

REGISTERED
SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 371/37-A/DBK/2017-RA

Date of Issue

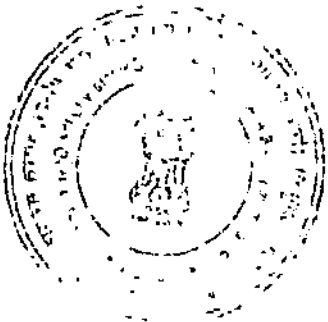
12.10.18.

ORDER NO. 703/2018-CEX (WZ)/ASRA/MUMBAI/DATED 28.09.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Allied Blenders & Distillers Pvt. Ltd., Aurangabad.

Respondent : Commissioner CGST, Aurangabad.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the letter F.No. VIII (Cus)34/TA/BRF/2017/4121 dated 16.11.2017 issued by Assistant Commissioner (Tech. Hdqrs.), CGST, Aurangabad



ORDER

This Revision Application has been filed by M/s Allied Blenders & Distillers Pvt. Ltd., (herein after referred to as the Applicant) against the letter F.No. VIII (Cus)34/TA/BRF/2017/4121 dated 16.11.2017 issued by the Assistant Commissioner (Tech. Hdqrs.), CGST, Aurangabad, on 4.12.2017 (received in this office on 27.12.2017).

2. Brief facts of the case are that the Applicant M/s.Allied Blenders & Distillers Pvt. Ltd., having registered office at Lamington Chambers, Lamington Road, Mumbai : 400 004, had exported the manufactured goods i.e. "India Made Foreign Liquor" of various brands from its supporting manufacturer's factory i.e. M/s. Radico NV Distilleries Maharashtra Pvt. Ltd., Aurangabad, under various shipping bills under Drawback Scheme during the period from 24.10.2016 to 31.03.2017. The Shipping bill No.1826913 dated 24.10. 2016, being the first shipping bill, the applicant were permitted to file the DBK Application for fixation of Brand Rate within 12 permissible/condonable months upto 23.10.2017 from the let export date which is same as shipping bill date i.e 24.10.2016.

3. The applicant had filed DBK Brand Rate Application dated 17.10.2017 for the above supplies together with all the required documents including DBK-I, DBK-II, DBK-IIA, DBK-III & DBK-IIIA, working sheet, shipping bill, etc. which was acknowledged by the authority (i.e. DBK Brand Rate sanction Authority / Jurisdictional Commissioner) on 23.10.2017, within permissible /condonable period of 12 months. The applicant had also submitted TR6 challan evidencing payment of Rs.2000/- as late fee together with condonation letter payable for the period starting after completion of 90 days of first shipping bill's let export date till 12 months as prescribed in the provisions of DBK Rules. The applicant in compliance to the deficiency letter, had submitted required documents vide its letter reference No.RES/04/057/16-17 dated 25.03.2017, which was acknowledged by the department on 27.03.2017 by Inward Entry No.373.

4. The applicant had all of sudden received a rejection letter F.No.VIII(Cus)34/TA/BRF/2017/4121 dated 16.11.2017, informing them that their request for delay condonation in filing application for fixation of Special Brand rate is rejected by the Commissioner, Goods and Service Tax and Central Excise, Aurangabad as no reason is given for delay condonation.



5. Being aggrieved by said finding and rejection letter, which was issued without following the principles of natural justice of personal hearing, the applicant has filed present revision application before Government on the following grounds & contentions -

5.1 The Respondent had totally erred in law by rejecting the application of the applicant for fixation of Brand Rate in respect of the manufactured exported goods "India Made Foreign Liquor" of various brands purely on illegal and wrongful ground as no reason is given for delay condonation, especially when original application was filed with the condonation letter dated 17.10.2017 and 06.11.2017 giving the reason for delay in filing the application.

5.2 The law provides that every adjudicating authority had mandatorily follow the principal of nature justice before rejecting any claim. / refund / fixation of DBK Brand Rate application. Failure to give a personal hearing to the applicant before rejecting the claim/application, is a serious / great lapse/error on the part of the Respondent and hence on this ground alone the Appeal of the Appellant be allowed and the letter of rejection be set aside.

