



REGISTERED  
SPEED POST

F.No.195/1085/11-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue.....4/6/13

ORDER NO. 505 /13-Cx DATED 03.06.2013 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Order in Revision Application filed under Section 35 EE of the Central Excise Act, 1944 Against the Order-In-Appeal No.96-CE/GZB/2011-12 dated 30.5.11 passed by the Commissioner of Customs, Central Excise (Appeals), Ghaziabad.

Applicant : M/s Met Trade India Ltd., Dadri (UP)

Respondent : The Commissioner of Central Excise, CGO Complex-II, Kamala Nehru Nagar, Ghaziabad, (Uttar Pradesh)

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Order

This revision application is filed by M/s Met Trade India Ltd., Ghaziabad against Order-In-Appeal No.96-CE/GZB/2011-12 dated 30.5.11 passed by the Commissioner of Customs, Central Excise (Appeals), Ghaziabad with respect to Order-in-Original No.48-55/Addl. Commissioner/GZB/2010 dated 28.9.10 passed by the Additional Commissioner, Central Excise, Ghaziabad.

2. Brief facts of the case are that the Applicants are engaged in the manufacture & export of Antimoni Lead Alloy falling under Ch. No. 78 of the Central Excise Tariff Act, 1985. During the period from July 2007 to August 2007, they exported the said goods under claim for rebate of duty under Rule 18 of the Central Excise Rules 2002. The jurisdictional Assistant Commissioner sanctioned the rebate claims of duty of Rs.10082632/- (claims as filed by the applicants in respect of the said export goods) vide 8 Orders-in-Original all dated 5.11.08. The said orders-in-original were reviewed by CCE, Ghaziabad and appeals were filed before Commissioner (Appeals) who vide order-in-appeal dated 29.5.09 allowed the appeals of department.

2.1 Simultaneously, 8 show cause notices all dated 30.10.2009 were issued to the applicants for recovery of the so called erroneously sanctioned rebate of duty of Rs.1,00,82,632/-. The adjudicating authority, Additional Commissioner of Central Excise vide the impugned order dated 28.09.2010 confirmed the demand of duty of Rs.1,00,82,632/- & interest thereon. He also imposed a penalty of Rs.5,000/- in each case and thus, total penalty of Rs.40,000/- (Rs.5,000/- x 8) under Rule 27 of the Central Excise Rules, 2002 was imposed against the applicants.

3. Being aggrieved by the said Order-in-Original dated 28.9.10, the applicant filed appeal before Commissioner (Appeals) who vide order-in-appeal dated 30.5.11 upheld the impugned orders-in-original and rejected the appeal.

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 impugned SCN's were issued to us as protective demand. The Assistant Commissioner, Central Excise, Ghaziabad sanctioned the rebate claims to us after verifying all the facts thoroughly.

4.2 That the rebate claim is filed as per the provisions of Section 11 B and we have complied with all the provisions of the relevant Section. We have complied with the conditions and limitations as prescribed in the notification number 19/2004-CE (NT). It is the conditions and limitations which determine the entitlement of the exporter to rebate claim. The procedures are not mandatory. The procedure simply lays down a sequence of activities or tasks or steps to accomplish a particular act. The procedure in a given situation may vary.

4.3 We have exported the goods from the factory. The fact has been accepted by the Assistant Commissioner in all the orders-in-original and in different communications with us. The identity of the goods and correlation between the goods which moved from the factory and the goods which have been exported is conclusively determined by the papers presented to the Customs authorities and the same has nowhere been disputed by any customs authorities at ICD. Trade notice no.10/2004 Dated 3.8.2004 issued by the Commissioner Central Excise, Tirunelvile that the Manufacturer exporters who are not desiring to opt for self-sealing of

containers and other exporters may avail the facility of nearest Inland Container Depot/CFS for stuffing containers and other customs clearance requirements. We humbly submit that trade notice issued by the one Commissionerate is binding on the other Commissionerate.

4.4 The procedure is nothing but sequence of activities to complete a particular job. These could not be mandatory. Given this situation we wish to state that we have exported the goods only in specified and lawfully allowed manner. Therefore considering the Trade notice and Circulars mentioned the procedure for export adopted by us is as per the provisions of the law.

