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SPEED POST

F.No.195/1052/11-RA(CX)
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 22/9/15

ORDER NO. 83/2015-CX DATED 18.09.2015 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, 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. IND/CEX/000/APP/345/11 dated 25-08-2011 passed by the Commissioner of Central Excise (Appeals), Indore

Applicant : M/s Kriti Nutrients Ltd, Dewas

Respondent : Commissioner of Customs & Central Excise, Indore

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ORDER

This revision application is filed by M/s Kriti Nutrients Ltd, Dewas (M.P) (herein after referred as applicant) against the Order-in-Appeal No. IND/CEX/000/APP/345/11 dated 25.08.2011 passed by the Commissioner of Central Excise (Appeals), Indore with respect to Order-in-Original No. R/435/2010-11/Rebate/AC dated 31.03.2011, passed by the Assistant Commissioner of Central Excise, Bharatpuri, Ujjain.

2. Brief facts of the case are that the applicant is engaged in the manufacture and export of soybean meal extraction (D.O Cake) falling under Chapter No. 15 of the schedule to the Central Excise Tariff Act, 1985.

2.1 The applicant had filed a rebate claim for Rs. 8,46,113/- before the Assistant Commissioner of Central Excise, Ujjain for the Excise Duty paid on Hexane used in the manufacture of finished goods and consequently exported the same in terms of Rule 18 of Central Excise Rules, 2002.

2.2 The above said rebate claim was scrutinized and it was found that the applicant had not fulfilled certain conditions prescribed under Notification No. 21/2004-CE (NT) dated 06-09-2004 issued under Rule 18 of Central Excise Rules, 2002. Thus, Show Cause Notice dated 14-05-2010 was issued by the adjudicating authority to the applicant with respect to the rebate claim filed by the applicant. Assistant Commissioner of Central Excise, Ujjain vide impugned Order-in-Original rejected the said claim.

3. Being aggrieved by the impugned Order-in-Original, the applicant filed an appeal before the Commissioner (Appeals), who rejected the same vide Order-in-Appeal No. IND/CEX/000/APP/345/11 dated 25.08.2011. The Commissioner (Appeals) on passing the order has observed that the applicant has failed to comply with both the conditions i.e. No. 1 & 2 laid down under Notification no. 21/2004-CE(NT) and also failed to submit disclaimer certificate issued by the merchant exporter. Thus the contention of the applicant is baseless and not sustainable in the light of non-observance of the said conditions.

4 Thus, the applicant filed this revision application under section 35 EE of Central Excise Act, 1944 before the Central Government on the following grounds:

4.1 That the Order rejecting the claim of Rs. 8,46,133/- and not granting interest thereof is illegal, arbitrary, bad in law , and therefore deserves to be quashed.

4.2 That the applicant has duly complied with the conditions of Rules and Notification and therefore, the claim of the applicant deserves to be sanctioned.

4.3 That the Commissioner (Appeals) has disallowed the claim on wrong interpretation of exemption Notification No. 21/2004-CE dated 06.09.2004.

4.4. That the Rules and Notifications have to be read as a whole and no word can be added or substituted in the language of the said Rules and Notifications. Thus, the demand of declaration of Input Output Norms for granting rebate claim is illegal and bad in law, as they are already published in EXIM POLICY at Entry No. E 42, by the Government.

4.5. That the applicant is regularly procuring Hexane without payment of duty and obtained Annexure 45 from the department. There while by obtaining Annexure 45 applicants have declared Input Output Ratio. Therefore, it is wrong to say that applicants have not used Input Output Ratio.

4.6. That the adjudicating authority has passed the order after getting the verification report from the Range Superintendent, Dewas who has certified that the applicants have complied with all the conditions of getting the refund against this certification there is nothing admitted by the department, therefore the contention of the department is baseless.

4.7. That the applicant has submitted the original documents for verification with the department and the range office have verified claim. Thus, it is clear that the applicants are entitled for the refund and the same is not liable to be rejected.

4.8. That in an identical matter of applicant the Commissioner (Appeals), Indore has not followed the principles of Natural Justice in deciding appeal and for that Revision Application is already sub-judiced before Hon'ble Joint Secretary, New Delhi on 30.10.2010 having F.No. 193/835/10-RA.

5. A Show Cause Notice was also issued to the Respondent Department who in the cross objections have submitted as under:-

5.1. That the Rule 18 of Central Excise Rules, 2002 provides that where any goods are exported, the Central Government may, by Notification, grant rebate of duty paid on such excisable goods or duty paid on material used in manufacture or processing of such goods and the rebate shall be subject to such condition or limitation, if any and fulfillment of such procedure, as may be specified in the Notification. That the applicant purchased soya lecithin and they exported the same and claimed rebate of duty paid on soya lecithin. That the basic condition (1) of the Notification No. 21/2004-CE(NT) dated 06.09.2004 is to file input output ratio and to get it approved from the competent authority but applicant failed to fulfil conditions laid down in the notification which is mandatory. That the applicant had not exported the impugned goods on ARE-2 form although they are registered under the Central Excise Act, 1944. That ARE-2 is basic and essential export document for such export for which impugned rebate claim has been filed. That the applicant has failed to follow the prescribed procedure by not filing ARE-2 form, Input –Output ratio declaration, manufacturing declaration and non filling this it cannot be treated as minor technical lapse.

