

REGISTERED
SPEED POST



F.No. 198/51/10-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..... 15/11/14

ORDER NO. 07/2014-CX DATED 02.01.2014 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 the order-in-appeal No.YDB/87/M-II/09 dated 29.09.2009 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II

Applicant : Commissioner of Central Excise, Mumbai-III

Respondent : M/s Aleganza Furnishing Pvt. Ltd., Lower Parel (W), Mumbai

ORDER

This revision application is filed by the Commissioner of Central Excise, Mumbai Zone-III against the order-in-appeal No.YDB/87/M-II/09 dated 29.09.2009 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II with respect to order-in-original passed by the Assistant Commissioner of Central Excise (Rebate), Mumbai-III. M/s Aleganza Furnishing Pvt. Ltd., Mumbai is the respondent.

2. Brief facts of the case are that respondent had filed a Rebate claim for Rs.48,820/-. The rebate claim was rejected vide order-in-original on the ground that the basic requirement of Rule 18 ibid for considering rebate claim that the goods should be exported, has not been fulfilled by the claimant in as much as they have short shipped 92 cartons out of the total 535 cartons mentioned on the ARE-I No.33/04-05 dated 10.06.2004. Though the said fact of short shipment was brought to the notice of the exporter, he did not submit any clarification before the adjudicating authority; and also that it was not possible to ascertain the exact quantity and quality of processed fabrics short-shipped on the basis of available records as there was no serial number of cartons mentioned on the short shipment notice.
3. Being aggrieved by the said order-in-original, the respondent filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) vide order-in-appeal No.YDB/87/M-III/09 dated 29.09.2009 set aside the order-in-original dated 05.05.2008 and allowed appeal filed by the exporter on the grounds that the short shipment notice dated 11.06.2004 mentions the short shipment of 92 cartons bearing serial Nos. 748 to 840(sic), which do not pertain to ARE-I No.33/04-05 dated 10.06.2004. Therefore, the question of export of 535 cartons of excisable goods bearing serial No.214 to 748 cannot be in dispute and respondent is entitled for the rebate in question.
4. Being aggrieved by the impugned order-in-appeal, the applicant department has filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 Commissioner (Appeals) has allowed the appeal of the exporter on the strength of the Short Shipment Notice dated 11.06.2004, which indicates the carton serial number other than covered in the ARE-I No.33/04-05 dated 10.06.2004. However, it appears from the said Short Shipment Notice that the carton serial number of the cartons reported short shipped has been manipulated which is apparent from the corrections made in the said serial number. Even otherwise serial number from "749 to 840" is generally not written as "749 to 840" as revealing from the Short Shipment Notice.

4.2 The Original adjudicating authority in his findings has categorically observed at para 3 of the order-in-original as under:

"It is not possible to ascertain the exact quantity and quality of processed fabrics short-shipped quantity on the basis of available documents on records, as no serial number of cartons have been mentioned in this short shipment notice."

Above findings of the adjudicating authority supports the stand of the department that the carton serial number on the short shipment notice has been manipulated subsequently to substitute the missing details of serial number of short shipped cartons in order to suit their claim.

4.3 The short shipment notice presented before the Appellate authority does not clearly establish that the short shipment of 92 cartons did not relate to the ARE-I No.33/04-05 dated 10.06.2004.

4.4 On being asked by Assistant Commissioner (Rebate), Central Excise, Mumbai-III vide his letter F.No.RC No.275/05-06 dated 19.11.2009 to the exporter to produce the original copy of the short shipment notice dated 11.06.2006 to confirm the serial number of cartons short shipped, the exporter failed to submit the same.

5. A Show Cause Notice was issued to the respondent under Section 35EE of Central Excise Act, 1944 to file their counter reply. No reply received from respondent in this regard.

6. Personal hearing was scheduled in this case on 26.11.2013. Nobody attended the hearing. Hence, Government proceeds to decide the case on the basis of available records.

7. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned order-in-original and order-in-appeal.

8. Government observes that the respondent's rebate claim was rejected by the original authority on the ground that respondent short shipped 92 cartons out of total 535 cartons mentioned in the ARE-1 and that it was not possible to ascertain exact quantity and quality of processed fabrics short shipped on the basis of available records. Commissioner (Appeals) decided the case in favour of respondents on the grounds that the short shipment notice dated 11.06.2004 mentions the short shipment of 92 cartons bearing serial Nos. 748 to 840, which do not pertain to ARE-I No.33/04-05 dated 10.06.2004. Therefore, the question of export of 535 cartons of excisable goods bearing serial No.214 to 748 cannot be disputed and respondent is entitled for the rebate in question. Now the applicant department has filed this revision application on the grounds stated in para (4) above.

9. Government observes that the original authority mainly rejected the rebate claim on the grounds that respondents short shipped 92 cartons out of total 535 cartons mentioned in ARE-1 and it was not possible to ascertain the exact quantity and quality of processed fabrics short shipped on the basis of available record. Government finds that the appellate authority has discussed this issue and observed as under:

"I have carefully gone through the case records & averments made in the appeal. The rejected rebate claim of Rs.48820/- under the impugned order pertains to ARE-1 No.33/04-05 dated 10.6.04 vide which excisable goods bearing carton No.214 to 748

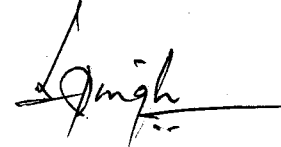
have been exported. The short shipment Notice dated 11.6.04 shows the short shipment of 92 cartons bearing serial Nos. 748 to 840, which do not pertain to ARE-1 No.33/04-05 dated 10.6.04. Therefore, question of export of 535 cartons excisable goods bearing serial NO.214 to 748 cannot be in dispute. Since other conditions for sanctioning rebate were also fulfilled as observed by the lower authority in the impugned under the appellant is entitle for rebate question."

9.1 Government notes that the appellate authority has categorically held that 92 cartons which were short shipped do not pertain to ARE-1 No.33/04-05 dated 10.6.2004 and all the 535 cartons pertaining to said ARE-1 have been exported. Such factual observations of appellate authority has not been controverted by department by any substantial documentary evidence. Department failed to adduce any evidence that the short shipped 92 cartons pertain to goods covered vide impugned ARE-1. Under such circumstances the findings of appellate authority cannot be faulted with.

10. In view of above discussion, Government finds no infirmity in order of Commissioner (Appeals) and hence, upholds the same.

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

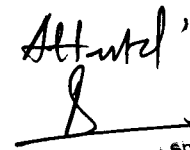
12. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

Commissioner of Central Excise
Mumbai Zone-III, 4th Floor,
Vardaan Sankul, MIDC, Wagle Industrial Estate,
Thane (West)-400604



(भागीवती शर्मा/Bhagwati Sharm)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Dept. of Revenue)
भारत
18

G.O.I. Order No. 07/14-Cx dated 02.01.2014

Copy to:-

1. M/s Aleganza Furnishing Pvt. Ltd., 95, Ganpatrao Kadam Marg, Lower Parel (W), Mumbai-400013
2. Commissioner of Central Excise (Appeals), Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhavan, Plot No.C-24, Sector-E, Bandra-Kurla Complex, Bandra (East), Mumbai 400051.
3. Assistant Commissioner of Central Excise (Rebate) Mumbai-III 4th Floor, Vardan Trade Centre, MIDC, Thane (West) - 400604
4. ✓ PS to JS (Revision Application)
5. Guard File
6. Spare Copy.

(Attested)



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