



REGISTERED
SPEED POST

F.No. 195/774/12-RA-Cx
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..6-1-14.....

ORDER NO. 6 114 Cx DATED 02.01.14 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 : Order in Revision Application filed, under Section 35 EE of
the Central Excise Act, 1944. against the Order-in-Appeal
No. YPP/23/M-III/2000 dated 18.02.2000 passed by the
Commissioner of Central Excise (Appeals), Mumbai-III.

Applicant : M/s Makharia Synthetics, Thane.

Respondent : The Commissioner of Central Excise, Mumbai-III

ORDER

This Revision Application is filed by M/s Makharia Synthetics, Thane against the Order-in-Appeal No. YPP/23/M-III/2000 dated 18.02.2000 passed by the Commissioner of Central Excise (Appeals), Mumbai-III with respect of Order-in-Original passed by Deputy Commissioner of Central Excise, Kalyan-II Division.

2. Brief facts of the case are that applicant filed refund claim for the deemed credit lying unutilized vide application dated 30.03.99 for Rs. 83,91,297/-. Applicant was issued a Show Cause Notice dated 14.07.99 on the grounds that the refund claim had been filed for the clearances under AR4's dated 28.04.98 to 17.01.99 and that the claim for the period covered under AR4 Nos. 5 dated 28.04.98 to 31 dated 10.09.98 is time barred on the basis of the date of shipment as per the period specified in section 11B of Central Excise Act, 1944. Further applicants has also cleared the goods under AR4 in which they have declared that the goods have been exported without availing facility of modvat credit under Rule 57A of Central Excise Rule, 1944 and that the export is in discharge of the export obligation under Excise Duties Drawback Rules, 1971, Notification No. 29/96 CE(NT) dated 03.09.96 stipulates that refund of credit of duty on inputs is admissible provided the manufacturer does not avail drawback allowed under Central Excise duties (drawback) Rules, 1971. Further the applicants has not maintained any register for deemed credit availed in respect of exports and as per the declaration on the AR4 made by the applicants it appears that they have not availed credit in the first place for export clearances and hence there is no question of unutilized clearances. From the description of goods shown in the said AR4's it appears that the applicants has cleared 100% cotton for which they are eligible for deemed credit of 50% of the duty payable, but they have claimed 60% of the duty payable in their application. Lower authority vide above impugned order dated 04.10.99 has rejected the refund claim of Rs. 83,91,297/-.

3. Being aggrieved by the said Order-in-Original, applicants filed appeal before Commissioner (Appeals), who rejected the same. Against the impugned Order-in-Appeal, the applicant filed appeal before CESTAT, who rejected the appeal filed by the applicant vide Order No. A/675/WZB/C-I/GB/06 dated 31.03.2006.

4. Now against 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 main and subsequently submitted grounds:-

4.1 The applicants exported the final products using the duty paid raw materials, and qualified to avail deemed credit in terms of Notification No. 29/1996-CE(NT) dated 03.09.1996 issued under Rule 57(A)2 of Central Excise Rules, 1944. Therefore, filed the refund claim under the provisions of Rule 57F(13) of the Central Excise Rules, 1944. Notification No. 29/1996-CE(NT) dated 03.09.1996 is in relation to MODVAT, Deemed Credit for yarn and fibers of Chapter 51 to 56. The said Notification, provides that where for any reason adjustment of deemed credit is not possible, the manufacturer shall be allowed refund of such amount of deemed credit subject to the safeguards, conditions and limitations as may be specified by the Central Government Notification No. 29/96 CE(NT) dated 03.09.96/96 has any Notification been published in the Official Gazette by the Central Government prescribing any safeguards, conditions or limitations.

4.2 In the aforesaid circumstances, when there is no dispute as to the fact that the applicants-assessee is seeking refund of unutilized deemed credit, provisions of Section 11B of the Central Excise Act, 1944, which have been relied upon by the respondent-revenue, can have no play and cannot be applied. Such deemed Modvat credit is not equal to duty paid in the peculiar facts and circumstances of the case. Therefore, such orders as passed by both the lower

authorities disallowing the legitimate refund claim of the applicants, on the ground of contravention of Section 11B of the Central Excise Act, 1944 is illegal, unjust, unsustainable, bad in law & against well settled law of the land also which need to be set aside & quashed. The applicants rely on the order passed by Hon'ble High Court of Gujarat, in an exact similar matter of Commissioner of Central Excise Surat-I Vs. Swagat Synthetics as reported in [2008(232) ELT 413 (Guj.)].

