



REGISTERED
SPEED POST

F.No.195/859/13-RA & 195/860/13-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. 9/12/14...

ORDER NO. 374-375/14-Cx DATED 08-12-2014 OF THE GOVERNMENT OF
INDIA, PASSED BY SMT. ARCHANA PANDEY TIWARI, 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 orders-in-appeal
No.PJ/264/VDR-I/2012-13 dated 8.8.13 & VAD-
EXCUS-001-APP-295/13-14 dated 19.8.13 passed by
the Commissioner of Central Excise & Customs
Vadodara

Applicant : M/s Ankur Scientific Energy Technologies Pvt. Ltd.,
Vadodara-390024

Respondent : Commissioner of Central Excise, Vadodara-I

ORDER

These revision applications are filed by M/s Ankur Scientific Energy Technologies Pvt. Ltd., Vadodara-390024 against the orders-in-appeal No.PJ/264/VDR-I/2012-13 dated 8.8.13 & VAD-EXCUS-001-APP-295/13-14 dated 19.8.13 passed by the Commissioner of Central Excise & Customs (Appeals), Vadodara with respect to orders-in-original passed by the Deputy/Assistant Commissioner of Customs & Central Excise, Vadodara-I.

2. Brief facts of these cases are as under:

2.1 Brief facts pertaining to R.A.No.195/859/13-RA

2.1.1 The applicant is involved in the export of "'Ankur" Biomass Gasifier system', they were not registered as a manufacturer nor availing the facility of Cenvat Credit under the Cenvat Credit Rules, 2004 and exported product "Ankur" Biomass Gasifier system Model (non-conventional energy devices) falling under chapter 84 of C Ex Tariff Act, 1985, exempted from duty vide Sr. No. 84 of Notification 06/2006 -CE dated 01.03.2006. The applicant filed rebate claim under Notification No.21/2004-CE (NT) dated 06.09.2004 of duty paid on raw materials i.e. Gas Engine Set procured from M/s. Neptro Renewable Energy India Pvt. Ltd. (a registered dealer), which was used for the manufacture of export item. A Show Cause Notice was issued to the applicant as they failed to follow the conditions laid down under Notification No.21/2004 CE(NT) issued under Rule 18 of Central Excise Rules, 2002. The rebate claim was rejected vide the impugned order on the grounds that the necessary procedure prescribed under the Notification 21/2004(NT) dated 06.09.2004 had not been followed including submission of original and duplicate copies ARE-2 with their claim for rebate.

2.2 Brief facts pertaining to R.A.No.195/860/13-RA

2.2.1 The briefly stated facts of the case are that M/s. Ankur Scientific Energy Technologies Pvt. Ltd., (hereinafter referred to as the 'respondent') who were not registered as a manufacturer and exported "Ankur" Biomass Gasifier system (non-conventional energy devices), exempted from duty vide Sr. No. 84 of Notification

06/2006 -CE dated 01.03.2006, had filed a rebate claim in respect of duty paid on raw materials i.e., Gas Engine Set procured from M/s. Neptro Renewable Energy (I) P. Ltd., who was neither a registered manufacturer nor registered with the department as a dealer. Therefore, a show cause notice dated 05.08.2010 was issued to the respondent to deny the rebate claim for failure to follow the condition No.3 of Notification No.21/2004-CE(N.T.) dated 06.09.2004 which required that the manufacturer or processor should obtain the materials to be utilised in the manufacture of the finished goods intended for export directly from the registered factory in which such goods were produced, accompanied by an invoice under rule 11 of the Central Excise Rules, 2002 or from dealers registered for the purposes of the Cenvat Credit Rules, 2002 under invoices issued by such dealers. However, the adjudicating authority vide the impugned order sanctioned the rebate claim, after considering the respondent submissions that though they purchased the raw materials from M/s. Neptro Renewable Energy (I) P. Ltd. who were not registered with the department as a dealer but the goods were directly delivered from the factory of M/s. Sudhir Gensets Limited who were duly registered with the Central Excise department and it was only due to commercial reasons, Sudhir Gensets raised invoice on Neptro and Neptro in turn raised commercial invoice on Ankur Scientific.

