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F.No.195/507/12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue...16/1/16

ORDER NO. 33/2016-CX DATED 05.02.2016 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD 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 Order-in-Appeal No. US/176/RGD/12 dated 15.03.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

Applicant : M/s. Fichem, Ahmedabad.

Respondent : Commissioner of Central Excise, Raigad.

ORDER

This revision application is filed by M/s Fichem, Ahmedabad against the Order-in-Appeal No. US/176/RGD/12 dated 15.03.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai, with respect to Order-in-Original passed by the Commissioner of Central Excise (Rebate), Raigad.

2. Brief facts of the case are that the applicants exported the goods and filed rebate claims under Rule 18 read with Notification No.19/2004-CE(NT) dated 6.9.2004 with reference to duty paid on final finished export product. The rebate claim was sanctioned by the original authority after carrying out the verification. The department filed appeal against impugned Order-in-Original before Commissioner (Appeals) on the ground that the applicant failed to follow the procedure prescribed under the Notification No.21/2004-CE(NT) dated 06.09.2004 as declared by them at Sl.No.3(b) of the impugned ARE-1 and also on ground that the appeal filed by department before Commissioner (Appeals) was time barred.

3. Commissioner (Appeals) decided the case in favour of department by setting aside impugned Order-in-Original.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 The applicants contended that the declaration made on as ARE-1 was clerical in nature and same may be condoned as a procedural mistake. The ARE-1 is an assessment document and after self-assessing the said document, the applicants presented the same to the proper officer. Once the said document is assessed by the applicants, it is not open for them to re-assess it. Board has also clarified under Circular No.510/06/200-CX dated 03.02.2000 that any scrutiny of the correctness of the assessment shall be done by the jurisdictional Assistant/Deputy Commissioner only. In view of this the order has to be set aside.

4.2 Our only mistake while presently the ARE-1 wherein there are three conditions 3 (a) (b) (c) at the bottom of ARE-1.

(a) Availing facility of CENVAT credit - Not disputed.

(b) Here we committed a mistake by scoring out "without availing facility". Actually we could have scored out "availing facility". We do admit our mistake but the mistake is not so grave that the entire claim which has already been sanctioned should be rejected only on this procedural/clerical mistake. Condition 3(b) provides for claiming Rebate on the inputs utilized in the manufacture of final product. Here it is not the issue of claiming rebate on inputs & lower authority & Commissioner (Appeals) had knowledge that our rebate claim is pertaining to final product and not inputs. Here, the Commissioner (Appeals) could have taken the broad outlook as he

is the appellate authority & noted whether our mistake is an intentional one or procedural/clerical mistake. Thus, it is requested to set aside the present findings of the Commissioner (Appeals).

4.3 It is the findings of the Commissioner (Appeals) that for filing appeal by the lower authority before the Commissioner (Appeals) is of 03 months. The contention of the Commissioner (Appeals) is totally baseless. Looking to the provisions of section 35 of the Central Excise Act 1944 where the period prescribed is 2 months on either side. It is not understood how a period of 03 months have been concluded by him. Moreover order of the lower authority is required to be reviewed by the committee of two Commissioners and thereafter the concerned Commissioner authorize lower authority to file the appeal. No such documents are appearing in the papers supplied by the department the basis on which we have filed cross objection.

5. Personal hearing scheduled in this case on 10.08.2015 was attended by Shri Navin Gheewala, Consultant on behalf of the applicant who reiterated the grounds of revision applications. Nobody attended hearing on behalf of department.

6. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. Upon perusal of records, Government observes that the applicant's rebate claims filed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE/(NT) dated 06.09.2004 was initially sanctioned by the original authority vide impugned Order-in-Original. Being aggrieved by the same the department filed appeal before Commissioner (Appeals) on the ground that the applicant a merchant exporter has declared in impugned ARE-1 that they are availing benefit of 21/04-CE(NT) dated 06.09.04 and Notification 43/2001-CE(NT) dated 26.06.2001, however they failed to follow the mandatory provisions as required under Notification No. 21/2004-CE(NT) dated 06.09.2004 and Notification 43/01-CE(NT) dated 26.06.2001. Commissioner (Appeals) decided the cases in favour of department. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government observes that the applicant has contested that appeal filed by department before Commissioner (Appeal) against impugned rebate sanctioning Order-in-Original was time barred having been filed after stipulated 2 months period. In this regard Government finds that the appellate authority has dealt with this contention of applicants and held that impugned Order-in-Original was reviewed within 3 (three months) time limit as prescribed in Section 35E(3) of the Central Excise Act 1944 and thereafter, appeal was filed before Commissioner (Appeals) within one month of the date of communication of such review order as stipulated in

Section 35(E)(4) of the Central Excise Act 1944. Government finds these factual observations have not been controverted by the applicant on the basis of any documentary evidence. Hence, Government agrees with the findings of the appellate authority in this regard.

