

SPEED POST



F.No. 195/177/2018-R.A.
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... 16/4/21

Order No. 90/2021-CX dated 16-04-2021 of the Government of India, passed by **Sh. Sandeep Prakash**, Additional 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. LUD-EXCUS-000-APP-1017-18 dated 25.04.2018 passed by the Commissioner (Appeals), Central Goods & Service Tax, Ludhiana.

Applicants : M/s. Dhanmay International, Jalandhar

Respondent : Commissioner of CGST, Jalandhar

ORDER

A revision application no. 195/177/2018-RA dated 30.07.2018 has been filed by M/s Dhanmay International, Jalandhar (hereinafter referred to as the applicant) against Order-in-Appeal No. LUD-EXCUS-001-APP-1017-18 dated 25.04.2018, passed by the Commissioner (Appeals), CGST, Ludhiana, whereby the appeal filed by the applicant against Order-in-Original No. Rebate/1838/AC/Jal/2014 dated 30.06.2014 passed by the Assistant Commissioner, Central Excise Division, Jalandhar has been rejected.

2. Briefly stated, the applicants are engaged in the manufacture and export of excisable goods. They filed a rebate claim for Rs. 3,41,074/-, on 12.02.2014, in respect of goods cleared for export, vide A.R.E.-1 No.03 dated 30.03.2013, which were exported by the merchant exporter, vide Shipping Bill No. 7733523 dated 30.09.2013, with let export date as 07.10.2013. As the goods had been exported after expiry of six months from the date of clearance from the factory, the rebate claim was rejected by the Assistant Commissioner, vide aforesaid Order-in-Original dated 30.06.2014, being in contravention of para-2(b) of the notification No. 19/2004-CE(NT) dated 06.09.2004. The appeal filed by the applicant was also rejected leading to be present Revision Application.
3. The Revision Application has been filed, mainly, on the grounds that the rebate had been rejected on technical grounds when export of goods is not in dispute and that it is incorrect to deny rebate claim on procedural/technical infirmities when admissibility of claim is otherwise not disputed.
4. Personal hearing was held on 15.04.2021, in virtual mode. Sh. Sudhir Malhotra, Advocate, appeared for the applicant and reiterated the contents of RA. He specifically highlighted the judgment in the case of Dorcas Market Makers {2012(281)ELT 227(Mad)} in support of his case. Sh. Malhotra also submitted that the requisite application fee of Rs.1000/- has been paid and TR-6 Challan shall be submitted. The copy of TR-6 Challan was submitted on 15.04.2021 itself. No one appeared for the respondent Department. No request for adjournment has also been received. Therefore, the matter is being taken up for decision based on records.

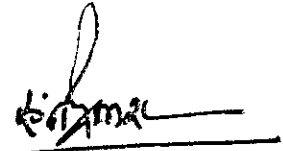
5. The Government has examined the matter. The instant claim for rebate has been filed under Rule-18 of Central Excise Rules, 2002 read with notification no. 19/2004-CE(NT) dated 06.09.2004. Para-2 of the notification specifies the 'conditions and limitations' subject to which rebate of duty paid on excisable goods shall be granted under Rule-18. Clause (b) of said para-2 specifies "that the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow." In the present case, the goods were cleared for export from the factory of manufacture on 30.03.2013 whereas date of Let Export Order is 07.10.2013. Therefore, the goods have been exported beyond the limit of six months specified in para- 2(b). This limit has also not been extended. The applicant has admitted these facts and their only contention is that contravention of para-2(b) is merely a procedural/technical infraction.

6. It is observed that Rule-18 of Central Excise Rules prescribes for grant of rebate of duty subject to such conditions and limitations, if any and fulfillment of such procedures, as may be specified by the Central Government by a notification. The notification no. 19/2004-CE(NT) prescribes the 'conditions and limitations' for grant of rebate in para-2 and the 'procedure' in para-3. The Hon'ble Bombay High Court in the case of UM Cables Ltd. Vs UoI [2013(293)E.L.T 641(Bom.)] has held that "the conditions and limitations for the grant of rebate are mandatory." Therefore, the contention of the applicant that contravention of para-2(b) of the notification is merely a technical/procedural infraction cannot be accepted.

7. The applicant has heavily relied upon the judgment of Hon'ble Madras High Court in Dorcas Market Makers (Supra) in support of their case. However, the Government finds that the judgment in Dorcas case relates to applicability of limitation period provided under Section- 11B of the Central Excise Act to the claims of rebate filed under Rule-18 read with notification no. 19/2004-CE(NT). The Hon'ble High Court held that since at the relevant time the notification no. 19/2004-CE(NT) did not specify any time limit for filing of rebate claim, no limitation would apply, even though Section-11B provides for a limitation period of one year. In the present case, the issue relates to rejection of rebate claim as the applicant failed to export the goods within the period of six months from the date of

clearance from the factory as specified in para-2(b) of the notification no. 19/2004-CE(NT). Therefore, the judgment in the case of Dorcas does not support the contention of the applicant. The other case laws/decisions cited are also not relevant in the facts of this case.

8. In view of the above, the Government does not find any infirmity in the impugned order of the Commissioner (Appeals). The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s. Dhanmay International,
D-124, Focal Point, Jalandhar, Punjab,
144 001.

G.O.I. Order No. 90/21-CX dated 16-4-2021

Copy to: -

1. The Commissioner of Central Goods & Service Tax, Jalandhar(Hqrs at Ludhiana), CGST House, "F" Block, Rishi Nagar, Ludhiana - 141 001(Punjab.)
2. Commissioner (Appeals), Central Goods & Service Tax, Chandigarh Appeals, C.R. Building, Plot No. 19, Sector 17/C, Chandigarh.
3. Mr. Sudhir Malhotra, Advocate, 13-R, Hukam Chand Colony, Near D.A.V. College, Jalandhar - 144 623.
4. P.S. to A.S. (Revision Application).
5. Guard File.
6. Spare Copy

ATTESTED



(Ashish Tiwari)

ASSISTANT COMMISSIONER (R.A.)