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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.195/72/2017-RA /1101

Date of issue: 27.02.23

ORDER NO. 65 /2023-CX (WZ)/ASRA/MUMBAI DATED 27.02.2023
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s. Trident Limited

Respondent: Commissioner of CGST, Customs & Central Excise, Bhopal.

Subject : Revision Application filed under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. BHO-EXCUS-001- APP-
32/17-18 dated 30.06.2017 passed by the Commissioner (Appeals),
Customs, Central Excise & Service Tax, Bhopal (M.P.)

ORDER

This Revision Application is filed by the M/s. Trident Limited having their office at E-212, Kitchlu Nagar, Ludhiana (Punjab) - 141 001 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. BHO-EXCUS-001- APP-32/17-18 dated 30.06.2017 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal.

2. Brief facts of the case are that the Applicant, had filed a rebate claim amounting to Rs. 9,04,267/- under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004. The rebate sanctioning authority, vide Order-in-Original No. IV(16)715,716/Refund/BPL-II/2015/3155 dated 11.01.2016, rejected the rebate claims on the grounds that the said ARE-1s have already been disposed of by passing appealable orders and hence processing of refund claim again will amount to reviewing its own already passed Order, which is not permissible. Aggrieved, the applicant filed an appeal which was rejected by the Commissioner (Appeals) vide the impugned Order-in-Appeal.

3. Hence, the Applicant has filed the instant Revision Application mainly on the following grounds:

- a) The main issue for consideration is that whether the Learned Deputy Commissioner Central Excise on request put forth by us within 30 days of OIO could have issued Corrigendum thus correcting "CLERICAL MISTAKES". The corrigendum can be issued to rectify "clerical mistakes" made in Order-in-Original (24 Nos), as it doesn't alter the Order-in-Original but places the fact of re-credit of Duty excess paid as placed in Order-in-Original by the learned adjudicating authority itself. Hence, request is placed herewith to remand back the case to Original Adjudicating Authority to either issue Corrigendum to OIO or sanction the Rebate Claims short sanctioned on the basis of Supplementary Claim Application passed by us.
- b) Learned Commissioner (Appeal) order also needs to be set aside, as the Original Adjudicating authority office can issue corrigendum to OIO by

rectifying clerical mistake and afterwards his office can become functus officio.

- c) Original Adjudicating authority in the present case is not reviewing his order / alter his OIO, but has to correct clerical mistake of equating the figure of Rebate Claim filed which he has correctly stated in OIO, with the amount of Rebate Claim sanctioned in Cash and by way of re-credit.
- d) We wish to submit that the fact of Export of goods, duty payment has been accepted by the department and were not in dispute at any Appeal stage, only contention being is that "Non Speaking order has been issued by the Deputy Commissioner Central Excise Division-Bhopal, for the short amount of Rebate sanctioned as the same is either sanctioned in Cash nor by way of Re-Credit in CENVAT account. Request was made for issuing the corrigendum to the Order-in-Original and correcting the factual errors, but the same has not been acceded to. Further Rebate Claim was submitted for short realised amount and the same again has not been accepted.
- e) Amount of duty rebate short sanctioned is on account of variance in Exchange Rate of Euro. In connection with this, we would like to state that the Exchange rate varies on the date of clearance of goods from factory and the date of filing of Shipping Bill, which can be either way, hence have no control of us. Further the assessable value on which duty has to be paid at the time of clearance of goods is at the Exchange rate Notification of Customs, which is adhered to by us and subsequently on date of shipping bill, if the exchange rate varies as per custom Notification, difference in Assessable & FOB Value arises. Hence, that should not be criteria for disallowing the Duty Rebate. We are not disputing whether the same is to be sanctioned in Cash or in CENVAT, only contention being is that "No speaking order has been passed for allowing such amount in the Order Para, but has been mentioned in the Order that the same can't be part of transaction value on which Duty is to be discharged. Specific Mention should have been made by the Original Adjudicating Authority in his Order-in-Original for allowing Rebate by way of Re-credit of duty excess paid on account of variance in exchange rate, which has not been done.

In the light of the above submissions, the applicant prayed to set aside the impugned order-in-appeal and allow the application with consequential relief.

4. The Respondent-Department has filed written submissions inter alia contending that since the applicant had intentionally taken into consideration higher exchange rate to claim higher rebate, the same is not considerable and liable to be rejected. Keeping that in view, the revision application filed by the applicant is liable for rejection.

5. Personal hearing in the case was fixed for 21.12.2022. Shri Sanjay Malhotra, CA, attended the online hearing and submitted that since first Order of original authority did not specifically mention about balance amount, a separate claim was filed. He requested to allow their claim.

6. Government has carefully gone through the relevant case records available in the case file, written and oral submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that in the instant case the applicant had filed 24 nos. of rebate claims which were disposed of by the adjudicating authority by passing 24 separate OIOs, vide which out of total rebate claim amount of Rs. 2,20,30,426/-, claim amount of Rs. 2,11,26,159/- was sanctioned. However, remaining amount of Rs. 9,04,267/- was rejected by the original adjudicating authority due to difference in the exchange rate claimed by the applicant and the exchange rate notified in the Customs Notifications issued during the relevant period. Thereafter, instead of appealing against said OIOs, the applicant filed a fresh rebate claim for the rejected amount of Rs.9,04,267/-. The original adjudicating authority rejected the claim as, against the same ARE-1s, the claims had already been disposed of by passing the said 24 OIOs.

8. Government observes that the said 24 OIOs had been passed in Jan-Feb'15 and had not been challenged by the Applicant or the Department, and had hence attained finality and therefore subsequent proceedings could

not have travelled beyond it. Therefore, Government concurs with the findings of the Appellate Authority mentioned at Para 7 of the impugned Order-in-Appeal, which is reproduced hereunder:

7. *The contention of the adjudicating authority is correct. It is well settled position of law that when any adjudicating authority passes any order, he cannot again pass order in the same case because it will amount to review the orders passed by him, which is not permissible. There is a principle of res judicata. If they were aggrieved with the rejection of their refund claim, the only course open before them was to file an appeal against the same. They cannot reargue the matter before the adjudicating authority. The Tribunal in the case of GARDEN SILK MILLS LTD. Versus COMMISSIONER OF C. EX. & SERVICE TAX - 2014 (2) TMI 917 - CESTAT AHMEDABAD has held that the adjudicating authority becomes functus officio, as soon as he passes the Order-in-Original.*

9. In view of the findings recorded above, Government upholds the Order-in-Appeal No. BHO-EXCUS-001-APP-32/17-18 dated 30.06.2017 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal (M.P.) and rejects the impugned Revision Application.


(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 65 /2023-CX (WZ)/ASRA/Mumbai dated 20.02.23

To,
M/s. Trident Limited,
E-212, Kitchlu Nagar,
Ludhiana (Punjab) – 141 001.

Copy to:

1. Commissioner of CGST, Customs & Central Excise, Bhopal,
35-C, Administrative Area, Arera Hills, Bhopal (M.P.) – 462 011.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.