9. Government observes that the applicant exported the goods and filed rebate claim under Rule 18 of the Central Excise Rules, 2002 read with the Notification No.19/2004-CE/(NT) dated 06.09.2004. The applicant has contended that they have mistakenly ticked the declaration on availment of benefit of Notification 21/04-CE(NT) dated 06.09.2004 and Notification 43/01-CE(NT) dated 26.06.2001 in ARE-1s. However, they exported the goods under Notification No.19/2004-CE/(NT) dated 06.09.2004 on payment of duty and as such they were not required to export the goods under Bond or under cover of ARE-2 as they had not claimed input rebate.

9.1 On perusal of copy of relevant ARE-1, Government finds that the applicant prepared the ARE-1 under claim of rebate and paid applicable duty at the time of removal of goods. The original authority in rebate sanctioning orders have categorically held that applicants have exported the goods under claim of rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE/(NT) dated 06.09.2004 and also observed that triplicate copy of ARE-1 has been endorsed by the Central Excise officer which confirmed the verification of duty payment. As such, the exported goods are duty paid goods. Once, it has been certified that exported goods have suffered duty at the time of removal, it can be logically implied that provisions of Notification 21/04-CE(NT) dated 06.09.04 and Notification 43/01-CE (NT) dated 26.06.2001 cannot be applied in such cases. There is no independent evidences on record to show that the applicant have exported the goods without payment of duty under ARE-2 or under Bond. Under such circumstances, Government finds force in contention of applicant that they have by mistake ticked in ARE-1 form declaration and they have not availed benefit of Notification 21/04-CE(NT) dated 06.09.2004 and Notification 43/01-CE(NT) dated 26.06.2001. In this case, there is no dispute regarding export of duty paid goods. Simply ticking a wrong declaration in ARE-1 form cannot be a basis for rejecting the substantial benefit of rebate claim. Under such circumstances, the rebate claims cannot be rejected for procedural lapses of wrong ticking. In catena of judgments, the Government of India has held that benefit of rebate claim cannot be denied for minor procedural infraction when substantial compliance of provisions of notification and rules is made by claimant.

9.2 However since it is a matter of fact which requires verification in view of rival claims, therefore, the case is remanded back to the original authority to verify the claim of the applicant that they have not availed benefit of Notification 21/04-CE(NT) dated 06.09.2004 and Notification 43/01-CE (NT) dated 26.06.2001 and thereafter subject to the satisfaction of the Assistant/Deputy Commissioner the

rebate claim may be disposed off accordingly. A reasonable opportunity of hearing may be given to concerned parties.

10. In view of above position, Government sets aside the impugned Order-in-Appeal and remands the case back to the original authority for fresh decision.

11. The Revision Application is disposed off in above terms.

12. So, ordered.




(RIMJHIM PRASAD)

Joint Secretary to the Government of India

M/s Fichem
'Sagar' Near Sahajanand College,
Opp. Stock Exchange,
Ahmedabad-380015.

ATTESTED


(श्यामशंकर शर्मा / Shyamshankar)
सहायक आयुक्त / Assistant Commissioner
C B E C - O 3 D (Revision Application)
वित्त विभाग (भारत सरकार)
Ministry of Finance (Deptt of Rev)
भारत सरकार / Govt of India
नई दिल्ली / New Delhi

ORDER NO. 33/2016-CX DATED 05.02.2016

Copy to:

1. The Commissioner of Central Excise, Raigad Commissionerate, Ground Floor, Kendriya Utpad Shulk Bhavan, Sector-17, Plot No. 1, Khandeshwar, Navi Mumbai-410206.
2. The Commissioner of Central Excise (Appeals-II) Mumbai Zone, 3rd Floor, Utpad Shulk Bhavan, Bhandra Kurla Complex, Bhandra (E), Mumbai.
3. The Deputy Commissioner (Rebate) Central Excise, Raigad, Kendriya Utpad Shulk Bhavan, Raigad.
4. PA to JS(RA).
5. ✓ Guard File.
6. Spare copy.

ATTESTED



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