Customs department as required by the vessel is equally incorrect since the customs authorities will not allow the supply to be effected/unless they are satisfied that the quantities are reasonable and are required for the purpose for which they are intended. Hence, there is no requirement of separate and exclusive certificate from the Commissioner of Customs determining the quantity of goods to be supplied.

4.4 It is on record that such ship stores supplies were undertaken by many other exporters from Visakhapatnam port itself and in any case there was no situation where such flimsy objections were ever raised. The quantities supplied to the Captain and the owners of the ship certify ship stores and they would not allow any Captain to import quantities of his choice without any basis and justification.

4.5 Further, Customs authorities allowed the ship stores to be loaded on ships only when they are satisfied that they are not unusual and of high quantities unless they satisfy as to the quantities/requirement of the ship. Hence, the contention of the lower authority as also the Commissioner of Central Excise (Appeals) that these conditions have not been satisfied as the basis for rejecting the rebate claims deserves to be set aside with consequential relief in favour of the appellants.

5. The personal hearing was scheduled in this case on 13.12.2012 and 22.2.2013. Nobody attended the hearing. The department vide their letter dated 27.6.2012 stated that the issue has already been decided by Government of India vide order No.1491-1493/11-Cx dated 3.11.2011.

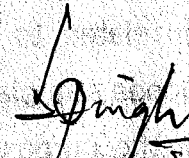
6. Government has carefully gone through the relevant case records and perused impugned order-in-original and orders-in-appeal.
7. Government notes that respondents have exported duty paid goods as Ship Stores and filed rebate claims under Rule 18 of the Central Excise Rules 2002 read with Notification No.19/2004 CE (NT) dated 6.9.04. Adjudicating authority rejected the rebate claims for no-compliance of condition 2 (c) of the Notification No.19/2004 CE (NT) dated 6.9.04. Commissioner (Appeal) has also rejected the appeals filed by the applicant. Now, applicants have challenged the said order-in-appeal on the grounds stated in para (4) above.
8. Government notes that applicant has mainly argued that Assistant Commissioner of Customs is the proper officer in terms of the provision of para 3 (xiv) and 3(xv) of Notification No. 19/2004-CE/(NT) dated 06.09.2004 and they have fulfilled these condition; that Commissioner Customs cannot personally verify and fix reasonable quantities of Ship Store as the same can be done by captain of Ship; that they have followed the procedure and the condition laid down in para 2 (c) will stand modified with the procedures laid down in para 3(xiv) & 3(xv). In this regard, Government notes that para 3(xiv) & 3(xv) of the said notification relates to procedure prescribed for sealing of goods and examination of goods at a place of dispatch/export. The powers are delegated to proper officer for the purpose of provision contained in para 3(XIV) & 3(xv) of the said Notification. In this case rebate claims are rejected for violation of condition 2(c) of said modification which read as under:

"That the excisable goods supplied as Ship Stores for consumption on board or vessel bound for any foreign port are in such quantities as the Commissioner of Customs at the port of Shipment consider reasonable."

This is a statutory condition to be followed by exporter. The powers under para 2(c) are vested in Commissioner of Customs and are not delegated to lower authorities. In this case Applicant has not obtained any approval from Commissioner of Customs, therefore the condition 2(c) of the said Notification stands violated. As the Applicant failed to satisfy the basic mandatory requirement of the Notification No. 19/2004-CE(NT) dated 06.09.2004 and hence the rebate claims are not admissible to them. Hon'ble Supreme Court in its judgment in the case of M/s Eagle Plastic Industries Ltd Vs CCE Pune - 2004(171) ELT 296 (SC) has held that the conditions of the notification are not merely procedural and exemption can be denied for non-observance of the said conditions. Adjudicating authority has rightly rejected the said rebate claims relying on the above said Supreme Court judgment. Government has earlier in GOI revision order No. 803-806/10-Cx dated 21.04.2010 and further vide revision order No.1491-1493/11-Cx, in the case of the same applicant disallowed such rebate claims. In view of this position, Government finds no infirmity in orders of Commissioner (Appeals) and hence, upholds the same.

9. The revision applications are thus rejected being devoid of merits.

10. So, ordered.



(D P Singh)

Joint Secretary (Revision Application)

M/s PPG Coating India Pvt. Ltd.
(formerly Sigma Kalon India(P) Ltd.
D-37, Industrial Estate
Visakhapatnam-530007

Attested
1/4/2013

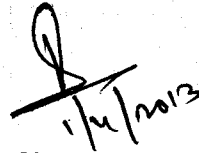
(भगवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
प्र.स.त.य. (राजस्व विभाग)

Order No. 323-328 /2013-Cx dated 28.03.2013

Copy to:

1. Commissioner of Central Excise & Customs, Visakhapatnam-I.
2. Commissioner (Appeals), 4th Floor, Customs House, Port Area, Visakhapatnam- 530035 (Andra Pardesh).
3. The Assistant Commissioner of Central Excise and Customs, Division-II Visakhapatnam-I Commissionerate, 3rd Floor, Suryabagh, Opp Rajkamal Theatre, Visakhapatnam 530020.
- ✓ 4. PA to JS(RA)
5. Guard File.
6. Spare copy

ATTESTED



1/4/2013

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

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