4.5 Thus far there is no dispute that the goods have not been exported.

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It is categorically said by the Assistant Commissioner in his orders sanctioning rebate claims that we have exported the goods directly from the factory. There is no dispute from the excise angle that the goods have not been exported. The Honorable Commissioner (Appeals) in the impugned order at page No.8 last para has said "while, it is true that substantive benefit should not be denied if there has been procedural lapse, in these cases, I find that there has been gross failure on the part of the respondent in following the mandatory procedures as laid down in Notification No.19/2004-CE (NT) Dated 6.9.2004 which in fact is not even admitted by them and no reasons for this failure to follow procedure has been given.

4.6 The impugned notification very clearly says about two places namely place of dispatch and place of export. Having cleared the goods from the factory we presented the goods at place of export. The place of export and as explained in para 9 above is "place of export may be a port, airport, Inland Container Depot, Customs Freight Station or land Customs Station". The goods have been

examined there and all the procedural requirements, as specified in the law, were completed at the place of export by the Customs Authorities acting as a representative of the Excise authorities and for himself as per the laid direction in Chapter 8 para 7. It is contrary to the facts of the case that we have not complied with the conditions of Notification 19/2004.

4.7 In our case there is no denial and dispute to the fact that:

We have exported same duty paid goods. The payment of the goods after export has been realized by the authorized bank. The essential condition of allowing rebate as per Rule 18 of the Central Excise Rule 2002 is that the goods are to be exported and those goods should be duty paid. Thus we fall in the ambit of the Notification 19/2004 as goods have been exported by following the conditions specified in the notification.

5. The personal hearing was scheduled in this case on 21.02.2013. Shri T.K.Chanana, General Manager appeared for hearing on behalf of the applicant who reiterated the grounds of Revision Application. He submitted that their revision application No.195/670/09 filed against order-in-appeal No.119-126-CE /GZB/09 dated 29.5.09 was allowed vide GOI order No.1253-54/11-Cx dated 30.9.11. The Respondent Department vide their letter dated 21.2.13 confirmed that issue was decided in favour of applicant vide the GOI order No.1253-54/11-Cx dated 30.9.11.

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

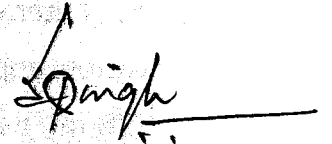
7. On perusal of records Government notes that the adjudicating authority confirmed the erroneously sanctioned rebate with interest and imposed penalty of Rs.5000/- each in all the eight show cause notices dated 30.10.09 where

protective demands were issued. Initially Assistant Commissioner of Central Excise had sanctioned the said 8 rebate claims vide 8 orders-in-appeal dated 5.11.08. These orders were reviewed and appeal filed before Commissioner (Appeals) were allowed in favour of department vide order-in-appeal dated 29.5.09. Applicant filed revision application against the said order-in-appeal dated 29.5.09 which was allowed in favour of applicant vide GOI Revision Order No.1253-54/11-Cx dated 30.9.11. The department vide letter dated 21.2.13 has confirmed this position. In view of GOI Revision Order No.1253-54/11-Cx dated 30.9.11 further recovery proceeding initiated and impugned orders confirming demand, do not legally sustain. The demands are liable to be dropped straightway.

8. In view of position explained above, Government sets aside the impugned orders and allows the revision application.

9. The revision application thus succeeds in terms of above.

10. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

M/s Met Trade India Ltd.,  
Village Bheel Akbar Pur, Dadri  
G.T.Road, Dadri (UP)



(भागवत शर्मा/Bhegvet 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. 505/13-CX dated 03.06.2013

Copy to:-

1. The Commissioner of Central Excise, CGO Complex-II, Kamala Nehru Nagar, Ghaziabad-201001 (Uttar Pradesh)
2. The Commissioner (Appeals), Central Excise & Customs, Room No. 232, CGO Complex-I, Kamla Nehru Nagar, Ghaziabad – 201 001.
3. The Additional Commissioner of Central Excise, Ghaziabad (U.P.)
- ✓ 4. PS to JS(Revision Application)
5. Guard File.
6. Spare Copy.

ATTESTED



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

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