3. Being aggrieved by the said orders-in-original, both applicant party and department filed appeals before Commissioner (Appeals), who decided both the appeals in favour of department.

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

4.1 Grounds in respect of R.A. No.195/859/13-RA

4.1.1 The Commissioner (Appeal) erred in rejecting the rebate claim on the ground that non submission of original and duplicate copy of Form A.R.E.-2 tantamount to non-fulfillment of mandatory conditions for claiming any benefit under a notification and cannot be termed as procedural lapse.

4.1.2 The Commissioner (Appeal) erred in rejecting the rebate claim without considering other important and independent documents such as Custom certified Invoices, packing list, Bill of lading, Bank Realisation Certificate, duty paid document on input etc. submitted by the applicant which clearly established that export had actually taken place, duty has been paid on input and money also realised.

4.1.3 The Commissioner (Appeal) erred in rejecting the rebate claim without considering properly the various judicial pronouncements of higher forums that at most, such deficiencies can be considered as procedural lapse while all the substantial conditions were fulfilled by the applicant and claim should not have been rejected.

4.1.4 The Commissioner (Appeal) erred in rejecting the rebate claim without considering the Hon'ble Bombay High court judgement dated April 24, 2013 in UM Cables limited v/s Union of India and others in writ petition No.3102 & 3103. This judgement which is clearly on identical facts clearly states that Excise Rebate cannot be rejected on the ground of non-submission of original and duplicate AREs - Submission of AREs is only a procedural requirement under the notification issued under Rule 18. The procedure which has been laid down in the notification is to facilitate the processing of an application for rebate and to enable the authority to be duly satisfied that the two fold requirement of the goods having been exported and of the goods bearing a duty paid character is fulfilled. The procedure cannot be raised to the level of a mandatory requirement - Rule 18 itself makes a distinction between conditions and limitations on the one hand subject to which a rebate can be granted and the procedure governing the grant of a rebate on the other hand. Rebate sanctioning authority is directed to process the rebate claim without insisting on the original and duplicate AREs if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled.

4.1.5 The Commissioner (Appeal) erred in rejecting the rebate claim of by placing reliance on Supreme Court's judgement in the matter of Eagle Flask Industries Ltd. v/s Commissioner of Central Excise, Pune without appreciating the fact that said judgement

is with reference to Central Excise Rules and has no relevance (direct or indirect) with the case of applicant.

4.2 Grounds in respect of R.A.No.195/860/13-RA

4.2.1 The Commissioner (Appeal) erred in allowing the appeal of Excise department and setting aside the impugned order in original for rebate claim on the ground that applicant did not fulfill mandatory conditions for claiming any benefit under a notification and it cannot be termed as procedural laps.

4.2.2 The Commissioner (Appeal) erred in allowing the appeal of Excise department and setting aside the impugned order in original of the rebate claim without appreciating and considering other important and independent documents submitted by the applicant & accepted by the original adjudicating authority which clearly established that input received directly from the registered factory.

4.2.3 The Commissioner (Appeal) erred in allowing the appeal of Excise department and setting aside the impugned order in original of the rebate claim without considering properly the various judicial pronouncements of higher forums that at most, such deficiencies can be considered as procedural lapse while all the substantial conditions were fulfilled by the applicant and rebate refund was in order.

4.2.4 The Commissioner (Appeal) erred in allowing the appeal of Excise department and setting aside the impugned order in original of the rebate claim by placing reliance on Supreme Court's judgment in the matter of Eagle Flask Industries Ltd. v/s Commissioner of Central Excise, Pune without appreciating the fact that said judgment is with reference to Central Excise Rules and no relevance (direct or indirect) with this case.

5. Personal hearing scheduled in this case on 30.9.14 was attended by Shri Vipin Surana, CFO on behalf of the applicant who reiterated the grounds of revision application.

6. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned orders-in-original and orders-in-appeal.

7. Government observed that rebate claim in respect of Revision Application No. 195/859/13-RA, was rejected for the reason of non-submission of original/duplicate copies of ARE-2. In respect of Revision Application No.195/860/13-RA, the rebate claim was sanctioned to the applicant. Both the cases were decided by Commissioner(A) in favour of department. Now, the applicant has filed these Revision Applications on the ground mentioned in para (4) above.

