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SPEED POST



F.No.195/260/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue... 13/6/13

Order No. 559 /2013-CX dated 12.06.2013 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 Act, 1944 against order-in-appeal No. 061(DKV) CE/JPR-I/2011 dated 17.1.11 passed by Commissioner of Central Excise (Appeals), Jaipur- I

Applicant : M/s Dhawan Box Sheet Containers (P) Ltd., Bhiwadi

Respondent : Commissioner of Central Excise, Jaipur-I

ORDER

This revision application is filed by the applicant M/s Dhawan Box Sheet Containers (P) Ltd., Bhiwadi, against the order-in-appeal No.061(DKV) CE/JPR-I/2011 dated 17.1.11 passed by Commissioner of Central Excise (Appeals), Jaipur-I, with respect to order-in-original No.109/2009-2010 dated 18.12.09 passed by Assistant Commissioner of Central Excise Division, Bhiwadi.

2. Brief facts of the case are that:

2.1 The applicant is engaged in the manufacturing of excisable goods falling under chapter 48 of the Central Excise Tariff Act, 1985. During the period i.e. April 2008 they were availing cenvat credit facility on the inputs in terms of Cenvat Credit Rules, 2004. A major fire accident took place in the applicant factory on 23.04.2008 and due to which certain machinery and finished goods got destroyed. In this regard on 23.04.2008 applicant informed to the fire brigade office. The applicant also informed to the local police station. On 28.04.2008 the applicant had filed an intimation of fire accident to the Assistant Commissioner of Central Excise, Division-Bhiwadi (Rajasthan). Applicant also filed an intimation dated 28.04.2008 of fire accident to the Superintendent of Central Excise, Range-VI, Bhiwadi who visited the applicant factory on same day for verification of damaged stocks which were burnt/destroyed in fire accident on 23.04.2008. During the visit he had drawn the panchnama dated 28.04.2008 on the spot. On 05.05.2008 applicant filed a remission application to the Joint Commissioner of Central Excise, Jaipur-I for remission of Central Excise duty of Rs.1,62,229/- involved on 84490 Pcs of corrugated boxes under Rule 21 of the Central Excise Rules, 2002.

2.2 A show cause notice was issued by the Joint Commissioner of Central Excise, Jaipur-I, Jaipur-302005 wherein, remission claim of Central Excise duty of Rs.1,62,229/- was supposed to be rejected under Rule 21 of the Central Excise Rules, 2002. Subsequently, order-in-original No. 34/2009/JC dated 12.05.2009

passed by the Joint Commissioner of Central Excise, Jaipur-I, wherein he rejected the remission claim of Central Excise duty of Rs.1,62,229/-. Applicant had filed the appeal to the Commissioner of Central Excise (Appeals), Jaipur-1 against the order-in-original dated 12.05.2009, who vide order-in-appeal No. 32(DK)CE/JPR-1/2010 dated 22.01.2010 rejected the appeal. The applicant had filed revision application No. 195/393/10-RA to the Joint Secretary, Government of India, Ministry of Finance, Department of Revenue, New Delhi under Section 35EE of the Central Excise Act, 1944. The revision application No. 195/393/10-RA decided by Revision Order No.1718/11-CX dated 29.12.2012, wherein the revision application filed by the applicant was rejected.

2.3 Another show cause notice dated 18.12.2008 was issued by the Assistant Commissioner, Central Excise, Division- Bhiwadi. Para 4 of the show cause notice alleged that the applicant request of remission of Central Excise duty amounting to Rs.1,62,229/- under Rule 21 of Central Excise Rules, 2002, but the same has not so far been remitted by the competent authority. Therefore, the applicant is liable to pay Central Excise duty amounting to Rs.1,62,229/- as the remission has not so far been allowed by the competent authority and the duty amount should not been recovered from applicant under Rule 4 of Central Excise Rule, 2002 read with Section 11A of the Central Excise Act 1944. The original authority vide impugned order-in-original has held that the Central Excise duty amounting to Rs.1,62,229/- on the goods destroyed/damaged in the fire incident recoverable from them in terms of Rule 4 of the Central Excise Rule, 2002 read with Section 11A of Central Excise Act, 1944.

3. Being aggrieved by the said order-in-original, the applicant filed appeal before Commissioner (Appeals) who upheld the impugned order-in-original and rejected the appeal.

4. Being aggrieved by the said order-in- appeal, the applicant has filed this revision application under Section 35 EE of the Central Excise Act, 1944 before Central Government on the following grounds:

4.1 In terms of Rule 4 and 8 of Central Excise Rules, 2002, the applicant is liable to pay duty on removal of goods from their factory. In the present case the applicant had not removed the goods in question from their factory and hence they are not liable for duty in question under Rule 4 of the Central Excise Rules, 2002.