5.2. That the appellate authority clearly mentioned at para 5.5 of Order-in-Appeal No. IND/CEX/000/APP/292/2011 dated 19.07.2011 that the decisions relied upon by the applicant are not applicable as the facts and circumstances of the quoted case differ from that of the applicant's case.

5.3. That the facts and circumstances of the cited case are altogether different than that of the case of applicant. Thus the ratio of the decision in the cited case is not applicable in the instant case.

6 Personal hearing in the captioned case was held on 09.04.2015 wherein Sh. Ashutosh Upadhaya, Advocate appeared on behalf of the appellant and reiterated the grounds of appeal.

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

8 Government notes that in the case under consideration it is an admitted fact that goods have been cleared for export under Rule 18 of the Central Excise Rules, 2002 without following the conditions prescribed under Notification no. 21/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rule, 2002. The rebate claims were thus rejected by the original authority. The Commissioner (Appeals) also rejected the appeal filed by the applicant. Now the applicant has filed this Revision Application on grounds mentioned in para 4 above.

9. Government finds that the Rule 18 of Central Excise Rules 2002 provides that where any goods are exported, the Central Government may, by Notification, grant rebate of duty paid on such excisable goods or duty paid on material used in manufacture or processing of such goods and the rebate shall be subject to such condition or limitation, if any, and fulfillment of such procedure, as may be specified in the Notification. The said procedure is spelt out in Notification no. 21/2004-CE(NT) as amended and provides for rebate of the whole of the duty paid on excisable goods used in the manufacture or processing of export goods under the said Notification. Fulfillment of the conditions laid down in the notification is mandatory. In the case of applicant they have not complied with conditions and provision of Notification No.21/2004-CE (NT) dated 6/09/2004.

10. Government notes that in the present case, it is an undisputed fact that the applicant, a unit registered with Central Excise, availed benefit of rebate under Rule 18 for inputs used in manufacture of goods for the purpose of export but failed to fulfill the conditions and did not follow the prescribed procedure. They did not comply with the provisions of Notification No.21/2004- CE(NT) dated 06.09.2004 under Rule 18 ibid and failed to submit disclaimer certificate issued by the Merchant Exporter in original and Input Output Ratio with respect of the export product.

11. In reference to the above, Government first proceeds to examine the conditions stated to be not fulfilled as laid down under Notification No. 21/2004-CE(NT) dated 06.09.2004.

11.1. Government observes that export of goods under claim for rebate on inputs used in manufacture of export goods is governed by Rule 18 of Central Excise Rules, 2002 and Notification No.21/2004-CE(NT) dated 06.09.2004 read with Chapter 8 of CBEC's Central Excise Manual and finds that first condition laid down is that of filing of declaration which states that the manufacturer or processor shall file a declaration with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture, describing the finished goods proposed to be manufactured or processed along with their rate of duty leviable and manufacturing/processing formula with particular reference to quantity or proportion in which the materials are actually used as well as the quality. The declaration shall also contain the tariff classification, rate of duty paid or payable on the materials so used, both in words and figures, in relation to the finished goods to be exported. In the instant case the applicant failed to file any such declaration. Further applicant has contended that demand for declaration of input-output norms for granting rebate is illegal and bad in law as the SION Norms are notified in EXIM Policy. In this regard, it is observed that in the procedure laid down in Notification No. 21/2004-CE(NT) dated 06.09.2004 there is requirement of filing declaration and verification/approval of input-output norms. Therefore, it is wrong to claim on the part of applicant that demand of such declaration is illegal. The CBEC Excise Manual of Supplementary Instructions part-V para 3.2 of Chapter 8 simply states that for the sake of convenience and transparency input and output norms notified under EXIM Policy may be accepted. This provision cannot be claimed to do away with the provisions of Notification No. 21/2004-CE(NT). The applicant cannot claim the input rebate as a matter of right when he has failed to follow the provisions of Notification No. 21/2004-CE(NT) without giving explanation or any valid reasons for such lapses. In this case applicant has not admitted the occurrence of any unintentional procedural lapse and rather termed the demand of such declaration as illegal and bad in law.

11.2 Another condition laid down under the above referred Notification is that of verification of Input-Output Ratio. The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall verify the correctness of the ratio of input and output mentioned in the declaration filed before commencement of export of such goods, if necessary, by calling for samples of finished goods or by inspecting such goods in the factory of manufacture or process. If after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is satisfied that there is no likelihood of evasion of duty, he may grant permission to the applicant for manufacture or processing and export of finished goods.

