

**REGISTERED
SPEED POST**



**F.No. 195/505-507/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
3rd FLOOR, NEW DELHI-110 066

Date of Issue.....31/5/13

Order No. 501-503/13-cx dated 31.05.2013 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under section 35 EE of the Central Excise, 1944 against the Order-in-Appeal No. 8-10/11 dated 05-04-2011 passed by Commissioner of Central Excise, (LTU), New Delhi.

Applicant : M/s Sandhar Automotives (Export Div.), A unit of M/s. Sandhar Technologies Ltd., Plot No. 7A, KIADB Industrial Area, Attibele, Bangalore-560107.

Respondent : Commissioner of Central Excise, Bangalore-I, Commissionerate, C.R. Building, Queens Road, Bangalore-560001.

ORDER

These revision applications are filed by M/s Sandhar Automotives (Export Div.), A unit of M/s. Sandhar Technologies Ltd., Plot No. 7A, KIADB Industrial Area, Attibele, Bangalore against the Order-in-Appeal No. 8-10/11 dated 05-04-2011 passed by Commissioner of Central Excise (Appeals), Bangalore with respect to Order-in Original passed by The Assistant Commissioner of Central Excise, Bangalore.

2. Brief facts of the case are that the applicant filed rebate claims for duty paid on goods, exported by them. The adjudicating authority found that although the applicant had exported the goods in the month of April, May, July and August 2009, they had debited the duty involved in December 2009. As such they did not comply with the provisions of Notification No. 19/04 dated 06-09-2004 issued under Rule 18 of the rules read with condition (i) of part-I, Chapter 8 of the CBEC Manual of Supplementary Instructions to make them eligible for rebate claims. The adjudicating authority rejected the rebate claim of vide the impugned Orders-in-Original.

3. Being aggrieved by the said Orders-in-Original, applicant filed appeal before Commissioner (Appeals), who also rejected their appeals.

4. Being aggrieved by the impugned Orders-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 applicant would also like to draw attention on sub rule (3) of rule 8 of Central Excise Rules, 2002. According to these sub rules if the assessee fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount along with interest at the rate specified by the Central Government vide notification under section 11AB of the act on the outstanding amount, for the period starting

with the first day after due date till the date of actual payment of the outstanding amount.

4.2 It is not case of the department that the applicant has not paid the Central Excise duty on the exported goods. The issue involved in the present case is that the applicant has not paid the duty on due date which is specified under Rule 8 of Central Excise Rules, 2002. But subsequently applicant had paid the duty and hence they are legally entitled for rebate claim of because the export of goods is not under dispute.

5. Personal hearing was scheduled in this case on 13-12-2012 & 22-02-2013. Hearing was attended by Shri. Ram Chander Chaudhary, advocate on behalf of the applicant who reiterated the grounds of Revision Application. Nobody attended hearing on behalf of department.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Orders-in-Appeal.

7. Government observes that the original authority rejected the rebate claim on the ground that the applicant cleared the goods for export, in the month of April, May, July and August 2009 but paid the duty w.r.t. such exported goods only in the month of December 2009. Since the applicant did not pay duty at the time of removal of goods for export, the rebate of duty paid subsequently, was held inadmissible by the adjudicating authority. The said orders were upheld by Commissioner (Appeals). Now, the applicant has filed these revision applications on grounds mentioned in para (4) above.

8. As per provisions of Rule 18 of Central Excise Rule 2002 r/w Notification No. 19/04-Central Excise (NT) dated 06-09-2004, the rebate of duty paid on excisable exported is granted subject to compliance of conditions and procedure prescribed in the Notification No. 19/04- Central Excise (NT). Condition 2 (a) of said Notification stipulates that goods shall be exported on the payment of duty directly

from factory or warehouse. Government further notes that as per provisions contained in para 1.1 (1) OF PART-I, Chapter 8 of CBEC's Excise manual of Supplementary Instructions, the excisable goods shall be exported after payment of duty. The conditions of "payment of duty" is satisfied once the exporter records the details of removals in the Daily stock Account maintained under Rule 10 of Central Excise Rules, 2002 where as the duty may be discharged in the manner specified under rule 8 of the said Rules, i.e monthly basis. Further, the rule 8 of the said Rules requires that duty payment for the goods removed during the month of March should be done by the 31st of March. Rule 10 requires maintenance of Daily Stock Account, by giving complete details of goods produced and manufactured including amount of duty actually paid.

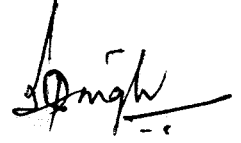
9. Form the harmonious reading of all the provisions mentioned above, it is concluded that for the goods cleared in month of April, May, July and August the duty was to be paid by last date of that month and actual payment of duty was required to be entered in daily stock register. Government notes that applicant did not pay duty at the time of export of goods and as such failed to fulfil the above said conditions stipulated under Rules 18 of Central Excise Rules, 2002, Notification No. 19/04-C.E. (NT) dated 06-09-2004 and above supplementary instructions.

10. Government further observes that sub rule 3 and 3(A) of Rule 8 provides for payment of duty along with applicable interest if the assessee failed to pay the amount of duty by due date. Government notes that provision for claim of rebate is governed by Rule 18, which requires payment of duty at the time of export. The provisions contained in Rule 8 does not absolve the assessee from substantial conditions of payment of duty of claim rebate of duty under Rule 18 of Central Excise Rules 2002. Since, the fundamental condition of exporting duty paid goods is not satisfied in this case, so the rebate claim is rightly held inadmissible. Further, the facts of the case laws relied upon by the applicant is different from facts of this case and hence, the ratio of those case laws cannot be made applicable to this case.

11. In view of above circumstances, rebate of duty is rightly held inadmissible to the applicant in the instant case. Government do not find any infirmity in the orders of appellate authority and hence, upholds the same.

12. Revision Applications are rejected being devoid of merit.

13. So, ordered.




(D.P. Singh)

Joint Secretary to the Govt. of India

M/s Sandhar Automotives (Export Div.),
A unit of M/s. Sandhar Technologies Ltd.,
Plot No. 7A, KIADB Industrial Area,
Attibele, Bangalore-560107.

ATTESTED



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

order No. 501-503 /13-Cx dated 31-05-2013

Copy to:

1. Commissioner of Central Excise, Bangalore-I, Commissionerate, C.R. Building, Queens Road, Bangalore-560001.
2. Commissioner of Central Excise (Appeals), LTU, NBCC Plaza, Pusapvihar, Saket, New Delhi-17.
3. Assistant Commissioner of Central Excise, Div.- III, 7th Floor, (C), Wing, Kendriya Sadhan, Koramangle, Bangalore-34.

- ✓ 4. PS to JS(RA)
5. Guard File.
6. Spare Copy

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(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)