4.2 Applicant submit that their case is fully covered under Rule 21 of the Central Excise Rules, 2002 since there is no allegation in the show cause notice or any evidence in the order of the lower authorities that the applicant had removed the goods in question without payment of duty from their factory in the grab of fire accident. In this regard, the applicant is relying on Tribunal decision passed in the case of Plastikos Packaging Vs. Collector of Central Excise, Allahabad reported in 2001 (128) ELT 386(Tri-Del). In this case the Hon'ble Tribunal has held that remission of duty – goods lost in fire accident as established by evidence on record – No evident adduced in the show cause notice or brought on record in adjudication to prove that goods removed without payment of duty in the grab of fire accident – appellant entitled to remission of duty – Rule 49 of Central Excise Act, 1944.

4.3 The applicant is not liable to pay duty under Rule 4 of the Central Excise Rules, 2002 read with Section 11A of the of the Central Excise Act, 1944 and pay interest under Section 11AB of the of the Central Excise Act, 1944.

5. Personal hearing was scheduled in this case on 10.10.12, 08.12.12 & 20.2.2013. Nobody attended personal hearing. Hence Government proceeds to decide the case on merit on the basis of available records.

6. Government has carefully gone through the relevant case records and perused the impugned the impugned orders-in-original and orders-in-appeal.

7. Government observes that application filed for remission of duty of Rs.1,62,229/- involved in corrugated boxes destroyed/burnt in fire accident was

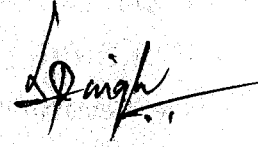
rejected by the Joint Commissioner of Central Excise, Jaipur-I vide order-in-original No.34/2009/JC dated 16.5.2009. The Commissioner (Appeals) upheld the said order-in-original dated 16.5.2009 vide order-in-appeal No.32(OK)/CE/JPR-I/2010 dated 22.1.2010. The said order-in-appeal dated 22.1.2010 was further upheld by GOI vide Revision Order No.1718/11-CX dated 29.12.2011 in passed in revision application No.195/393/19-RA filed by the applicant. Meanwhile, original authority vide impugned order-in-original, confirmed the demand of duty of Rs.1,62,229/- along with applicable interest on the ground that remission of Rs.1,62,229/- was not so far allowed by the competent authority. Commissioner (Appeals) upheld impugned order-in-original. Now, the applicant has filed this revision application on the ground stated in para 4 above.

8. Government observes that in the first round of revisionary proceedings before this authority the GOI vide Revision Order No.1718/11-CX dated 29.12.2011 in RA No.195/393/10-RA filed by the applicant, had rejected the revision application and held that rejection of remission claim by Joint Commissioner of Central Excise, Jaipur-I vide order-in-original No.34/2009/JC dated 16.5.2009 was legal and proper. As such, the issue of remission claim of amount of Rs.1,62,229/- has attained its finality by virtue of said GOI Order dated 29.12.2011. No stay has been reported against the said GOI Order dated 29.12.2011. Now the original authority has confirmed the demand of duty of Rs.1,62,229/- along with interest only on the ground that above said remission claim of Rs.1,62,229/- was not allowed at the time of issuance of impugned order-in-original. Now, since the issue of remission claim has attained its finality, wherein remission claim of the applicant has been held inadmissible, any action of demand of duty consequent to rejection of remission claim is legal and proper. Hence, Government finds that demand of duty vide impugned order-in-original is correct and hence, required to be upheld.

9. In view of above discussion, Government does not find any infirmity in order of Commissioner (Appeals) and hence, upholds the same.

10. Revision Application is thus rejected being devoid of merit.

11. So ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

M/s Dhawan Box Sheet Containers (P) Ltd.,
A-455, RIICO Industrial Area,
Chopanki
Bhiwadi (Rajasthan)

A. Sharma



(मानवत शर्मा/Bhagwat 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

G.O.I. Order No. 559 2013/CX dated 12.06.2013

Copy to:-

1. The Commissioner of Central Excise, Jaipur-I, N.C.R.Building, Statue Circle, 'C' Scheme, Jaipur-302005
2. Commissioner of Central Excise (Appeals), Jaipur-I, N.C.R.Building, 'C' Scheme, Statue Circle, Jaipur-302005
3. Assistant Commissioner of Central Excise Division-Bhiwadi, Rajasthan
- ✓ 4. PS to JS(Revision Application)
5. Guard File
6. Spare Copy.

ATTESTED



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