The reason for delay was stated in their letter dated 17.10.2017 and 06.11.2017. The various courts in the following cases have held that "the refund claim cannot be denied merely on the ground that the documents were not initially filed and filed at the later date. The date of filing the claim is the date on which the claim was filed initially".

6. A personal hearing in the case was held on 27.09.2018. Shri Suresh Malusare, Consultant attended the personal hearing on behalf of the applicant. It was pleaded that the Order of the Commissioner, Goods and Service Tax and Central Excise, Aurangabad rejecting the condonation of delay in filing Drawback claim (Spl. Brand Rate) be set aside and the Revision Application be allowed.

7. The Government has gone through the case records and submissions made by the applicant.

8. In the instant case the applicant failed to give reasons for condonation of delay, the Commissioner Goods and Service Tax and Central Excise, Aurangabad



rejected the request of the applicant for condonation of delay in filing application for fixation of Special Brand rate. It is observed that Assistant Commissioner (Tech. Hqdrs.) vide letter F.No.VIII (Cus) 34/ TA/ BRF / 2017 /4121 dated 16.11.2017 informed the applicant about rejection of their application for condonation of delay by the Commissioner, Goods and Service Tax and Central Excise, Aurangabad. The appeal against the rejection order of Commissioner Goods and Service Tax and Central Excise, Aurangabad lies to Appellate Tribunal (CESTAT).

9. Government further observes that under Section 35EE of the Central Excise Act, 1944, a revision application against the Order of Commissioner (Appeals) passed under Section 35A *ibid* lies with Government only if such orders relate to cases as mentioned in provision to sub-section (1) of Section 35B of the Act.

Sub-section (1) of Section 35B of Central Excise Act, 1944 reads as under :-

- (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -
 - (a) a decision or order passed by the Commissioner of Central Excise as an adjudicating authority;
 - (b) an order passed by the Commissioner (Appeals) under Section 35A;
 - (c) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or the Appellate Commissioner of Central Excise under Section 35, as it stood immediately before the appointed day;
 - (d) an order passed by the Board or the Commissioner of Central Excise either before or after the appointed day, under Section 35A, as it stood immediately before that day:

Provided that no appeal shall be to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to -



- (a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;
- (b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;
- (c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;
- (d) credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No. 2) Act, 1998.

Further, Section 35EE of Central Excise Act, 1944 states that

- (1) The Central Government may, on the application of any person aggrieved by any order passed under Section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of Section 35B, annul or modify such order :

Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees."

10. Government thus finds that the Order passed by the Commissioner, Goods and Service Tax and Central Excise, Aurangabad rejecting their application for condonation of delay is not of the nature referred to in the first proviso to sub-section (1) of Section 35B of Central Excise Act, 1944. Hence the instant case does not fall with the purview of ambit and scope of provisions contained for Section 35EE read with proviso to Section 35B(1) of the Central Excise Act, 1944 under which the instant revision application has been made. The appeal against the rejection order of Commissioner, Goods and Service Tax and Central Excise, Aurangabad lies to Appellate Tribunal (CESTAT).



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11. Government therefore finds that the revision application filed before Central Government in terms of Section 35EE of Central Excise Act, 1944 in the present case by the applicant is beyond jurisdiction. As such, this revision application is dismissed for being non-maintainable. The applicant is at liberty to file an appeal before the appropriate authority under Section 35B of Central Excise Act, 1944.

12. So, ordered.

(Signature)

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India.

ORDER No. 703 /2018-CX (WZ) /ASRA/DATED 28.09.2018.

To,

M/s Allied Blenders & Distillers Pvt. Ltd.,
Plot No. 6, MIDC, Industrial Area,
Chikalhana, Aurangabad-431 006

ATTESTED

(Signature)
12-10-18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner, Goods and Service Tax and Central Excise, Aurangabad, N-5, Town Centre, Cidco, Aurangabad-431 003
2. The Assistant Commissioner (Tech. Hdqrs.) Goods and Service Tax and Central Excise, Aurangabad, N-5, Town Centre, Cidco, Aurangabad-431 003
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

*Recd original order
Parash chawhan
(Signature)
asquasaraj*

