



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. 195/05-06/WZ/2019 / 9898

Date of Issue: 03.08.2023

ORDER NO. ³³⁴⁻335 /2023-CX (WZ) /ASRA/Mumbai DATED 27.07.2023 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 : M/s Hindustan Pencils Pvt. Ltd.,
Survey No.90 (P), P.O.- Tumb,
Umbergaon, Dist. Valsad,
Gujarat.
- Respondent : Commissioner of CGST & Central Excise,
Surat Commissionerate, New Central Excise Building,
Chowk Bazaar, Surat - 395001.
- Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
CCESA-Audit-SRT/VK-06 to 07/2018-19 dated 15.11.2018
passed by Commissioner (Appeals), GST & Central Excise,
Surat.

ORDER

The subject Revision Application has been filed by M/s Hindustan Pencils Pvt. Limited (here-in-after referred to as 'the applicant') against the impugned Order-in-Appeal dated 15.11.2018 passed by the Commissioner of Central Excise (Appeals), GST & Central Excise, Surat which decided appeals against two Orders-in-Original dated 30.11.2015 and 30.12.2015, both passed by the Assistant Commissioner, Central GST & Central Excise, Division Umbergaon, Daman Commissionerate, which in turn rejected the refund claims for Rs.28,971/- and Rs.20,751/-, respectively, filed by the applicant.

2. Brief facts of the case are that the applicant is a manufacturer of excisable goods and had cleared goods for export under LUT without payment of duty under the cover of two ARE-1s dated 25.08.2014 and 30.09.2014. During the course of audit it was noticed that they had failed to submit the proof of export in respect of the goods so cleared, within the stipulated period of six months from the date of removal of the goods. The applicant hence paid the duty involved on the said consignments. Thereafter, on receipt of the proof of export the applicant filed applications seeking refund of the duty so paid. The original authority found that the goods cleared on 25.08.2014 and 30.09.2014 were exported on 29.03.2015 and 09.07.2015, respectively, and hence rejected the refund claims on the grounds that the goods were exported after the expiry of the period of six months from the date of removal from the place of manufacture as stipulated by notification no.45/2001-CE(NT) dated 26.06.2001. The applicant chose to file appeals against the Orders-in-Original dated 30.11.2015 and 30.12.2015 before the Commissioner (Appeals) who vide the impugned Order-in-Appeal dated 15.11.2018 rejected both the appeals and upheld the orders of the original authority.

3. Aggrieved, the applicant has preferred the subject Revision Applications against the impugned Orders-in-Appeal on the following grounds:-

(a) That the Commissioner (Appeals) had erred in not giving any finding in respect of condition no.(ii) of notification no.42/2001-CE(NT) dated 26.06.2001; that in the present case the goods were exported within six months from the date of which these were cleared for export from the 'other

approved premises' and hence they had complied with the provision of the said notification;

(b) That the lower authorities had erred in not considering the legal position clarified by the Board vide Circular No. 952/13/2011-CX dated 08.09.2011 that the manufacturer can stuff their goods and export goods from other premises; that the six month period is hence to be calculated from the date of clearance from the other premises from where it was cleared for export;

(c) That there was no duty on export of goods and once the goods were exported the duty paid was requested to be refunded if filed in the prescribed time limit;

(d) That the lower authorities had placed reliance on the decision of the Bombay High Court in the case of Everest Flavours Limited which was not applicable to the facts of this case; that the same was dissented by the Madras High Court in the case of M/s Dorcas Market Makers P. Ltd which was maintained by the Hon'ble Supreme Court.

In view of the above, the applicant requested that their appeal be allowed with consequential relief.

4. Personal hearing in the matter was granted in the matter and Shri Raj Vyas, Advocate appeared online on 21.02.2023 on behalf of the applicant for the same. He submitted that goods were exported from their warehouse within six months as goods were exported from approved premises. He requested to allow the application.

5. Government has carefully gone through the relevant case records, the oral and written submissions and also perused the impugned Orders-in-Original and the Order-in-Appeal.

6. Government finds that the issue for decision in the present case is whether the period of six months prescribed by the notification no.42/2001-CE(NT) dated 26.06.2001 has to be computed from the day the goods were cleared from the place of manufacture, or, from the day they were cleared from the applicant's warehouse.

7. Government finds that the goods in this case were cleared for export by the applicant without payment of duty under Rule 19 of Central Excise Rules, 2002 read with the notification no.42/2001-CE(NT) dated 26.06.2001, which lays down the conditions, safeguards and procedure for export of goods under the said Rule. Government finds that the lower

authorities has held that the date of clearance from the place of manufacture would be the relevant date as against the claim of the applicant that the date of clearance from their 'approved warehouse' would be the relevant date for computation of the period of six months prescribed by notification no.42/2001-CE(NT). Government notes that goods cleared vide ARE-1s dated 25.08.2014 and 30.09.2014 from the factory were exported on 29.03.2015 and 09.07.2015, respectively, thus the goods were exported after a period of more than six months from the date it was cleared from the factory and that this fact is not disputed by the applicant.

