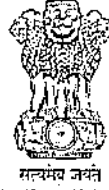


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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. 195/07/WZ/2019 / 1892
F. No. 195/162/WZ/2019

Date of Issue: 09.02.2023

ORDER NO. ^{H2-H3} /2023-CX (WZ) /ASRA/Mumbai DATED 08.02.2023 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 Applications filed under Section 35EE of the
Central Excise Act, 1944 against the Orders-in-Appeal Nos.
CCESA-SRT/(APPEALS)/PS-539/2018-19 and CCESA-
SRT/(APPEALS)/PS-796/2018-19 dated 09.11.2018 and
21.02.2019, respectively, passed by Commissioner
(Appeals), GST & Central Excise, Surat.

ORDER

The subject Revision Applications have been filed by M/s Hindustan Pencils Pvt. Limited (here-in-after referred to as 'the applicant') against the impugned Orders-in-Appeal passed by the Commissioner of Central Excise (Appeals), GST & Central Excise, Surat which decided appeals against two Orders-in-Original, both passed by the Deputy Commissioner, Central GST & Central Excise, Division-Umbergaon, Valsad Commissionerate. The issue involved in both the subject applications being common, they are being taken for decision together.

2. Brief facts of the case are that the applicant is a manufacturer and had exported goods to Nepal under LUT without payment of duty vide ARE-1 dated 21.08.2016. They failed to submit the proof of export within the stipulated period of six months from the date of removal of the goods and hence paid the duty involved on the consignment along with interest. Thereafter, on receipt of the proof of export the applicant filed an application on 22.05.2017 seeking refund of the duty so paid. They also requested the original authority to condone the delay in filing the proof of export vide their letter dated 26.07.2017. The original authority found that the goods were exported on 05.03.2017, as indicated by the endorsement of the LCS, Sonauli, Customs Office and hence vide Order-in-Original dated 05.01.2018 rejected the refund claim as the goods were exported after the expiry of the period of six months from the date of removal stipulated by notification no.45/2001-CE(NT) dated 26.06.2001. The original authority vide letter dated 01.12.2017 also rejected the request of the applicant to condone the delay on the grounds that as per para 3(ii) of the notification no.45/2001-CE(NT) dated 26.06.2001, in such cases, duty was required to be paid if the goods cleared for export were not exported within six months from the date of removal and that this position was not affected by subsequent notification/s amending it. The applicant chose to file appeals against the Order-in-Original dated 05.01.2018 and the letter dated 01.12.2017 before the Commissioner (Appeals) who vide the impugned Order-in-Appeals dated 05.01.2018 and 09.11.2018 upheld both the decisions 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 not taken into account or given any findings on the provisions of law clarified in Circular No. 958/1/2012-CX., dated 13-1-2012 which was applicable to the facts of the present case and that post-facto extension of time for export of the goods was permissible; that the export made to Nepal was at par and all the provisions of relaxation were applicable and therefore the findings of the lower authorities were not correct;

(b) That the Commissioner (Appeals) had failed to appreciate that the judgment cited by them was squarely applicable to the facts of the present case and therefore applying the ratio of Circular No. 958/1/212-CX dated 13.01.2012 read with para 2.1 of Chapter 7 of CBEC Manual and the judgment in the case of Kosmos Healthcare Pvt. Ltd. - 2013 (297) ELT 345 (Cal.), there was no cause to reject their appeal;

(c) That the Commissioner (Appcals) had cut-short in para 5.1, 5.2 and 6 of his order by giving simple findings that the order of the adjudicating authority was correct without giving any specific findings on the submissions made and judgment cited and circular explained and therefore there was injustice to them;

In view of the above, the applicant requested to allow their appeal with consequential relief and to condone the delay of 13 days.

4. Personal hearing in the matter was granted to the applicant on 22.11.2022 and Shri Raj Vyas, Advocate appeared online for the same. He submitted that goods were exported a few days after six months. He further informed that their application for condonation/extension of time was rejected by the competent authority. He relied upon the judgment of Calcutta High Court in the case of Kosmos Healthcare P. Ltd [2013 (297) ELT 345]. He submitted that all procedures had been followed including requesting for extension. 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 letter/Order-in-Original of the original authority and the impugned Orders-in-Appeal.

6. Government finds that the short issue for decision is whether the delay in exporting the goods after them being removed the factory can be condoned or otherwise and consequently whether the applicant would be eligible for the refund of the duty paid by them on the goods exported.

7. Government finds that notification no.45/2001-CE(NT) dated 26.06.2001 lays down the conditions, safeguards and procedure for export of goods to Nepal. Government notes that one of the conditions laid down at para 3(ii) of the said notification reads as follows –

“ (ii) in case of failure to export within six months from the date of removal from the factory or warehouse or any other approved premises, or shortages noticed, the exporter shall discharge the duty liability on the goods not so exported or shortage noticed along with twenty four per cent. interest thereon from the date of removal for export without payment of duty till the date of payment of duty in terms of the bond;”

The language used in the above notification make it clear that the legislature intended that in cases like the present one, the goods should be exported within six months of being cleared from the factory/warehouse of manufacturer. It does not provide for the original authority or the Commissioner (Appeals) to condone the delay on the part of the applicant in exporting the goods. Government finds that the fact that exports took place after six months of the goods being cleared from the factory/warehouse is not in dispute. Government finds that the applicant has sought to rely on the Circular no.958/1/2012-CX dated 13.01.2012 issued by the Board to submit that the delay was condonable by the competent authority. Government finds that the said Circular states that notification no.45/2001-CE(NT) dated 26.06.2001 stood amended by notification no.29/2011-CE(NT) dated 05.12.2011. On examining the notification no.29/2011-CE(NT) dated 05.12.2011, Government finds that the condition at para 3(ii) of notification no.45/2001-CE(NT) dated 26.06.2001 has not been amended and still held good for the period in question. Thus, Government finds that the original refund sanctioning authority and the Commissioner (Appeals) have no option but to follow the limitations imposed by the statute and are not

vested with powers to condone lapses which are in breach of such limitations. Thus, Government finds the decisions of the Commissioner (Appeals) to uphold the decisions of the original adjudicating authority to reject the request for condoning the delay in export of the goods and to deny the refund claim for not having complied with the condition of exporting the goods within six months of its clearance from the factory/warehouse, to be proper and legal.

8. Government further finds that the decision of the Hon'ble High Court of Calcutta in the case of Kosmos Healthcare P. Ltd. [2013 (297) ELT 345 (Cal)], on which the applicant has sought to rely, pertains to export under the notification no.19/2004-CE (NT) which sets down a different set of conditions and procedures for export and hence will not be applicable to the instant issue.

9. In view of the above, Government does not find any infirmity in the impugned Orders-in-Appeal and upholds both of them. The subject Revision Applications are dismissed.

Shrawan
8/2/23
(SHRAWAN KUMAR)

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

H2-13

ORDER No. /2023-CX (WZ) /ASRA/Mumbai dated 08.02.2023

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, 3rd floor, Magnus Mall, Althan Bhimrad Canal Road, Near Atlantis Shopping Mall, Althan, Surat - 395 017.
3. Shri Kaushik I. Vyas, Advocate,
401, Shivanjali Apartment, Rangila Park,
Ghod Dod Road, Surat.
4. Sr. P.S. to AS (RA), Mumbai
5. Notice Board.