

REGISTERED
SPEED POST



F.No. 195/533/11-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.....14.7.13

Order No. 933/2013-CX dated 15-7-2013 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 order-in-appeal No.II/AV/06/2011 dated 28.2.11 passed by Commissioner of Central Excise (Appeals-II), Pune.

Applicant : M/s Shreyas Intermediates Ltd., Pune

Respondent : Commissioner of Central Excise, Pune-II

ORDER

This revision application is filed by the M/s Shreyas Intermediates Ltd., Pune against order-in-appeal No.II/AV/06/2011 dated 28.2.11 passed by the Commissioner of Central Excise (Appeals-II), Pune with respect to order-in-original passed by the Deputy Commissioner of Central Excise, Ratanagiri Division, Kolhapur Commissionerate.

2. Brief facts of the case are that the applicants are a 100% EOU engaged in the manufacture of chemicals, etc. falling under chapter heading 3204 of the Central Excise Tariff Act, 1985. The applicants had cleared 6000 kgs of activated blue crude for export to USA under B-17 General Bond, vide ARE-1. The applicants failed to produce the proof of export within six months from the date of clearance of the goods for export, therefore, they debited the duty amounting to Rs.3,57,613/- through their cenvat credit account. Thereafter, the applicants filed a claim for refund of Rs.1,78,806/- being the duty paid on 3000 kgs of goods which were re-imported being rejected by the foreign buyer out of total 6000 kgs exported. The Assistant Commissioner, Central Excise, Ratanagiri Division rejected the refund claim on the ground that the claim was filed beyond a period of one year and hence time barred and that the B/E of the returned goods was in the name of their DTA unit.
3. Being aggrieved by the impugned order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the same.
4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government mainly on the various grounds.

5. Personal hearing was scheduled in this case on 5.3.2013 & 27.6.2013. Nobody attended the hearing. Hence Government proceeds to decide the case on the basis of available records.
6. Government has carefully gone through the relevant case records and perused the impugned orders-in-original and orders-in-appeal.
7. Government observes that the applicant, a 100% EOU, exported the goods without payment of duty. As they failed to produce proof of export within six months from the date of clearance of goods for export, they debited the duty amounting to Rs.3,57,613/- through their cenvat credit account. Subsequently, the half of the exported goods were re-imported as the same were rejected by foreign buyer. The applicant filed refund claim of duty involved on such quantity re-imported goods. The original authority rejected the refund claim on the ground that the claim was filed beyond a period of one year and hence time barred and that the B/E of the returned goods was in the name of their DTA Unit. Commissioner (Appeals) upheld impugned order-in-original. Now, the applicant has filed this revision application on various grounds.
8. Government observes that the main issue involved in this revision application is refund of duty paid against export of goods, half of which were subsequently re-imported as the same was rejected by the foreign buyer. Government finds that in terms of first proviso to Section 35 B(1) of the Central Excise Act 1944, appeal against order-in-appeal passed by Commissioner of Central Excise (Appeals) shall not be filed before CESTAT if relates to:-
- "(a) a decision or order passed by the Commissioner of Central Excise as an adjudicating authority;*
- (b) an order passed by the Commissioner (Appeals) under section 35A;*
- (c) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this*

Chapter referred to as the Board) or the Appellate Commissioner of Central Excise under section 35, as it stood immediately before the appointed day;

(d) an order passed by the Board or the Commissioner of Central Excise, either before or after the appointed day, under section 35A, as it stood immediately before that day.

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, —

(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty ;


(d) credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No. 2) Act, 1998:....."

8.1 Further as per Section 35EE of the Central Excise Act 1944 Central Government may on the application of any person aggrieved by any order passed under Section 35A where the order is of the nature referred to in the first proviso to Section 35 (B) annual or modify such order. In the said order-in-appeal the issue is of refund of duty paid on goods re-imported under Notification No.158/95-Cus. dated 14.11.95. Here it is not a case covered under first proviso of Section 35(B)(1) of Central Excise Act 1944 as discussed above.

8.2 By reading of above said proviso, it is quite clear that appeal against the order of Commissioner (Appeals) on the issue involved in this impugned case does not lie before this authority. As such this revision application cannot be entertained in terms of Section 35EE read with Section 35(B)(1) first proviso of the Central Excise Act, 1944. Therefore this revision application is not maintainable before Central Government under Section 35 (EE) of Central Excise Act, 1944. Applicant has liberty to file appeal before appropriate forum.

9. Revision Application thus stands dismissed, being filed beyond jurisdiction.

10. So, ordered.




(D P Singh)

Joint Secretary (Revision Application)

M/s Shreyas Intermediates Ltd.
Plot NO.D-21
MIDC Industrial Area
Lote Parushram, Taluka-Khed
Distt. Ratanagiri-415722

Attested'


16/7


(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C.B.E.C.-O.S.D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

GOI Order No. 9 33/13-CX dated 15-7-2013

Copy to:

1. Commissioner of Central Excise (Appeals-II) Pune-II, F-Wing, "ICE House", Sassoon Road, Opposite Wadia College, Pune- 411 001.
2. Commissioner of Central Excise (Appeals), Pune-II, F-Wing, "ICE House", Sassoon Road, Opposite Wadia College, Pune- 411 001.
3. The Deputy Commissioner of Central Excise, Ratanagiri Kolhapur Commissionerate, Central Government Building, Jail Road, Ratnagiri-415612
4. Guard File.
- ✓ 5. PS to JS (RA)
6. Spare Copy

ATTESTED


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