8. In these cases, the rebate claim was sought to be rejected for the reasons of non-submission of original/duplicate copies of AREs-2. In this regard, Government observes that Hon'ble High court of Bombay in its judgement dated 24.4.13 in the case of M/s U.M.Cables Vs. UOI (WP No.3102/13 & 3103/13) reported as TIOL 386 HC MUM CX. has held that rebate sanctioning authority shall not reject the rebate claim on the ground of non-submission of original and duplicate copies of ARE-1 forms if it is otherwise satisfied that conditions for grant of rebate have been fulfilled. Government, therefore, applying the ratio of above said judgement of Hon'ble High Court of Bombay in the said case, is of the view that the proof of export may be examined on the basis of collateral evidences where original and duplicate ARE-1 form is not submitted.

9. Government notes that ratio of said judgment is directly applicable to this case and therefore matter has to be examined in the light of the said judgment. In this case, the applicant did not clear the goods under cover of ARE-2 and hence failed to submit original and duplicate copies of ARE-2 to the original authority. The original authority needs to examine the whole case in the light of collateral evidences afresh giving due cognizance to the observations made in Hon'ble High Court's judgement.

10. Government notes that in respect of Revision Application No. 195/860/13-RA, the rebate claim was rejected by appellate authority on the

ground that the applicant procured the input from a firm who was neither a registered manufacturer nor a registered dealer with the department. The manufacturer M/s Sudhir Genset Ltd. raised the invoice No. 51004875 dated 09.02.2010 of impugned input in the name of M/s Neptro Renewable Energy (India) Pvt. Ltd., Gujarat who in turn raised the invoice No.04/2009-10 dated 26.2.10 in the name of impugned applicant. Government finds that in order to avail benefit of import stage rebate under notification No. 21/2004-C-E (N-T) the exporter needs to follow certain condition and procedure. One of the substantial requirement was to procure the goods directly from manufacturer place. In this case, M/s Sudhir Gensets Limited raised invoices to M/s. Neptro Renewable Energy India Pvt. Ltd. on 9.02.2010, while M/s Neptro has raised invoices to the applicant on 26.02.2010. The applicant could not give any satisfactory explanation regarding such gap of time in issuance of invoices to support their contention that goods were procured directly from manufacturer. As such applicant failed to produce any evidence to show that they procured the goods directly from factory premises. Under such circumstances, Government finds that the applicant failed to fulfill substantial condition of the said notification No. 21/2004-C-E (N-T) and therefore, rendered themselves liable for rejection of this rebate claim.

11. In view of above, Government sets aside the impugned Order-in-Appeal covered vide R.A.No.195/859/13-RA and remands the case back to original authority to decide the matter afresh in the light of said judgement of Hon'ble High Court of Bombay. A reasonable opportunity of hearing will be afforded to the parties. Government finds no infirmity in the impugned Order-in-Appeal covered vide R.A.No.195/860/13-RA and hence, rejects this revision application, being devoid of merits.

12. Revision Applications are disposed of in above term

13. So, ordered.

Handwritten signature
(Archana Pandey Tiwari) 8/12/14
Joint Secretary to the Government of India

M/s Ankur Scientific Energy Technologies Pvt. Ltd
"Ankur"
Near Navarachana School, Sama
Vadodara-390024

Attested

Handwritten signature

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D. (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt of India
नई दिल्ली/New Delhi

Order No. 374-375/14-Cx dated 08-12-2014

Copy to:


1. Commissioner of Central Excise & Customs, Vadodara-I Commissionerate, Central Excise Building, Race Course Circle, Vadodara-390 007
2. Commissioner (Appeals), Central Excise, Customs & Service Tax, 4th Floor, Central Excise Building, Race Course, Vadodara - 390 007.
3. The Deputy/Assistant Commissioner of Central Excise & Customs, Division-I, Vadodara-I, 4th Floor, Central Excise Building, Race Course, Vadodara - 390 007.

✓ 4. PA to JS(RA)

5. Guard File.

6. Spare Copy

ATTESTED


(B.P. Sharma)
OSD (Revision Application)
(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
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वित्त मंत्रालय (राजस्व विभाग)
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