

**REGISTERED
SPEED POST**



**F.No. 195/254/11-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..06./6./13

Order No. 557/13-cx dated 06-06-2013 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.
144/2005 Dated 11-01-2003
passed by Commissioner of Customs and Central
Excise, (Appeals), Mysore.
- Applicant : M/s Wolfra Tech. P. Ltd.,
B-07, Hebbal Indl Estate,
Mysore.
- Respondent : Commissioner of Customs & Central Excise,
Mysore

ORDER

This revision application is filed by M/s Wolfra Tech. P. Ltd., Mysore against the Order-in-Appeal No. 144/2005 Dated 11-01-2003 passed by Commissioner of Central Excise (Appeals), Mysore with respect to Order-in Original passed by the Assistant Commissioner of Central Excise, Mysore.

2. Brief facts of the case are that the applicant is engaged in the manufacture of Tungsten wire and molybdenum wires and special purpose tungsten Filament at Mysore. The applicant imports their raw materials under advance license from various countries and clears the materials from customs without payment of duty. The applicant exported their finished goods to various countries on payment of duty at the time of export. The applicant had paid excise duty on their impugned finished goods while clearing for export and has claimed the rebate under Rule 18 of the Central excise Rules, 2002. The original authority rejected their claim on the ground that since the raw material is imported and received under Advance License without payment of duty, the rebate under rule 18 is not eligible in terms of Notification No. 43/2002 dt. 19-04-2002.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same. The applicant preferred appeal before Tribunal against impugned Order-in-Appeal. The tribunal decided the case in favour of applicant. The department filed Central Excise Appeal No. 65/2007 before Hon'ble Karnataka High court against order of tribunal on the ground of jurisdiction that tribunal had no jurisdiction to deal with issues relating to rebate. Hon'ble Karnataka High Court vide order dtd. 28-02-2011 set aside the order of tribunal and directed the applicant to file the revision application before authorities within one month time. This authority was also directed to decide the issue on merit without getting into question of time limitation.

4. The applicant subsequently filed this revision application under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The applicant submits that since the similar matter in the case of Upkar International was taken up by the Tribunal and was allowed, the applicant had preferred an appeal before the CEGAT.

4.2 In the instant case the duty has been paid on clearances for export and in any event the refund of the credit to be allowed as otherwise under rule 5 of the Cenvat Rules 2004.

4.3 The Hon'ble Apex Court, in the case of Collector Vs. MRF Ltd. reported in 1996 (82) 151 (SC), had held that if the availment of relevant demand towards payment of duty and the finished excisable goods cannot be given in personal ledger account or appropriate account of the applicants, the amount of relief is payable in cash or by cheque. Further, in the case of SVM Exports Vs. Commissioner of Central Excise, Coimbatore reported in 2006 (203) ELT 52 (tri. Chennai), the Tribunal has allowed the refund.

4.4 In the case of Commissioner Vs. Suncity Alloys P. Ltd. reported in 2007 (218) ELT 174 (Raj.), the Hon'ble High Court has held that if goods have been cleared on payment of duty, Government in any event cannot retain the amount in question. Further, if no duty was leviable and assessee was not required to pay the duty still if he has paid the duty which has been received by the Commissioner, they cannot retain the same on any ground and must refund the amount received from the assessee as on their own.

4.5 The provisions of the Notification No. 43/2002- Cus. bars from availing rebate claim under rule 18 on the duty paid on materials used in manufacture of resultant product. In the case of M/s. Shubhada Polymers Products P. Ltd. the Revision Authority vide order No. 04-06/09 dt. 16-01-2009 has allowed a refund based on the Notification No. 43/2002 holding that the duty is paid on the clearance of the finished goods is not contrary to the provisions of the Notification No. 43/2002- Cus.

5. Personal hearing was scheduled in this case on 14-10-2012 & 22-02-2013. Hearing held on 22-02-2013 was attended by Shri S. Loknath, Chartered Accountant on behalf of the applicant who reiterated the grounds of Revision Application. Nobody attended hearing on behalf of respondent department.
6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.
7. Government observes that the applicant imported the inputs duty free under advance license under Notification No. 43/2002- Cus dt.19-04-2002 and exported the duty paid goods under Advance License Scheme. The original authority rejected their rebate claim on the ground that since the raw materials were imported duty free under advance License in terms of Notification No. 43/2002- Cus; they are not eligible for rebate under rule 18 of central Excise Rules, 2002. Commissioner (Appeals) upheld impugned Order-in-Original. The applicant filed appeal against order of appellate authority before CESTAT who vide final order No. 2043-2044/06 dt. 13-12-2006 decided the case in favour of applicant. The department filed Central Excise Appeal in Hon'ble Karnataka High Court against order of tribunal on the ground of jurisdiction. Hon'ble Karnataka High Court vide order dtd. 28-02-2011 set aside the order of tribunal and directed the applicant to file the revision application within one month time. This authority was also directed to decide the issues on merit without getting into question of time limitation. The applicant has filed this revision application on grounds mentioned in para (4) above.
8. Government notes that this issue is already decided vide GOI Revision order No. 04-06/09-dated 16.1.09 in the case of M/s Shubhada Polymers Products (Pvt.) Ltd, reported as 2009 (237) ELT 623 (GOI), allowing the rebate of duty paid on goods exported under advance License scheme, in the light of Corrigendum dated 29.11.02 issued to amend the earlier Notification No. 43/2002-Cus dated 19.4.2002. It is pertinent to mention here that initially Government vide Revision order No. 259-261/05 dt. 30-05-2005 had rejected the revision application of applicant. Aggrieved by the order of the revisionary authority, the applicant filed a Writ Petition No.

