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SPEED POST



F.No.195/139/12-Cx-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue: 06-01-2014

Order No. 09/14-Cx dated 03.01.2014 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, Under Secretary 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. BC/168/M-III/2011-12 dated 30.11.2011 passed by Commissioner of Central Excise (Appeals), Mumbai-III.

Applicant : M/s Gautam Silk Mills, Mumbai

Respondent : Commissioner of Central Excise, Mumbai-III

ORDER

This revision application is filed by M/s. Gautam Silk Mills, Mumbai against the order-in-appeal No BC/168/M-III/2011-12 dated 30.11.2011 passed by Commissioner of Central Excise (Appeals), Mumbai-III with respect to order-in-original dated 22.06.2011 passed by Additional Commissioner, Central Excise, Mumbai-III.

2. Brief facts of the case are that applicants exported the goods under DEPB cum drawback/shipping bills & filed a claim for fixation of brand rate of drawback with the Department on 06.07.1999. The issue remained pending for over ten years due to various reasons and correspondence was exchanged between the applicants, the jurisdictional Central Excise authorities and Brand Rate Section of the Ministry. Also during the pendency of subject issue, Custom Circular No. 39/2001-Cus dated 06.07.2001 – allowing drawback of Central Excise duty on inputs not specified in the relevant SION, in respect of export under DEPB Scheme was challenged by the exporters in the court of law. The issue was finally settled by Hon'ble Supreme Court in January, 2007 in the case of M/s Arviva Industries and others, wherein, it was held that the said circular was applicable prospectively. In view of the judgement, the Department decided to extend the benefit to the exporters who had filed claims before 06.07.2001. The claim of the applicants was returned to the jurisdictional Central Excise Commissionerate vide Under Secretary (Drawback) CBEC, New Delhi letter F.No.606/8/2002-DBK (Part-II) dated 21.4.08.

2.1 The Additional Commissioner, Central Excise, Mumbai-III vide impugned order has decided the applicant's claim wherein he has held that:-

(i) On the basis of the documents and data submitted by the applicants and verified by the Assistant Commissioner, Central Excise, Bhandup Division it is found that the applicant is eligible for a drawback rate of Rs. 16.62 per kg as against Rs. 22.45/kg as claimed, with quantity restriction of export goods at 40000.06 kgs. The applicant is eligible for an amount of Rs. 6,64,801/-. The eligibility has been decided on the basis of the duty paid documents produced for verification. The applicant has not submitted few documents for verification, accordingly the same were not consider for fixing the brand rate. Hence there is quantity restriction of the export goods.

(ii) The above rate of drawback is restricted to the export made for the period 24.05.1999 to 23.05.2000 with quantity restriction of 40000.06 kgs. of the aforesaid export goods until withdrawn or modified by the Central Government and will apply to the exports made from Mumbai PORT, India, and subject to the conditions of the aforesaid rules.

(iii) The drawback rate of Rs. 16.62 amounting to Rs. 6,64,801/- is allowed.

3. Being aggrieved by the said order-in-original applicant filed appeal before Commissioner (Appeals) who rejected the same.

4. Being aggrieved by the impugned order-in-appeal dated 13.4.09, the applicant had filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 We had filed various Brand Rate of Drawback Application prior to 06.07.2001 with all the necessary documents related thereto with concerned office. All these applications were duly verified by the jurisdictional range Superintendent of Central Excise. These verified applications were then vetted by the Dy./Assistant Commissioner of the Division. They were then forwarded to the Commissioner who recommended the cases to Jt. Secretary (Drawback) for issue of necessary Brand Rate approval letter. We had filed the applications with the concerned Divisional Central Excise office as per the norms and procedure laid by them. Thereafter, the verified file along with performance verification report was forwarded to Under Secretary, Drawback, Directorate of Drawback, New Delhi in the year 2000-2001. However, as the matter was kept in abeyance in view of Circular No.39/2001-Cus dated 06.07.2001; we were not issued Brand Rate Letter. When the issue has been settled by Hon'ble Supreme Court of India and directed the authorities to dispose of pending claims with the ministry, we approached Joint Secretary, Drawback, Central Board of Excise & Customs, New Delhi for sanction of Drawback.

