

SPEED POST



F.No. 195/219-220/2018-RA , 195/40/2019-RA
195/02/2021-RA , 195/03/2021-RA
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.. 20/11/21.....

Order No. 9195/21 CX dated 19-11-2021 of the Government of India passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under Section 35EE of the Central Excise Act, 1944.

Subject : Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. NOI-EXCUS-001-APP-1250 & 1251-17-18 dated 05.10.2017, NOI-EXCUS-001-APP-1397-17-18 dated 31.10.2017, NOI-EXCUS-001-APP-802 & 803/2020-21 dated 16.10.2020, and NOI-EXCUS-001-APP-810-812-20-21 dated 27.10.2020 by the Commissioner (Appeals), Customs & Central Tax, Noida.

Applicant : M/s Winson Perfumes & Cosmetics Pvt. Ltd.,
Noida.

Respondent : Commissioner of CGST, NOIDA.

ORDER

Five Revision Applications Nos. 195/219-220/2018-RA both dated 21.12.2018, 195/40/2019-RA dated 15.05.2019, 195/02/2021-RA and 195/03/2021-RA both dated 03.03.2021 have been filed by the M/s Winson Perfumes and Cosmetics Pvt. Ltd., NOIDA (hereinafter referred to as the applicant) against the Orders-in-Appeal arising out of Orders-in-Original as per details below:-

Sr. No.	Revision Application No.	Order-in-Appeal No.	Order-in-Original No.	Amount Involved (Rs.)	Remarks
1.	195/219-220/2018-R.A.	NOI-EXCUS-001-APP-1250 & 1251 -17-18 dated 05.10.2017	R-23/AC/D-III/N-I/2016-17 dated 30.06.2016	10,74,337/-	Appeal filed by the Department against Orders-in-Original allowed
			R-24/AC/D-III/N-I/2016-17 dated 30.06.2016	11,29,292/-	
2.	195/40/2019-R.A.	NOI-EXCUS-001-APP-1397-17-18 dated 31.10.2017	R/60/AC/Div-III/N-I/2016-17 dated 28.02.2017	20,39,631/-	Appeal filed by the applicant against Order-in-Original rejected
3.	195/02/2021-R.A.	NOI-EXCUS-001-APP-802 & 803/2020-21 dated 16.10.2020	115/R/AC/CGST/D-III/2020-21 dated 27.05.2020	11,14,653/-	Appeal filed by the applicant against Orders-in-Original rejected
			116/R/AC/CGST/D-III/2020-21 dated 27.05.2020	4,60,481/-	
4.	195/03/2021-R.A.	NOI-EXCUS-001-APP-810 to 812-20-21 dated 27.10.2020	113/R/AC/CGST/D-III/2019-20 dated 19.05.2020	35,50,036/-	Appeal filed by the applicant against Orders-in-Original rejected
			112/R/AC/CGST/D-III/2020-21 dated 19.05.2020	11,29,292/-	
			114/R/AC/CGST/D-III/2020-21 dated 19.05.2020	10,74,337/-	

2. The brief facts of the case are that the applicant had filed rebate claims in respect of central excise duty paid on export goods i.e. Spray perfumes under Rule 18 of Central Excise Rules, 2002. On scrutiny of the rebate claims, it was observed that the goods (Spray Perfumes) exported by the applicant, manufactured by using denatured Ethyl Alcohol (C_2H_5OH), were not classifiable under Chapter 33 of the Central Excise Tariff Act, 1985, in view of the Chapter Note 1(d). They were appropriately classifiable under Medicinal and Toilet Preparation (Excise Duties) Act, 1955 and, therefore, were not chargeable to central excise duty. Consequently, no CENVAT credit was admissible on the inputs used in the manufacture of such non-excisable goods and, thus, no rebate was admissible. This view was upheld by the Commissioner (Appeals) in the impugned Orders-in-Appeal. The present revision applications have been filed, broadly, on the ground that the applicant was using "*Denatured Ethyl Alcohol*" for manufacturing the export goods, which was different from "*Ethyl Alcohol*" with chemical formula C_2H_5OH , and the Commissioner (Appeals) had passed the impugned Orders-in-Appeal on the basis of illegal, arbitrary and perverse findings thereby erroneously upholding the Orders-in-Original.

3. Personal hearing was held on 15.04.2021, in virtual mode. Sh. R. M. Saxena, Advocate, appeared for the applicant and made the submissions. He highlighted that:-

(i) The revision application nos. 195/219-220/2018-RA dated 21.12.2018 and 195/40/2019-RA dated 15.05.2019 have been filed with delay as they had earlier approached CESTAT in the matter. Hence, delay may be condoned.

(ii) The lower authorities have treated denatured ethyl alcohol also as alcohol for the purpose of Chapter Note 1(d) of Chapter 33, without referring to any expert opinion or HSN Explanatory Notes.

(iii) CESTAT has, in the case of M/s Gusai Trading Company [2010 (254) ELT 299 (Tri- Kolkata)] held that Nivea Deodorant containing denatured ethyl alcohol is classifiable under Central Excise tariff and leviable to CVD.

On being asked, Sh. Saxena clarified that the subject goods were cleared only for export purposes.

Sh Rohitash Pandey, Superintendent, appeared for the respondent department and reiterated the findings of the lower authorities.

