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SPEED POST**



**F.No. 195/743/11-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.....

19/6/13

Order No. S64 /13-cx dated 14-06-2013 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.
128(CB)CE/JPR-II/10 dated 21-06-2011
passed by Commissioner of Central Excise (Appeals),
Jaipur-II.
- Applicant : M/s. Shivagrigo Implements Ltd.,
Falna, Rajasthan.
- Respondent : Commissioner of Central Excise,
Jaipur-II.

ORDER

This revision application is filed by M/s. Shivagrigo Implements Ltd., Falna, Rajasthan against the Order-in-Appeal No. 128(CB)CE/JPR-II/10 dated 21-06-2011 passed by Commissioner of Central Excise (Appeals), Jaipur-II with respect to Order-in Original passed by the Deputy Commissioner of Central Excise, Division, Jodhpur.

2. Brief facts of the case are that the applicant had filed rebate claims for grant of rebate of duty paid on materials used in manufacture of export goods under Rule 18 of the Central Excise Rules, 2002 read with notification 21/04-CE(NT) dated 06-09-2004 as amended. It was observed by the original authority that the rebate is admissible only to the extent of amount computed according to the formula prescribed in para 8.7 of the Board's Circular No. 129/40/95-CX dated 29-05-95 and accordingly the adjudicating authority sanctioned the rebate claim to the said extent vide the impugned Order-in-Original.

3. Being aggrieved by the said order-in-original, department filed appeal before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Order-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 applicant had claimed input rebate under Notification No. 21/2004-CE (NT) dt. 06-07-2004 which has been issued under Rule 18 of the Central Excise Rules, 2002. From perusal of this notification, it is clear that rebate of whole of duty paid on excisable goods used in manufacture of export foods is admissible. The words 'whole of duty paid on goods' is very important and once it is proved that the materials were used in manufacture of export goods, then whole of duty paid on such used materials is rebatable. The words used are 'whole of duty' and 'materials used' and not materials contained in export goods. The scrap is generated only after use of the material, therefore, the condition of the notification is satisfied and

therefore, the claim is to be sanctioned for whole of the duty paid on such materials which were used in manufacture of export goods.

4.2 The Board's circular relied upon by the department is legally not sustainable. The Board's Circular in question is not in conformity with the provisions of Rule 18 of the Central Excise Rules, 2002 and with Notification NO. 21/2004-CE (NT) dt. 06-09-2004.

4.3 As per para 4 (c) of the Notification No. 21/2004-CE (NT), the waste arising from the processing of materials may be removed on payment of duty as if such waste is manufactured or processed in the factory of the manufacturer or processor. Such provisions were not there in earlier Notification No. 42/94-CE (NT) under which above referred Board's Circular dated 29-05-1995 was issued. Therefore, earlier waste were being cleared without payment of duty, hence, the Board's Circular was having relevance under earlier notification. Presently, scrap generated is being cleared on payment of duty and is not in dispute.

4.4 In applicant's case, input-output ratio was approved and accordingly, inputs to be used in manufacture of final products was quantified. Necessary permission was also issued. No notice has been issued for modification of this input-output ratio. Even under various export promotion schemes formulated by the Government for import of inputs to be used in manufacture of export goods, input-output norms have been notified and according to these input-output norms, import of inputs to be used in manufacture of export goods is allowed to be imported duty free. If therefore, above Board's Circular is applied only in case of local procurement of inputs, then the same will be at loss vis-a-vis import under export promotional schemes under customs laws. This cannot be intention of the Government. Hence, now Board's Circular has got no relevance. The applicant has relied upon various case laws in favour of their contention.

5. Personal hearing was scheduled in this case on 07-12-2012 & 20-02-2013. The applicant department vide their written submission dated 19-02-2013 mainly

reiterated contents of impugned orders and relied upon GOI order. Nobody attended the hearing. Hence, Government proceeds to decide the case on merits on the basis of available record.

6. Government has considered all the relevant case records, written/oral Submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that input rebate claims of applicants was sanctioned by the original authority to the extent of amount computed according to formula prescribed in para 8.7 of Board's Circular No. 129/40/95-Cx dated 29-05-1995. In appeal, Commissioner (Appeals) upheld the impugned Order-in-Original and rejected the appeal. Now, applicant has filed this revision Application in grounds mentioned in para (4) above.

8. The applicant has contended that Board's Circular No. 129/40/95-Cx dated 29-05-1995 is not in conformity with the provisions of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 21/2004-CE (NT) dated 06-08-2004. In this regard, Government observes that relevant provision of Notification No. 42/94-CE (NT) dated 29-09-1994 and Notification No. 21/2004-CE (NT) dated 06-09-2004 are almost same and the procedure for grant of rebate on materials used in the manufacture of export goods, has not undergone any substantial change as the law from the beginning provided for grant of rebate of whole of duty of excise paid on the materials used in the manufacture of export goods is subject to similar conditions and limitation and procedure specified there under. Government notes that the said circular dtd. 29-05-1995 has not been rescinded till date and it is very much in force and hence applicable w.r.t. Notification No. 21/2004-CE (NT) dated 06-09-2004. As such, grant of rebate under Notification No. 21/2004-CE(NT) is subjected to provisions of this Circular dated 29-05-1995, in cases where recoverable wastage comes into existence in r/o materials used in manufacture of export goods. Under such circumstances, Government finds that the order of original authority sanctioning rebate of an amount computed accordingly to formula

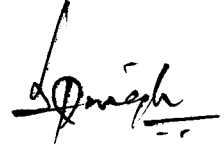
prescribed in para 8.7 of the Board's circular NO. 129/40/95-CX dated 29-05-1995 is legal and proper.

9. Government observes that case laws cited by the applicant are not exactly specific to this case and hence, their ratio is not applicable to this case. Further Government in the case of Metweld Industries reported in 2006 (202) ELT 145 (GOI) has held that Board's Circular No. 129/40/95-CX dated 29-05-1995 is applicable and input rebate amount has to be computed according to formula prescribed in para 8.7 of said circular. Similar view was taken in GOI Revision order No. 872/12-Cx dt. 06-08-2012 in another case of applicant. The ratio of said decision is squarely applicable to this case.

10. In view of above discussions, Government do not find any infirmity in order of Commissioner (Appeals) and hence, upholds the same.

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

12. So, ordered.

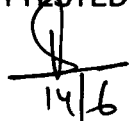


(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Shivagrigo Implements Ltd.,
A-38, H.M. Nagar,
Falna, Rajasthan.

ATTESTED



(भगवती शर्मा/Bhagwati Sharma)
सहायक आबुस्त/Assistant Commissioner
C.B.E.C.-OSD (Revision Appraiser)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली / New Delhi

Order No. 564 /13-Cx dated 14-06-2013

Copy to:

1. The Commissioner of Central Excise, Jaipur-II, N.C.R. Building, Statue Circle, C-Scheme, Jaipur(Raj.)
2. The Commissioner (Appeal), Customs & Central Excise, New Central Revenue Building, Statue Circle, C-Scheme Jaipur.
3. The Deputy Commissioner of Central Excise Division, Panchwati, Jodhpur.
4. Guard File.
5. PS to JS (Revision Application)
6. Spare Copy

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(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)