

SPEED POST



F.No. 196/05/2019-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. 26/7/21

Order No. 27/2021-~~EX~~ST dated 26-7-2021 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 Applications filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal Nos. 600(CRM)/ST/JDR/2019 dated 21.06.2019 passed by the Commissioner (Appeals), CGST, Jodhpur.

Applicants : M/s Trishul Industries, Jodhpur

Respondent : The Commissioner of CGST & CE, Jodhpur.

ORDER

A revision application no. 196/05/2019-R.A. dated 29.08.2019 has been filed by M/s Trishul Industries, Jodhpur (hereinafter referred to as the Applicants) against the Order-in-Appeal no. 600(CRM)/ST/JDR/2019 dated 21.06.2019 passed by the Commissioner (Appeals), CGST, Jodhpur, whereby the Commissioner (Appeals) has rejected the appeal filed by the Applicant against the Order-in-Original No. 209/2018-R(ST-EXP) dated 09.10.2018, passed by the Assistant Commissioner, CE & CGST, Division-A, Jodhpur.

2. Briefly, the facts of the case are that the Applicants had filed refund/rebate claims of Rs. 1,12,270/- on 11.07.2018 under the provisions of Notification no. 41/2012-ST dated 29.06.2012, in respect of service tax paid on services used for export of goods. The rebate claims were rejected by the original authority on the grounds of limitation, as they were filed after expiry of one year period from the date of export and non-submission of BRCs, in terms of provisions of Notification no. 41/2012-ST dated 29.06.2012. The appeal filed by the Applicant has also been rejected by the Commissioner (Appeals). Hence, the present revision application.

3. The revision application has been filed, mainly, on the grounds that the limitation should be counted from the date of realization of the export proceeds and copies of BRCs would be submitted at the time of hearing.

4. Personal hearing, in virtual mode, was held on 22.07.2021. Sh. O.P. Agarwal, CA, appeared for the Applicant and reiterated the contents of the RA. Sh. A. S. Meena, AC, appeared for the respondent department and supported the impugned Order-in-Appeal.

5.1 The Government has examined the matter. The rebate claims have been filed by the Applicants under the provisions of notification no. 41/2012-ST dated 29.06.2012. Para 3(g) of the said notification specifies that:

"the claim of rebate of service tax paid on the specified services used for export of goods shall be filed within one year from the date of export of the said goods."

5.2 Explanation to the aforesaid Para 3(g) specifies the date of export as *"the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under Section 51 of the Customs Act, 1962"*

5.3 Thus, on a plain reading, it is clear that the claim of rebate of service tax paid has to be filed within one year from the date of Let Export Order, i.e., the order permitting the clearance under Section 51 of the Customs Act, 1962.

5.4 On the other hand, it is the contention of the Applicants that *"Since the refund is subject to realisation of export proceeds, therefore, cause of action of admissibility of refund would arise only on realisation of export proceeds; therefore, limitation is to be counted from the date of realisation of export proceeds and not from the date of export."*

5.5 The Government finds that the aforesaid contention of the Applicants is not acceptable for the following reasons:

- (i) As brought out hereinabove, the notification specifically provides for *"date of export"* as the relevant date for counting the period of limitation. If the Applicants' contention were to be accepted, it would tantamount to substituting the words *"date of export"* used in Para 3(g) by the words *"date of realisation of export proceeds"*. It would also render the Explanation to Para 3(g) as infructuous. Hon'ble Supreme Court has, in the case of *Saraswati Sugar Mills Vs. Commissioner of Central Excise, Delhi-III*, held that *"When the wordings of notification is clear, then the plain language of the*

notification must be given effect to. By way of an interpretation or construction, the court cannot add or substitute any word while construing notification either to grant or deny exemption.”

- (ii) As per para (4) of the subject notification, “(4) Where any rebate of service tax paid on the specified services has been allowed to an exporter on export of goods but the sale proceeds in respect of said goods are not received by or on behalf of the exporter, in India, within the period allowed by the Reserve Bank of India under section 8 of the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such rebate shall be deemed never to have been allowed and may be recovered under the provisions of the said Act and the rules made thereunder”.

Thus, the para (4) enables recovery of rebate already granted if the exporter is unable to realize the sale proceeds within the time specified under FEMA, 1999. As such, the contention that cause of action for rebate arises on the date of realisation of export proceeds is misconceived. In fact, para (4) defines the cause of action for recovery of rebate already granted and not that for grant of rebate.

- (iii) In respect of Para 2(e) of the Notification No. 41/2007-ST, which specified the limitation period to file a refund claim, the Hon'ble Delhi High Court has held that the said Para 2(e) must be applied strictly [M/s Kultar Exports Vs. Commissioner of Central Excise, Delhi-I {2020 (36) GSTL 208 (Del.)}]. It is further held that such notifications have to be interpreted *stricto sensu*.

5.6 The Government has taken a similar view in the cases of M/s Cross Country, Jodhpur, vide GOI Order no. 03-06/2021-ST dated 23.03.2021 and 23/2021-ST dated 01.07.2021.

6. As regards the issue of rejection of rebate claims due to non-submission of BRCs, the Applicants have not submitted the BRCs even now, as assured by them in the revision application.

7. In view of the above, the revision application is rejected.


(Sandeep Prakash)

Additional Secretary to the Government of India

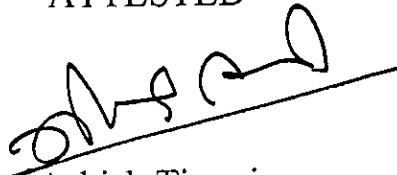
M/s Trishul Industries,
Plot No. F-398, MIAS Basni, Phase I,
Jodhpur-342 005

G.O.I. Order No. ST 27/21-~~EX~~ dated 26-7-2021

Copy to: -

1. The Commissioner of Central Goods & Service Tax, Jodhpur, 117/5, PWD Colony, Ratanada, Jodhpur – 302005.
2. The Commissioner (Appeals), CGST, Jodhpur.
3. Sh. O.P. Agarwal, CA, 56, Section 7, NPH Road, Jodhpur-342003
4. P.S. to A.S. (Revision Application).
5. Guard File.
6. Spare Copy.

ATTESTED



Ashish Tiwari
(Assistant Commissioner)