11.3. Government further observes that applicant has also procured the Hexane without payment of duty by obtaining Annexure 45 from the Department. The input rebate is not admissible under Rule 18 of Central Excise Rules, 2002, when duty free inputs are used in the manufacture of exported goods. In this case the applicant has used both duty paid as well as duty free inputs in the manufacture of exported goods. So, the input rebate become inadmissible provided applicant is able to establish that only duty paid inputs are used in the exported goods. In this case no such verification is done from the records.

12. Further Government observes that the applicant had failed to submit the original copy of the disclaimer certificate from the Merchant Exporter while claiming rebate. Disclaimer Certificate, is one of the principle document under Notification No.21/2004-CE (NT) dated 06.09.2004 which establishes that the Merchant Exporter is not claiming any benefit on the said export.

13. Government notes that nature of above requirements is both a statutory condition and mandatory in substance for removal of goods for exports under claim for rebate of duty either on the final goods exported or on the inputs contained therein.

13.1 It is in this spirit and this background that Hon'ble Supreme Court in case of Sharif-ud-Din, Abdul Gani – (AIR 1980 SC 3403) has observed that distinction between required forms and other declarations of compulsory nature and/or simple technical nature is to be judiciously done. When non-compliance of said requirement leads to any specific/odd consequences, then it would be difficult to hold that requirement as non-mandatory.

13.2 It is a settled issue that benefit under a conditional Notification cannot be extended in case of non-fulfillment of conditions and/or non-compliance of procedure prescribed therein as held by the Apex Court in the case of Government of India Vs. Indian Tobacco Association 2005 (187) ELT 162 (S.C.); Union of India Vs. Dharmendra Textile Processors 2008(231) ELT 3 (S.C.). Also it is settled that a Notification has to be treated as a part of the statute and it should be read along with the Act as held in the case of Collector of Central Excise Vs. Parle Exports (P) Ltd – 1988(38) ELT 741 (S.C.) and Orient Weaving Mills Pvt. Ltd. Vs. Union of India 1978 (2) ELT J 311 (S.C.) (Constitution Bench).

13.3. Government notes that the applicant relied on the various judgments regarding procedural relaxation on technical grounds. The point which needs to be emphasized is that when the applicant seeks rebate under Notification No. 21/2004-NT dated 06.09.2004, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under such Notification No.21/2004-NT dated 06.09.2004 the applicant should have ensured strict compliance of the

conditions attached to the Notification No.21/2004-NT dated 06.09.2004. Government place reliance on the Judgment in the case of MIHIR TEXTILES LTD. Versus COLLECTOR OF CUSTOMS, BOMBAY, 1997 (92) ELT 9 (S.C.) wherein it is held that:

> "*concessional relief of duty which is made dependent on the satisfaction of certain conditions cannot be granted without compliance of such conditions. No matter even if the conditions are only directory.*"

14. Further, Government finds that there is no provisions under Rule 18 of Central Excise Rules 2002 for condonation of non-compliance with the conditions and procedure laid down in the Notification allowing rebate under said rule. In view of the above discussions, Government finds that the applicant failed to fulfill the above mandatory condition of the said provisions and the condition being mandatory the same is required to be followed by the applicant particularly when the applicant is the beneficiary in the claim of rebate.

15. Further the Government observes that the issue at hand already stands settled by the Revisionary Authority in the identical case of the applicant vide Order No. 887/2012-CX dated 13.08.2012 and nothing is placed on record to show that the order has been stayed or set aside by a Higher Court or Authority. The decisions cited by the applicant do not help in the subject case in as much as the ratio laid down in the said judgments does not apply to the facts of the present case.

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

17. The revision application is therefore rejected being devoid of merit.

18. So, ordered.

(RIMJHIM PRASAD)
Joint Secretary to the Government of India

M/s Kriti Nutrients Ltd.,
Industrial Area-III No. 3,
A.B. Road, Dewas
Madhya Pradesh

Attested
शौकत अली
Shaukat Ali
अवर सचिव (पु का)
Under Secretary (RA)

GOI ORDER NO. 83/2015-CX DATED 18.09.2015

Copy to:-

1. The Commissioner of Customs, Central Excise & Service Tax, Manik Bagh Palace, Post Bag No. 10, Indore-452001.

2 The Commissioner (Appeals), Customs, Central Excise & Service Tax, 4, Indralok Colony, Keshar Bagh Road, Indore-452009.

3. Mr. Ashutosh Upadhyay, Advocate, 4 Kishan Colony, 567, M.G. Road, Opposite High Court, Near Rajani Building, Indore (MP).

4. The Assistant Commissioner of Central Excise, 29, Bharatpuri, Ujjain-456010.

5. PA to JS (Revision Application).

6. Guard File.

7. Spare Copy.

ATTESTED

(SHAUKAT ALI)
Under Secretary to the Government of India