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F.No. 195/566,567,568,569&624/11-RA-Cx
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue.. 8/7/13.....

Order No. 859-863 /2013-CX dated 03.07.2013 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 orders-in-appeal No. BC/56,57,58 & 59/SRT-II/2011 dated 6.4.2011 passed by Commissioner (Appeals) Central Excise, Surat-II.

Applicant : M/s Hiran Orgochem Ltd., Panoli, Ankleshwar

Respondent : Commissioner of Central Excise, Surat-II

ORDER

These revision applications are filed by M/s Hiran Orgochem Ltd., Panoli, Ankleshwar against orders-in-appeal No. BC/56,57,58&59/SRT-II/2011 dated 6.4.2011 and order-in-appeal No. BC/156/Surat-II/11 dated 5.7.2011 passed by Commissioner (Appeals) Central Excise, Surat-II with respect to orders-in-original passed by Deputy Commissioner of Central Excise Division-III, Ankleshwar.

2. Brief facts of the case are that the applicant exported the goods under various ARE-1 forms on payment of duty to Bangladesh and filed rebate claims. The rebate claims were initially sanctioned by the original authority.

3. Being aggrieved by the said orders-in-original, applicant department filed appeal before Commissioner (Appeals) on following grounds:

- (i) The Deputy Commissioner has erred in not considering the fact that the goods in question, crossed the border and reached Bangladesh, from Mumbai on the same day, looking the distance from Mumbai to Benapole, which is not possible.
- (ii) The adjudicating authority should have got the date & genuineness of goods, under export, verified, brought out evidences, LR's and other documentary evidences.

Commissioner (Appeals) decided the cases in favour of department.

4. Being aggrieved with the impugned order-in-appeal the applicant filed these revision applications under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The applicant at the outset submit that the goods were undisputedly exported as has been duly certified by the Customs Authorities at the concerned border from where the exports have been carried out and that all the valid and legal documents supporting the legal and valid rebate claims were filed by the applicant. The said facts have not been disputed by the Commissioner (A). It may be further stated here that the said Assistant/Deputy Commissioner has sanctioned the rebate claim only after verification of all the legal supporting documents. Not only that, but before sanctioning the claims, the minor procedural and technical discrepancies as have been pointed out in the appeal memorandum, have been got properly complied with before sanction.

4.2 The applicant submit that from the factory premises the goods were removed through V-Trans (Vijay Transporter) to Bhiwandi. Thereafter, the consignment of the goods was handed over to another transporter i.e., National carriers, Mumbai and they transported the said consignment from Bhiwandi to Petrapole. M/s National Carriers had handed over the consignment to another transporter i.e., Kalwania Roadways, Kolkata for transport of consignment of finished goods from Petra pole to Benapole. The only mistake that has been committed by one of the transporters i.e., Kalwania Roadways that they have mentioned 'Mumbai' in the column 'From' in the relevant LR instead of Petrapole. Thus, from this appears that Kalwania Roadways, Kolkata had transported the consignment from Mumbai to Benapole and therefore the department has felt that how the consignment has reached from Mumbai to Benapole within a day. But this is not the fact, the Kalwania Roadways, Kolkata had transported the goods from Petrapole to Benapole only. From Mumbai (Bhiwandi) to Petra pole, the goods have been transported by National Carriers. Through oversight only, Kalwania Roadways, Kolkata have mentioned From Mumbai to Benapole instead of From Petrapole to Benapole. As a matter of fact, it was required for the Kalwania Roadways to mention From Petra pole to Benapole in the relevant LR. If the Kalwania Roadways, Kolkata would have mentioned the correct details i.e., Petra pole to Benapole then this confusion would not have been created.

4.3 As a matter of fact this fact was explained to the Division office. Thus, this is nothing but case of mistake done by the concerned transporter while preparation of LRs. Thus, the consignment was not reached from Mumbai to Bangladesh within a day. This appears because the mistake was committed by the transporters while preparing LRs. The said entire situation was explained to the Commissioner (A) with the help of the copies of the LRs and the statement/certificate issued by the transporters. Even then it has been contended by the Commissioner (A) that the further transportation is not explained. As a matter of fact, the appellant had explained in detail, the entire transactions and how the mistakes have been committed by the transporters. Thus, the contention of the Commissioner (A) is not correct and proper. Further M/s National Carriers has also committed such mistake i.e. they have mentioned in the LR that Bhiwandi to Benapole instead of Bhiwandi to Petrapole. For this purpose, they have also issued a declaration.