8. Government notes that the Commissioner (Appeals) found that the applicant had cleared the goods for export under the cover of ARE-1s from their factory premises without payment of duty, on the strength of a LUT which was granted specifically for their factory premises and hence the applicant was required to follow the conditions laid down by the said LUT. The Commissioner (Appeals) found that one of the conditions was that the goods cleared under the said LUT should be exported within six months from the date of clearance from the factory and that the applicant had failed to fulfill this condition as the export had taken place after the expiry of six months from the date of clearance from the factory. The Commissioner (Appeals) held that the date of stuffing of goods in the container and clearance from 'other premises' was not governed by the subject LUT and hence cannot be considered to be the relevant date for computing the six month period.

9. Government finds that it would be pertinent to examine the relevant provision of notification no.42/2001-CE (NT) dated 26.06.2001 which is reproduced below: -

"Conditions: -

1. that the exporter shall furnish a general bond in the Form specified in Annexure-I to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory, warehouse or such approved premises, as the case may be, or the Maritime Commissioner or such other officer as authorised by the Board on this behalf in a sum equal at least to the duty chargeable on the goods, with such surety or sufficient security, as such officers may approve for the due arrival thereof at the place of export and their export therefrom under Customs or as the case may be postal supervision. The manufacturer-exporter may furnish a letter of undertaking in the Form specified in Annexure-II in lieu of a bond.

2. that goods shall be exported within six months from the date on which these were cleared for export from the factory of the production or the

manufacture or warehouse or other approved premises within such extended period as the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise or Maritime Commissioner may in any particular case allow."

The condition which an applicant undertakes to fulfill, as appearing in the Letter of Undertaking (UT - 1) prescribed by the said notification, is as under : -

"1. to export the excisable goods removed from my/our factory/warehouse/approved place of storage without payment of duty under rule 19 of the Central Excise (No.2) Rules, 2001 within six months from the date of such removal or such extended period as may be permitted by the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise or the Maritime Commissioner or the Central excise Officer duly authorised by the Board;"

A reading of the conditions laid down by the said notification clearly indicates that the permission granted by the jurisdictional Assistant/Deputy Commissioner having jurisdiction over their 'factory', to clear goods without payment of duty was in lieu of the Undertaking given by the applicant to the said jurisdictional Assistant/Deputy Commissioner that the said goods cleared without payment duty from the factory would be exported within six months of such clearance. Government finds that the permission so granted on the strength of the LUT cannot be read to include clearances from the warehouse of the applicant, approved or otherwise, for the simple reason that the Undertaking given by the applicant was limited to 'clearances from the factory' and did not cover clearances from any other premises.

10. Further, in this case Government notes that the LUT was issued by the Assistant Commissioner, Vapi Division, Vapi Commissionerate, whereas, the warehouse from where the applicant cleared the goods for export was situated at 'Tumb, Umbergaon', Daman Commissionerate; thus, Government finds that the Assistant Commissioner who issued the LUT to the applicant did not even have jurisdiction over the warehouse of the applicant and hence the permission granted by him cannot be said to cover the warehouse too. In view of the above, Government finds that the interpretation of the applicant that the relevant date for computation of the six months period would be date of clearance from the warehouse to be incorrect and not in consonance with the legal provisions governing the same. Government finds that to accept the position taken by the applicant would jeopardize the entire system put in place to ensure that the goods

which are cleared without payment of duty for being exported, are actually exported within a six months period. Accepting the contention of the applicant would mean that there was no time limit prescribed for either the goods cleared from a factory to reach the warehouse or for such goods to be cleared from such warehouse. Government finds that this definitely cannot be the intent of the legislation governing the issue on hand. Thus, Government finds the decision of the Commissioner (Appeals) in the impugned Order-in-Appeal to reject the refund claims of the applicant for their failure to fulfill the above discussed condition of notification no.42/2001-CE(NT), to be proper and correct.

11. In view of the above, Government does not find any infirmity in the impugned Order-in-Appeal and upholds the same. The subject Revision Application is dismissed.

Shrawan
27/7/23
(SHRAWAN KUMAR)

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

33A-
ORDER No-335/2023-CX (WZ) /ASRA/Mumbai dated 27.07.2023

To,

M/s Hindustan Pencils Pvt. Ltd.,
Survey No.90 (P), P.O.- Tumb,
Umbergaon, Dist. Valsad, Gujarat.

Copy to:

1. Commissioner of CGST & Central Excise, Surat Commissionerate, New Central Excise Building, Chowk Bazaar, Surat - 395001.
2. The Commissioner (Appeals), GST & Central Excise, Surat, 4th floor, Magnus, Althan Bhimrad Canal Road, Near Atlantis Shopping Centre, Althan, Surat - 395 017.
3. Shri Raj Vyas, Advocate, 401, Shivanjali Apartment, Rangeela Park, Ghod Dhod Road, Surat.
4. Sr. P.S. to AS (RA), Mumbai.

S. Grand file