4.2 At the time of original verification of our brand rate application in 1999-2000, we had submitted all the original documents including duty paid documents of raw materials, Commercial Invoices, triplicate copies of Shipping Bills, AR-4s to concerned range authority for verification of the said application. Thereafter, the verified file was forwarded to Commissionerate for further processing and issuing the brand rate letter. This verified application duly vetted by the Deputy/Assistant Commissioner, recommended by the Commissioner of Central Excise was lying for almost a decade in the office of the Jt. Secretary, New Delhi where it was finally misplaced/lost. However at the time of re-verification, consequent to the Supreme Court Order, we could not produced the original duty paying documents in respect of 47656.500kgs. yarn. This is due to fact that the original duty paying documents were depot bills issued by the manufactures to their depots. The depot bills will be normally for 100 of tons where as the purchase of exporters may be for 500kg/1000kg etc. according to their requirements. At the time of original verification in 1999-2000, we had obtained this original from the depot and produced before the verifying officer. As it was original documents of the Depot, we had no option but to return these originals to the depot. At the time of re-verification we tried out level best to get copies of the bills from the

suppliers. Unfortunately they were unable to provide the same because of the delay for almost a decade.

4.3 When we had exported the consignment covered under 38 Shipping Bills during 1999-2000, various other exports such as M/s Topman Exports, 82, badamwadi, 331-A, Kalbadevi Mumbai-400002 & Chothani Exports, Shop No.s, Krishna Bhawan, 146/148, Dr. Vighas Street, Opp. Ramwadi P.O. Kalbadevi, Mumbai -400002, were also exporting the same product under the same scheme of DEPB-cum-Drawback scheme. Like us, in the case of the above two exporters also their original brand rate applications pertaining to the year 1999-2000 were lost/misplaced in the office of Jt. Secretary, Drawback, New Delhi. In the case of Topman Exports/Chothani Exports, the concerned Commissionerates did not ask for any original documents. In the case of M/s Topman Exports, all their brand rate application were re-verified and brand rate approval letters issued to them on the strength of indemnity bond furnished to them. In the case of M/s Chothani Exports the brand rate approval was issued even without any indemnity bond. In the case of both the above party the brand rate letters were issued posthaste in the year 2000 itself, whereas our claim was inordinately delayed for reasons only known to the Commissioner. We had brought this injustice to the attention of Jt. Secretary vide out letter dated 08.12.2009, again a legal notice was served to them. In absence of non-compliance of the claim, we again brought the matter legally in the notice of Jt. Secretary, (Drawback), Department of Revenue, New Delhi vide letter dated 17.07.2010 addressed to Commissioner of Central Excise, Mumbai-III.

4.4 As per the Supreme Court judgment in the matter (civil appeal No.169/2007 dated 10.01.2007), "when a circular remain in operation the revenue is bound to be and cannot be allowed to plead that it is not valid nor that it is contrary to the terms of the statue. The department cannot be permitted to take a stand contrary to the instruction issued by the Board." Board had issued circular No. 08/2001 dated 20.02.2001 according to which there will be only one verification report for a drawback application. So, thus reverification is itself is in effect a contempt of court.

4.5 Article 14 of Indian constitution doesn't allow any discrimination on the part of government. When the government (the same Commissioner) has allowed brand rate without original duty paying documents to 2 other exporters how can the same Commissioner deny the same the Applicant Company.

5. Personal hearing scheduled in this case on 26.11.2013 was attended by Shri R.K. Sharma, advocate on behalf of the applicant who reiterated the grounds of Revision Application. Shri D.P. Singh, Superintendent attended hearing on behalf of respondent and stated that Order-in-Original being legal and proper, may be upheld.