4.4 The most important point is that if the dates mentioned in the LRs (Consignment Notes) of National Carriers, Mumbai and Kalwani Roadways, Kolkata would be referred, it would be found that there is gap of at least one week. Thus, the consignment was transported by the National Carriers from Bhiwandi to Petra pole and from Petra pole to Benapole was transported by the Kalwaniya Roadways. In the circumstances it cannot be said only on the basis of assumptions that the goods have been reached from Mumbai to Bangladesh within a day.

4.5 Even if it is assumed but not admitted that the consignment of the finished goods has been reached from Mumbai to Benapole within a day, in the facts and circumstances also it is not understood how the said fact is relevant for eligibility of rebate claim but the relevant fact is that whether the consignment of the finished goods has been exported or not. And in the instant case, it is quite evident from the different documents such as ARE-1 duly endorsed by the Customs officer at Petrapole, Bill of Export, Shipping bill etc., that the consignment has been exported. Further, it is submitted that the goods, which were removed

from the factory premises, the same goods, in a same packing condition, have been exported as it is quite evident from the description of the goods, Gross weight, Net weight, quantity mentioned in the ARE-1s and shipping bills are being tallied. It is also not the case of the department that the goods, which were removed from the factory premises have not been exported.

4.6 As regard the contention of the Commissioner (A) that it is hard to believe that two different transporters have committed oversight in writing the LR's which is important for the transportation; these certificates cannot be relied as authenticated documents, the applicant submit that she has erred in holding so. As a matter of fact, it was required for the Commissioner (A) to verify the documents as proof of exports showing the goods have duly been exported. It was required for the Commissioner (A) to verify whether the duty has been paid or not and on the basis of the relevant judgements, it was required to reject the appeal of the department. But, instead of appreciating the facts and evidences, the Commissioner (A) has harped on the same grounds as mentioned in the grounds of appeal filed by the department and hence it is submitted that the order, under appeal, is not sustainable.

4.7 The applicant also relied upon some case laws in favour their contention.

5. Personal hearing was scheduled in this case on 5.3.2013 & 27.6.13. Personal hearing held on 5.3.13 was attended by Shri Vinay Kansara, Advocate on behalf of the applicant who reiterated the grounds of revision application. Nobody attended hearing on behalf of department on any of these dates.

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 original authority has sanctioned the rebate claims after verifying that duty paid goods have been

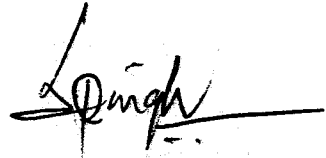
exported. The Commissioner (Appeals) has allowed appeals of the department on the ground that goods cannot reach from Mumbai to Bangladesh in one day.

8. Government notes that as per clarification given by applicant the confusion was created by transporter Kalwania Roadways, Kolkata as they have mentioned in relevant LRs as Mumbai to Benapole instead of writing Petrapole to Benapole. Similar mistake is made by another transporter M/s National Carrier who has mentioned LR as from Bhiwadi to Benapole instead of Bhiwadi to Petrapole. In view of said explanation the error appears bonafide as these transporters have stated to have transported goods from factory to Bhiwadi, Bhiwadi to Petrapole and Petrapole to Benapol. There is a custom certification on relevant ARE-1 forms and shipping bill that the said goods have been exported. So there is no reason to suspect the export of goods. The explanation given by applicant appears plausible and merits acceptance. As such, Government do not agree with the findings of Commissioner (Appeals).

9. In view of above discussion, Government sets aside the impugned orders-in-appeal and restores the impugned orders-in-original.

10. The revision applications succeed in terms of above.

11. So ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

M/s Hiran Orgochem Ltd.
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Panoli, Ankleshwar



GOI Order No. 859-863 /13-CX dated 03.07.2013

Copy to:

1. Commissioner of Central Excise & Customs Surat-II, Central Excise & Customs Building, Opp. Gandhi Baug, Chowk Bazar, Surat-395 001.
2. Commissioner of Customs & Central Excise (Appeals), Surat-II, Central Excise & Customs Building, Opp. Gandhi Baug, Chowk Bazar, Surat
3. Deputy Commissioner of Central Excise & Customs, Central Excise Building, Plot No.C/4/9, Division-II, 2nd Floor, GIDC, Ankleshwar-393002
4. Shri Vinay Kansara, Advocate, D/F 31 & 32, Sardar Patel Complex, Nr. SBI, GIDC, Ankleshwar-393002
5. Guard File.
- ✓ 6. PS to JS (RA)
7. Spare Copy

ATTESTED



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