4. The Government has examined the matter. As regards the request by the applicant for condonation of delay in filing revision applications nos. 195/219-220/2018-RA both dated 21.12.2018 and 195/40/2019-RA dated 15.05.2019, it is observed that the Orders-in-Appeal in these cases were communicated to the applicant on 13.11.2017 and 11.11.2017, respectively. CESTAT had returned the appeals to the applicant vide Miscellaneous Order No. MO/70264-70266/2018-EX [DB] dated 23.08.2018. The revision applications have been filed on 21.12.2018 and 15.05.2019, i.e., with a delay of

312 and 550 days, respectively. Further, the revision applications in these cases have been filed beyond the permissible period of three months, as per Section 35EE (2) of Central Excise Act, 1944, even after the CESTAT's order returning the appeals. No sufficient cause has been shown by the applicant which prevented them from presenting the application within the aforesaid period of three months, even after the CESTAT's order. Hence, delay cannot be condoned in respect of these three revision applications and they are liable to be rejected on this ground alone.

5.1 On merits, it is observed by the Government that the Chapter Note 1 of Chapter 33 of Central Excise Tariff Act, 1985 reads as follows:-

"1. This Chapter does not cover: "

(a)-----

(b)-----

(c)-----

(d) perfumery, cosmetics and toilet preparations containing alcohol or opium, Indian hemp or other narcotics and for this purpose, these expressions have the meanings respectively assigned to them in Section 2 of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955).

Section 2 (a) of Medicinal and Toilet Preparations (Excise Duties) Act, 1955 reads as follows:-

“a. “alcohol” means ethyl alcohol of any strength and purity having the chemical composition C_2H_5OH ”

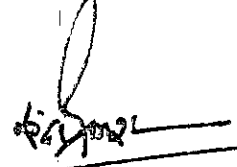
5.2 It can be seen from the above that Chapter 33 of the Central Excise Act, 1944 excludes perfumery preparations containing “alcohol” from its ambit. As per Section 2 of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (MTP Act), “alcohol” means ethyl alcohol of any strength and purity having chemical composition C_2H_5OH . It is not the contention of the applicant that the “denatured ethyl alcohol” does not have the chemical composition C_2H_5OH . Their contention is that the ethyl alcohol used with denaturant was rectified spirit/industrial alcohol and not ‘potable alcohol’. As such, it was not covered under the definition of “alcohol” provided under the MTP Act. However, the Government observes that there is nothing in Section 2(a) of the MTP Act to suggest that only ‘potable alcohol’ is covered thereunder. Further, it is settled law that statute ordinarily must be literally construed. In the case of UOI Vs. Dharmendra Textiles Processors [2008 (231) ELT 3 (SC)], the Apex Court has held that the Court cannot read anything into a statutory provision. Similarly, in the case of M/s Oswal Agro Mills Ltd. Vs. Collector of Central Excise [1993 (66) ELT 37 (SC)], the Apex Court has held that *“Nothing is implied. Neither can we insert nor anything can we delete but it should be interpreted and construed as per the words the legislature has chosen to employ in the Act or Rules.”* Thus, the Government finds that there is no room to restrict the scope of word

'alcohol' by reading it as 'potable alcohol', as suggested by the applicant.

5.3 A reference to HSN Explanatory Notes, as suggested by the applicant, would be futile as Clause (d) of Chapter Note 1 to Chapter 33 is India specific. Further, there is no need to refer to the technical literature to interpret the word 'alcohol' as the meaning thereof is statutorily defined.

5.4 The applicant has cited the decision of CESTAT in Gusai Trading Company (supra) to support their case. It is observed that while arriving at the conclusion that the Nivea Deodorant (which had denatured alcohol as an ingredient) is classifiable under Chapter 33 of the Central Excise Tariff, the CESTAT relied upon the decision in the case of M/s Deccan Sugar & Abkari Co. Ltd. [(2004) 1 SCC 243]. However, the decision in Deccan Sugar case relates to applicability of State Excise duties to industrial alcohol/rectified spirit removed/cleared for supply to industries and not with reference to the applicability of Excise Duties under the MTP Act to perfumes made with rectified spirit/denatured ethyl alcohol. In this regard, it is to be noted that while by virtue of Chapter Note 1(d), the perfumes etc., with alcohol content, are excluded from the purview of Central Excise Tariff, correspondingly such perfumes are specifically included as 'Toilet Preparations' for levy of excise duties under the MTP Act.

6. In view of the above, the Government finds no infirmity in the impugned orders of Commissioner (Appeals). The revision applications are, therefore, rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Winson Perfumes & Cosmetics Pvt. Ltd.,
B-88, Sector-67, Noida- 201 301.

Order No. _ 91-95/21-Cx dated 19-4-2021

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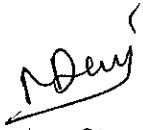
1. Commissioner of Central Goods & Service Tax, Noida.
2. Commissioner (Appeals), Customs & Central Tax, Noida.
3. M/s LASA Consultancy Private Limited, D-60, Sector-2, Noida (U.P.) -201 301.
4. PA to AS (RA) 5. Guard File.

6. Spare Copy.

Attested

(Ravi Prakash)

Senior Technical Officer (Revision Application)



(निर्मला देवी)
(Nirjala Devi)
अनुभाग अधिकारी (पुनर्विचार याचिका)
Section Officer (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Dept. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi