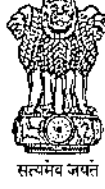


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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F NO. 195/25/16-RA | 6095

Date of Issue: 27.12.22

ORDER NO. 987 /2022-CEX (WZ)/ASRA/MUMBAI
DATED 20-10-2022 OF THE GOVERNMENT OF INDIA PASSED BY
SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO
ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER
SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Junaid Industries.

Respondent : Commissioner of CGST & CX, Mumbai East.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.-
CD/833/M-II/2015 dated 29.06.2022 passed by the
Commissioner(Appeals), Central Excise , Mumbai Zone-II.

ORDER

This Revision Application has been filed by M/s. Junaid Industries (hereinafter referred to as "Applicant") against the the Order-in-Appeal No.- CD/833/M-II/2015 dated 29.06.2022 passed by the Commissioner(Appeals), Central Excise ,Mumbai Zone-II.

2. Brief facts of the case are that the Applicants had filed a total number of 5 rebate application with the Department totally amounting to Rs. 4,72,870/- under Notification No. 19/2004-CE (NT) dated 06.09.2004, out of which the applicants themselves accepted that their first rebate claim vide A.R.E. 1 No. 01/13-14 dated 08.11.2013 amounting to Rs. 12,892/- was time-barred as the same was filed after the lapse of one year from the date of export, whereas the lower adjudicating authority has admitted the rebate claim filed vide A.R.E. No. 02/13-14 dated 25.11.2013 amounting to Rs. 75,461/- and ordered appropriation against pending dues of the applicants, whereas rejected the three rebate claims viz. A.R.E. Nos. 03/13-14 dated 13.12.2013, 04/13-14 dated 18.12.2013 and 05/13-14 dated 09.01.2014 for Rs. 96,970/-, Rs. 870/- and Rs. 2,86,777/- respectively on the grounds that the applicants had delayed the payment of duty resulting into non-compliance of Notification No. 19/2004-C.E. (N.T.) dated 06.09.2014. Aggrieved, the Applicant filed appeal against the rejection of their three rebate claims totally amounting to Rs. 3,84,517/- with the Commissioner(Appeals), Central Excise ,Mumbai Zone-II, who vide Order-in-Appeal No.- CD/833/M-II/2015 dated 29.06.2022 rejected their appeal.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application on the following grounds :

- i. The impugned Order is passed without considering the merits of the case and without taking cognizance of the provisions of the statute with regard to the facts of the case and without considering the binding circular of the CBEC and the settled case laws and therefore it is not proper speaking order and not just and proper in law and hence on this ground alone needs to be set aside.

- ii. Appellate Authority has merely rejected the appeal on the basis of some decisions/judgments of higher judicial authorities. The reliance placed on these decisions is out of context and not at all appropriate and thus do not applicable to the Applicants case. They are distinguishable in the Applicants case.
- iii. Without prejudice to the above it is submitted that the Applicants case is of refund of excise duty paid on export goods as provided under Notification No.19/2004-CE NT dated 06.09.20114 as amended issued under Rule 18 of the Central Excise Rules. The notification grants rebate of the whole of the duty paid on all excisable goods exported to any country except Bhutan subject to conditions, limitations and procedures specified therein. The very first condition of the notification requires the excisable goods to be exported after payment of duty. This is the only condition held as not being followed by the Applicants despite making payment of the duty albeit belatedly with applicable interest and hence rejection of the claim.
- iv. if condition of export after payment of duty as laid down in the notification is to be complied with verbatim, no exporter would be able to claim the refund as the duty is invariably paid subsequent to export; either after a month or three months, as the case may be, as per Rule 8 of the central excise rules. Therefore, considering the intent and objective of the law this condition should not and cannot be strictly construed as not complied with as held by the Respondent and as long as duty is paid on export goods even if belatedly and all other conditions are satisfied there should not be any impediment in granting the refund.
- v. As stated in the above Para the case laws relied upon by the Respondent are distinguishable and in fact some of them are supporting the Applicants case.
- vi. Without prejudice to whatever stated above the Applicant reiterated that the Respondent has erred in rejecting the Applicants appeal on the grounds of delay in payment of duty although the duty is paid

along with the interest as provided under sub rule (3) of rule 8 of the Central Excise Rules. In this regard the Respondent has completely overlooked the binding circular No.418/51/98-CX dated 02.09.1998 issued by the CBEC relied upon by the Applicant in EA-1 appeal. The Para 6 of the circular states that:

“6. It is emphasized that these notifications provide for rebate of duty only where duty on such clearances have been full discharged. No rebate fully or partially, should be sanctioned where duty has not been paid or only partially paid for the period in which the goods have been removed from the factory of production It is, however clarified that rebate will be allowed even in the cases where a manufacturer makes delayed payment of duty under the provisions of Central Excise Rules, 1944, in respect of period where export goods were cleared.”

The above circular though issued in context of erstwhile Rule 12 of the Central Excise Rules, 1944 and in respect of excisable goods falling under Ch.72 the same is still in force. Further, most importantly the underline principle laid down in the circular that rebate will be allowed even in cases where a manufacturer makes delayed payment of duty is applicable in the Applicants case. Therefore, impugned order passed in defiance of binding circular is liable to be set aside.

- vii. In view of the above submissions and the circular of the Board and various case laws cited it is contended that the delay in payment of duty cannot be the impediment in the way of grant of rebate when all other conditions of Notification No.19/2004-CE (NT) as amended issued under Rule 18 of the Central Excise Rules, 2002 are fulfilled.
 - viii. In view of above Applicant is requested to set aside the impugned Order-in-Appeal No. CD/833/M-II/2015 dated 19.11.2015 and to allow rebate claim of the Applicants amounting to Rs. 3,84,517/-.
4. Personal hearing in the matter was fixed on 29.06.2022, Mr. Pankaj Pai, Consultant appeared on behalf of the applicant and submitted a written submission on the matter. He referred to Board's circular 418/51/98-CX


dated 02.09.1998. He requested to allow the claim as delayed payment of duty with interest cannot be a ground for rejection of their claim.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original, Order-in-Appeal and the Revision Application.

6. On perusal of the records, Government finds the issue to be decided in the instant case is whether the rebate can be allowed under Notification 19/2004 dated 06.09.2004 if the payment of duty has been made on a later date after the export.

7. Government notes that it is not in dispute that the goods in question have been exported, thus, the only issue for decision is whether the payment of duty at a later date can be accepted for sanction of rebate of such duty. Government finds that the applicant has paid the duty in cash along with interest and hence there is no loss to the Government exchequer. Government notes that the Commissioner (Appeals) has rejected claims of the applicant on the grounds that they failed to pay duty before clearance of the goods for export and had hence failed to fulfil the statutory condition of notification no.19/2004-CE (NT) dated 06.09.2004 which required them to do so. Government finds this view to be a narrow one and notes that the same is not in consonance with the laid down principle that as far as exports are concerned, substantial benefit should not be denied on the basis of procedural lapses. Government finds that in the present case the duty was paid by the applicant, albeit belatedly, along with appropriate interest on the goods which have been exported. In such situation, rejecting the rebate claim of the applicant would amount to the Government holding on to the duty paid by the applicant without the authority of law, which is incorrect and not permissible. In view of the above, Government sets aside the impugned Order-in-Appeal CD/833/M-II/2015 dated 29.06.2022 and holds that the applicant is eligible to the rebate claimed vide the said claim.

8. The subject Revision Application is allowed with consequential relief.


(SHRAWAN KUMAR)

Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 987/2022-CEX (WZ) /ASRA/Mumbai Dated 20.10.2022

To,

1. M/s. Junaid Industries.,K-118, Ansa Industrial Estate, Saki Vihar Road, Andheri East, Mumbai -400072.
2. The Commissioner of CGST & CX, Mumbai East Commissionerate, 9th FLOOR, LOTUS INFO CENTRE, BEHIND PAREL RAILWAY STATION, PAREL (EAST), MUMBAI - 12

Copy to:

1. The Commissioner(Appeals),Central Excise ,Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, BKC, Bandra€, Mumbai-400051.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.