4.3 The benefit of Notification No. 29/1996-CE(NT) can be denied only in case where duty has not been levied or paid or has been short levied short paid on the final products. But when the duty on final products exported is duly paid by the applicants, denying the refund claim for the same, by both the lower authorities is in utter disregard to the existing law, hence unjust, not sustainable & against well settled law of the land also, such orders by both the lower authorities need to be set aside & quashed.

5. Personal hearing scheduled in this case on 26.11.2013 was attended by Shri R.K. Sharma, Advocate on behalf of the applicant who reiterated the grounds of Revision Application.

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

7. On perusal of records, Government observes that the refund claim of unutilized cenvat credit was rejected by the original authority on the ground that as per Notification No. 29/96 CE(NT) dated 03.09.96/96, the applicant appears to have not maintained any register for deemed credit of availed in respect of exported goods and further that they were eligible for deemed credit of 50% of duty payable, however, they claim for 60% of it. Commissioner (Appeals) upheld impugned Order-in-Original. Against impugned Order-in-Appeal, the applicant filed appeal before CESTAT who rejected the same vide order dated 31.03.2006.

Now the applicant has filed this Revision Application against same Order-in-Appeal after expiry of more than 12 years from date of receipt of impugned Order-in-Appeal.

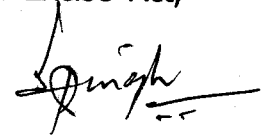
8. Government observes that the applicants has initially preferred appeal before tribunal against impugned Order-in-Appeal. Tribunal rejected the appeal of applicant on merit vide order dated 31.03.2006. Once, the impugned Order-in-Appeal attained finality before tribunal, the same Order-in-Appeal cannot be agitated before Government of India. This is clear violation of judicial principles and the applicant has misused the provisions of law by filing this revision application when their appeal is already rejected by Hon'ble CESTAT on merit.

Moreover issue involved in the case is of refund of unutilized cenvat credit which is not covered under section 35EE read with first proviso to section 35B(1) of Central Excise Act, 1944. So no revision application is maintainable before Central Government against impugned Order-in-Appeal.

9. As per section 35EE(2), the revision application is to be filed with 3 months of receipt of Order-in-Appeal and delay upto 3 months can be condoned. So, in terms of these provision revision application filed after stipulated time period can not be entertained at all.

10. In view of position explained above the revision application stands dismissed as non-maintainable under section 35EE of the Central Excise Act, 1944.

11. So, ordered.




(D.P. Singh)

Joint Secretary (Revision Application)

M/s Makharia Synthetics,
Plot No.F-4, MIDC, Badalpur,
Post Kulgaon, Distt-Thane, Maharashtra-412209.

(Attested)



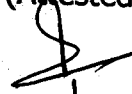
(भागवत शर्मा/Bhsawat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
नियंत्रण मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Deptt. of India
नई दिल्ली/New Delhi

G.O.I. Order No. 6 /14-Cx dated 02.01.14

Copy to:-

1. The Commissioner, Central Excise, Mumbai III Commissionerate, Vardaan Trade Centre, 4th Floor, M.I.D.C. Wagle Industrial Estate, Thane (West) -400604.
2. Commissioner of Central Excise (Appeals), Mumbai-III, Meher Building, Dady Seth, Bombay Garage, Chwpatty, Mumbai- 400007.
3. The Deputy Commissioner of Central Excise, Kalyan-II Division, 2nd Floor Bhagwandas Mansion, Shivaji Chowk, Kalyan-421301.
4. Shri R K Sharma, Advocate, 157, 1 Floor, DDA Office Complex, CM Jhandewalan Extn., New Delhi-110055.
5. ✓ PS to JS(Revision Application)
6. Guard File
7. Spare Copy.

(Attested)



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