

SPEED POST



**F. No. 195/139-145/2018—R.A.
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.. 18/3/21.....

Order No. 53-59 /2021-CX dated 18-03-2021 of the Government of India, passed by Shri Sandeep Prakash, Additional 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 Order-in-Appeal No. JNK-EXCUS-APP-333-339-17-18 dated 07.03.2018 passed by Commissioner (Appeals), CGST and Central Excise, Jammu.

Applicant: M/s Cardinal Chemicals Pvt. Ltd., Kathua, J&K.

Respondent: Commissioner of CGST & Central Excise, Jammu.

ORDER

Seven Revision Applications Nos. 195/139-145/2018-R.A. dated 08.06.2018 have been filed by M/s Cardinal Chemicals Pvt. Ltd., Kathua, J&K (hereinafter referred to as applicant) against Order-in-Appeal No. JNK-EXCUS-APP-333-339-17-18 dated 07.03.2018 passed by Commissioner (Appeals), CGST and Central Excise, Jammu wherein the appeals filed by the applicant against Orders-in-Original No. 103/CE/Rebate/AC/J/2016 dated 06.03.2017, 104/CE/Rebate/AC/J/2016 dated 06.03.2017, 105/CE/Rebate/AC/J/2016 dated 07.03.2017, 106/CE/Rebate/AC/J/2016 dated 15.03.2017, 107/CE/Rebate/AC/J/2016 dated 15.03.2017, 112/CE/Rebate/AC/J/2016 dated 21.03.2017 and 113/CE/Rebate/AC/J/2016 dated 21.03.2017 have been rejected.

2. The brief facts leading to the present proceedings are that the applicant was availing the benefit of Area Based Exemption in terms of Notification No. 01/2010-CE dated 06.02.2010 and also exporting their goods. In the instant case, they filed rebate claims with the jurisdictional Central Excise authorities in terms of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004 in respect of the central excise duty paid on the exported goods. The said claims were rejected by the original authority on the ground that simultaneous benefit of area based exemption in terms of Notification No. 01/2010-CE dated 06.02.2010 and rebate under Notification No. 19/2004-CE (NT) dated 06.09.2004 is not admissible in view of the debarring provisions as contained in Para 2(h) of said

notification no. 19/2004, though there is no debarring provisions specifically with respect to notification no. 01/2010-CE dated 06.02.2010 in the said notification 19/2004 but the same logic applies. Aggrieved, the applicant filed appeals before Commissioner (Appeals) who rejected the appeals on the same grounds. Instant revision applications have been filed on the ground that since notification no. 01/2010-CE dated 06.02.2010 has not been included in Clause 2(h) of notification no. 19/2004, there cannot be any bar for the applicant to take rebate of the duty suffered on exported goods. Hence, the impugned Order-in-Appeal may be set aside.

3. Personal hearing was held on 16.03.2021, in virtual mode. Sh. S.K. Malhotra, Chartered Accountant, appeared for the applicant and re-iterated the submissions made in the revision application and the additional submissions dated 15.03.2021. He highlighted that:

- (i) The applicant was working under the area based exemption vide notification 1/2010-CE that grants refund only to the extent of duty paid in cash. In the present case, the duty has been paid entirely from the CENVAT account. Hence, no refund has been obtained by them. Consequently, sanction of rebate will not cause any double benefit to them.
- (ii) The benefit has been denied to them on the basis of Para 2(h) of the notification 19/2004-CE (NT) that bars availment of rebate to manufacturers availing the benefits of the notifications specified therein. Notification 1/2010-CE is not mentioned / specified therein. Therefore, there is no authority in law to deny them rebate.

No one attended the personal hearing for the respondents and no request for adjournment has been received. Hence, the matter is being taken up for disposal on the basis of facts available on record.

4.1 The Government has examined the matter. It is not disputed that:

- (i) The applicant was working under Notification no. 01/2010-CE dated 06.02.2010.
- (ii) The applicant has filed rebate under Rule 18 read with notification no. 19/2004-CE (NT) dated 06.09.2004. This notification lays down 'terms and conditions' and 'procedure' for availment of rebate under Rule 18. Clause 2(h) of this notification, inserted by an amendment vide notification no. 37/2007-CE (NT) dated 17.09.2007, bars the manufacturers from availing rebate, if they are availing the benefit of any of the notifications listed therein.
- (iii) Notification no. 1/2010-CE dated 06.02.2010 which was availed by the applicant in this case, is not listed in the above said Clause 2(h) of notification 19/2004-CE (NT) dated 06.09.2004.

Therefore, it is clear that rebate cannot be denied to the applicant by virtue of provisions of notification 19/2004-CE (NT). It is trite to say that the notifications have to be construed strictly and there is no scope of intendment therein.

4.2 It has been alleged by the respondent department that as the applicant was availing the benefits of Notification 01/2010-CE (NT) dated 06.02.2010, the duty paid was refunded to the applicant. Thus, grant of rebate would amount to double benefit. However, the Government observes that this notification provides for refund

of duty which is payable on value addition (i.e. cash) only whereas in the instant case, admittedly, the entire duty claimed as rebate has been paid from CENVAT account.

Thus, it is not a case of double benefit as well.

5. In view of the foregoing, the revision applications are allowed with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India

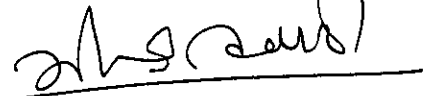
M/s. Cardinal Chemicals Pvt. Ltd.,
G.T. Road, SICOP Industrial Estate, Hatli More, Kathua,
Jammu & Kashmir, Pin code-184 001

G.O.I. Order No. 53-59/21-Cx dated 18-3-2021

Copy to:-

1. Commissioner of CGST & Central Excise, Jammu.
2. Commissioner (Appeals), Central Excise & CGST, Jammu.
3. Sh. S. K. Malhotra, Chartered Accountant, 75/6, Channi Himmat, Jammu.
4. PA to AS (Revision Application)
5. Spare Copy
6. Guard File

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)