

**REGISTERED
SPEED POST**



**F.No. 198/314/11-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...5/6/11...

Order No. 511 /13-cx dated 04-06-2013 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 : Revision Application filed,
under section 35 EE of the Central Excise,
1944 against the Order-in-Appeal No.
BC/20/SURAT-II/2011 dated 15-03-2011
passed by Commissioner of Central
Excise, (Appeals), Surat-II.

Applicant : Commissioner of Central Excise,
New Central Excise Building,
Opp. Gandhi Baug, Chowk Bazar,
Surat-395001.

Respondent : M/s. Gujrat Organics Ltd.,
Plot No. 127/1, GIDC,
Ankleshwar-393002.

ORDER

This revision application is filed by Commissioner of Central Excise, Surat-II against the Order-in-Appeal No. BC/20/SURAT-II/2011 dated 15-03-2011 passed by Commissioner of Central Excise, (Appeals), Surat-II with respect to Order-in Original passed by the Assistant Commissioner of Central Excise, Surat-II. M/s. Gujrat Organics Ltd. is the respondent in this case.

2. Brief facts of the case are that the respondent in this case supplied their goods to SEZ and filed claim of rebate of duty paid on such supplies to SEZ. The claims were sanctioned by the original authority vide impugned Orders-in-Original.

3. Department reviewed the impugned order and filed appeal filed before Commissioner (Appeals), on the ground that the applicant did not supplied the goods under Bill of Export. Commissioner (Appeals) decided the case in favour of respondent.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant department has filed this revision application under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 As per Rule 30 (3) of SEZ Rules, 2006, the goods procured by the SEZ unit or developer under claim of export of entitlements shall be allowed admission into the SEZ on the basis of ARE-1 and Bill of export filed by the supplier or on his behalf by the SEZ unit or developer and which is assessed by the authorized officer before arrival of the goods. The rebate also includes in the export incentive for the purpose of SEZ procedures. As per Circular No. 29/2006-Cus dt. 27-12-2006 in para 6 also stipulates that the movement of goods from the place of manufacture to the SEZ shall be on the basis of ARE-1 and Bill of Export (in cases where export entitlements are availed).

4.2 The Commissioner (Appeals) failed to take of note and failed to appreciate that the adjudicating authority erred in allowing the rebate claim in absence of Bill of Export which he neither has cited authority for relaxation of the binding condition nor has he recorded any reason for allowing rebate inspite of non availability of the Bill of Export. Such an order of Adjudicating authority is contrary to the ratio of the case law of 2009 (233) ELT 46 (Guj) in case of M/s. Cosmount Chemicals Vs. Union of India wherein it has been specifically recorded that " It is necessary to state and clarify here that mitigating circumstance as flowing from the aforesaid legislative scheme is one and one only Viz. where the lapse as to non-availability of requisite document is on account of Central Excise Department or Customs Department. The legislative scheme does not provide for any other exception or mitigating factor." The claimant has not even come up with any mitigating factor owing to which such condition of the laid down instruction could be relaxed.

5. A Show Cause Notice was issued to the respondent under section 35 EE of Central Excise Act, 1944 to file their counter reply. However, no reply has been received.

6. Personal hearing scheduled in this case on 05-03-2013 was attended by Shri Vinay Kansara, advocate on behalf of the respondent who stated that Order-in-Appeal being legal and proper, may be upheld. Nobody attended hearing on behalf of applicant department.

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

8. Government observes that the respondents supplied the goods to units located in special Economic Zone (SEZ) and filed rebate claims under Rule 18 of Central Excise Rules, 2002. The rebate claims were rejected by the original authority on the ground that rebate being an export entitlement, the respondent was required to file Bill of export and they have cleared the goods only on ARE-I form. Commissioner (Appeals) decided the cases in the favour of respondents. Now the

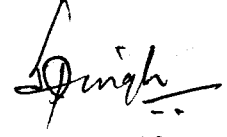
applicant department has filed this revision application on grounds mentioned in para (4) above.

9. Government observes that in terms of para (5) of Board's Circular No. 29/2006-Cus dated 27.12.06, the supply from DTA to SEZ shall be eligible for claim of rebate under Rule 18 of Central Excise Rules, 2002 subject to fulfilment of conditions laid thereon. Government further observes that the Rule 30 of SEZ Rules, 2006 prescribes for the procedure for procurements from the Domestic Tariff Area. As per sub-Rule (1) of the said Rule (30) of SEZ Rules, 2006, DTA may supply the goods to SEZ, as in the case of exports, either under Bond or as duty paid goods under claim of rebate under the cover of ARE-1 form. The original authority has rejected rebate as they failed to produce bill of Export in term of sub-Rule (3) of Rule 30 of SEZ Rules, 2006 and Board's Circular No. 29/2006-Cus dated 27.12.06. CBEC Circular No. 6/10-Cus dt. 19-03-2010 further clarified that rebate of duty paid on goods supplied to SEZ is admissible under rule 18 of Central Excise Rules, 2002. Government observes that in terms of rule 30(5) of the SEZ Rules, Bill of export should be filed under the claim of drawback or DEPB. Since rebate claim is also export entitlement benefit, the respondent was required to file Bill of export. Though Bill of Export is required to be filed for making clearances to SEZ, yet the substantial benefit of rebate claim cannot be denied only for this lapse. Government observes that Custom Officer of SEZ Unit has endorsed on ARE-1 form that the goods have been duly received in SEZ. As the duty paid nature of goods and supply the same to SEZ is not under dispute, the rebate on duty paid as goods supplied to SEZ is admissible under Rule 18 of Central Excise Rules, 2008. Commissioner (Appeals) has rightly allowed the rebate claims in these cases.

10. In view of above discussions Government do not find any infirmity with the impugned Order-in-Appeal and hence, upholds the same.

11. This revision application is thus rejected being devoid of merits.

12. So, ordered.

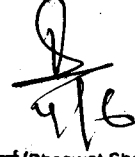


(D.P. Singh)

Joint Secretary to the Govt. of India

Commissioner of Central Excise,
New Central Excise Building,
Opp. Gandhi Baug, Chowk Bazar,
Surat-395001.

ATTESTED



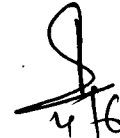
(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev)
भारत सरकार/Govt of India
नई दिल्ली / New Delhi

Order No. S11 /13-Cx dated 04-06-2013

Copy to:

1. The Commissioner (Appeals), Central Excise & Customs, New Central Excise Building, Opp. Gandhi Baug, Chowk Bazar, Surat-395001.
2. The Asstt. Commissioner of Central Excise, Devison-I, Ankleshwar, Central Excise Building, Behind Roshan Cinema, Ankleshwar.
3. M/s. Gujrat Organics Ltd., Plot No. 127/1, GIDC, Ankleshwar-393002.
- ✓ 4. PS to JS (RA)
5. Guard File.
6. Spare Copy

ATTESTED



(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)