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

7. Government observes that in impugned case, original authority vide impugned order-in-original dated 22.6.11 fixed the brand rate @Rs.16.62 kgs with quantity restriction of 40000.06 kgs as against rate of Rs.22.45 kgs of full quantity claimed by the applicant. Commissioner (Appeals) upheld impugned order-in-original. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government notes that original authority has fixed brand rate of drawback in 38 shipping bills @Rs.16.62 kgs with quantity restriction of 40000.06 kgs on the ground that the applicants has not submitted some documents for verification and accordingly the same were not considered for brand rate fixation and hence there is quantity restriction.

9. Commissioner (Appeals) has observation her findings in para 10 of order-in-appeal as under:

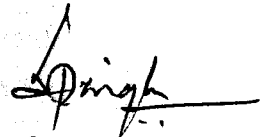
"The appellant has not submitted any evidence to show their entitlement for drawback on full quantity and @ Rs 22.45/ - per kg. It was the responsibility of the appellants to substantiate the appeal with proper evidence which they have failed to do. The dispute involved is based on the facts of the case and does not involve any question or interpretation of law. The issues relating to fixation of drawback are to be decided on case to case basis depending upon the nature and composition of export goods and the raw materials used. Therefore, the cases cited by the appellant do not support their case in any way. It is also on record that the Joint Commissioner (BRU), Mumbai-III vide letter F.No. C.Ex/54/05/08-09/DBK/M-III dated 15.2.11 has submitted a detailed verification report to Under Secretary (Drawback) New Delhi, with a copy to the appellants. In the said report, it is clearly stated that the appellants are eligible for drawback rate of Rs.16.62 per kg. with quantity restriction of 40,000.06 kgs. The impugned order has been passed by the Additional Commissioner (BRU), Mumbai III on 22.6.11 i.e. after four months. The appellant had sufficient time to contest the working out by the department before the order was passed. The appellant has not adduced any evidence to show that they have contested the fixation of Brand rate and quantity restriction as mentioned in the letter dated 15.2.11 before the lower authority. Further, they have failed to submit the relevant documents as agreed to by them during the course of personal hearing."

Government finds that in this revision application, the applicants have stated that they could not produce original duty paying documents in respect of 47656.500 kgs due to the fact that the original duty paying documents were depot bills issued by manufacturer of their depots, which were produced at the time of original verification in 1999-2000 and then returned the same to the depot. However, they could not get the said originals from depot now at the time of re-verification. As such, Government finds that the applicants failed to produce the originals which was not in possession of department, as per applicants own submission at the time of re-verification. They also could not produce any other evidence regarding claimed quantity. Further, they have not produced any substantial documentary evidence challenging brand rate fixation @Rs.16.62 kgs as against Rs.22.45 kgs. claimed by the applicant. In absence of such documentary evidences the fixation of brand rate by the original authority cannot be faulted with. The appellate authority also discussed the same in detail and Government agrees with the findings of appellate authority.

10. In view of above discussion, Government do not find infirmity in order of Commissioner (Appeals) and hence, upholds the same.

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

12. So ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Gautam Silk Mills,
111/1, Road No. 13, MIDC,
Andheri (E), Mumbai 400 093.

(Attested)




3/1/2014

(Rishwat Sharma)
Assistant Commissioner
C. U. (Revision Application)
वित्त मंत्रालय (सूक्ष्म विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली / New Delhi

Order No. 09/2014-Cx dated 03.01.2014

Copy to:

1. Commissioner of Central Excise, Mumbai-III Commissionerate, 4th Floor, Vardan Trade Centre, MIDC Wagle Industrial Estate, Thane (West) – 400 604
2. Commissioner of Central Excise(Appeals), Mumbai-III, Mumbai Zone-II, 5th Floor, C.G.O. Complex, C.B.D. Belapur, Naiv Mumbai – 400614.
3. Additional Commissioner (BRU), Central Excise, Mumbai-III.
4. M/s R.K. Sharma & Associates Pvt. Ltd., 157, 1st Floor, Drawback Office Complex, C.M. Jhandewalan Extn. New Delhi-55.
- ✓ 5. PA to JS(RA)
6. Guard File.
7. Spare Copy


3/1/2014
(BHAGWAT P. SHARMA)
OSD (Revision Application)