606/2006 in the High Court of Judicature at Bombay. The Writ Petition was decided on 9.03.06 [2006 (204) ELT 552 (Bom.)] and the Hon'ble High Court set aside order dated 30.06.05 passed by Revisionary authority and remanded the matter back for fresh consideration in accordance with law in the light of the corrigendum dated 29.11.02. The operative part of judgment is reproduced below:

"6. The present writ petition deserves to be allowed on the short ground of non-consideration of the corrigendum dated 19th November, 2002 clarifying the condition V of the Notification No. 43/2002-Cus dated 19th April, 2002 despite the specific contention raised in this regard by the petitioner. In the revision application, admittedly, the petitioner raised *inter alia* the following contentions :

- (a) That the applicants had submitted that Notfn. No. 43/2002-Cus dated 19.04.02 is concerned, it stands corrected *ab initio* from 19.04.02 FROM 19.04.02 and DEEC availment bar, therefore, *vide* condition (v) therein, is correctly barred only against Rule 18 (input)(ARE-2) or rule 19(2) CT2 + ARE-2, rebate or relief and not against rule 18 (finished goods (ARE-1), rebate or rule 19(1) ARE-1 or CR1 + ARE-1), facility. The Ld. Commissioner thus rejected rebate claim without applying his mind and without taking the change made in the Notfn. No. 43/2002-Cus.
- (b) That the Govt. of India, Ministry of Finance & Co. Affairs, Department of Revenue *vide* Drawback Public Notice No. 9/2002 dated 29.11.02 issued a Corrigendum which read as below:

"GSR 705 (E)" :- In condition (v) of opening paragraph of the Notification of the Govt. of India in the erstwhile Ministry of Finance, Deptt. of Revenue. No. 43/2002-Cus dated 19.04.02, published in the Gazette of India (extraordinary), *vide* GSR No. 292(E), the words & figures Rule 18 shall be corrected to read as figures "Rule 18 (rebates of duty paid on materials used in the manufacturer of resultant product."

7. Upon perusal of the impugned order, we find no discussion and consideration of the Corrigendum dated 29th November, 2002 in the impugned order.

8. Without going into the merits of the matter, we are satisfied that the matter requires reconsideration by the revisional authority since the vital issue concerning applicability of corrigendum dated 29th November, 2002 clarifying condition V of the Notfn. No. 43/2002-Cus dated 19th April, 2002 was not considered by the revisional authority.

9. We, accordingly, dispose off the rule by the following order :

- (i) The order dated 30th June, 2005 passed by the Joint Secretary, Government of India, Ministry of Finance, New Delhi is quashed and set aside.
- (ii) The three revision applications arising out of Orders-in-Appeal No. AT/82/M-II/04 and Appeal No. AT/85 & 86/Mumbai-II/2004 dated 27th October, 2004 and 28th October, 2004 are restored to the file of the joint Secretary, Government of India, Ministry of Finance, New Delhi for fresh consideration accordance with law in the light of the corrigendum dated 29th November, 2002."

9. In the *denovo* proceeding, Government after considering the corrigendum dated 29-11-2002 to Notification No. 43/02-Cus dt. 19-04-2002, passed Revision order No. 04-06/09 dt. 16-01-2009 allowing the rebate of duty paid on exported goods since amended condition of the Notification No. 43/02-Cus prohibits the

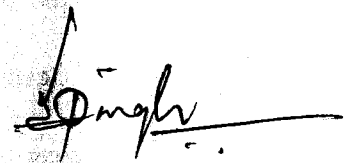
rebate under rule 18 of Central Excise Rules 2002 of the duty paid on materials used in the manufacture of resultant excisable goods exported.

10. In the above GOI order it was held that corrigendum dt. 29-11-2002, to Notification No. 43/02-Cus dt. 19-04-2002 made unambiguously clear that the bar of rebate under rule 18 was made applicable only to cases where rebate of duty paid on materials used in manufacture of finished product was claimed. As such, there is no bar on availment of rebate of duty paid on finished goods under Notification No. 43/2002- Cus dt.19-04-2002. Since, in this case the applicant is claiming rebate of duty paid on finished goods, the ratio of said GOI order No. 04-06/09 dt. 16-01-2004 is squarely applicable. Hence, the applicant is entitled for rebate of duty paid in finished goods under rule 18 of Central Excise Rules, 2002 r/w Notification No. 19/04-CE (NT) dt. 06-09-2004.

11. In view of above discussions, Government sets aside impugned Order-in-Appeal and allows Revision Application.

12. Revision Application thus succeeds in above terms.

13. So, Ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

M/s Wolfra Tech. P. Ltd.,
B-07, Hebbal Indl Estate,
Mysore-570016.

ATTESTED



(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C.B.E.C.-OSD (Revision Application)
दिल्ली मंत्रालय (Ministry)

Order No. 557 /13-Cx dated 06.06.2013

Copy to:

1. The Commissioner of Central Excise, Customs & Service Tax, Mysore, Commissionerate, Vinaya Marga, Siddhartha Nagar, Mysore-570011.
2. The Commissioner (Appeals), Central Excise, Trade Centre, Bunts Hostel Road, Mangalore.
3. The Asstt. Commissioner of Central Excise, Mysore.
4. Shri S. Loknath, Chartered Accountant, C/o M/s Wolfra Tech. P. Ltd., B-07, Hebbal Indl Estate, Mysore-570016.

✓ 5. PS to JS (RA)

6. Guard File.

7. Spare Copy

ATTESTED



(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)

