

REGISTERED
SPEED POST



F.No. 198/66/2016—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. 15/10/18

Order No. 534/2018-CX dated 12-10-2018 of the Government of India, passed by Shri R. P. Sharma, Principal Commissioner & 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 Orders-in-Appeal No. HPU/EXCUS/000/APPL-I/60/2016-17, dated 11/05/2016, passed by the Commissioner (Appeals), Meerut.

Applicant : Commissioner of Central Excise, Meerut

Respondent : M/s Mentha & Allied Products. Pvt. Ltd., Rampur.

ORDER

A Revision Application No. 198/66/ST/18-RA dated 04.05.2018 has been filed by the Commissioner of Central Excise, Meerut (hereinafter referred to as the applicant) against the Order-in-Appeal No. HPU/EXCUS/000/APPL-I/60/2016-17, dated 11/05/2016, passed by the Commissioner (Appeals), Meerut, whereby the respondent's appeal against the order-in-original has been allowed.

2. The brief facts leading to the present proceeding before the Government are that M/s Mentha & Allied Products. Pvt. Ltd. had filed rebate claim of Rs. 70,624/- under Rule 18 of Central Excise Rules, 2002, read with notification no. 40/2001-CE (NT) dated 26/06/2001, in respect of central excise duty paid on the goods exported out of India. The said rebate claim was rejected by the original adjudicating authority on the ground that the exported goods namely CIS-3 Hexanol falling under were exempted from central excise duty in terms of Sl. No. 135 of the Notification no. 12/2012-CE dated 17/03/2012 as it had emerged as a by-product during the manufacturing of Menthol and accordingly the duty paid by the respondent could not be treated as validly paid duty. The respondent filed an appeal before the Commissioner (Appeals) who allowed the said appeal as per the above order-in-appeal dated 11/05/2016 which has been now challenged by the revenue in the present revision application.

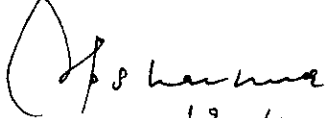
4. A personal hearing was offered on 18/09/2018 which was availed by Sh. V. K. Aggarwal, Advocate, for the respondent who vehemently opposed the department's revision application mainly on the ground that the product CIS-3 Hexanol exported by them is classifiable under CETH 29051450 as per their registration certificate issued by their jurisdictional Range Superintendent also and the same is not covered under sub heading 33019059 as is claimed by the lower authorities in their orders. It is further contended that CIS-3-Hexanol is neither an intermediate product nor a byproduct as the same is not manufactured during the manufacturing of Menthol. Instead it is manufactured independently from Terpenes. But no one appeared for the applicant and no

request has been received from them for any other date of hearing in this matter from which it is implied that they do not require any personal hearing in this case.

5. The government has examined the matter and it is observed that the applicant has filed the present revision application mainly on the ground that CIS-3 Hexanol, also known as Rectified Terpenic Fraction or Corn mint Oil, is a byproduct arising during the manufacturing of Menthol falling under CETH 33109059 and the same is exempted from central excise duty at Sr. No. 135 of Notification No. 12/2012-CE dated 17/03.2012. However, no relevant detail has been given in the revision application as to how the said product is a byproduct in this case and how the same is classifiable under CETH 33109059. Their above claim is not accepted by the Commissioner (Appeals) and it has been opposed by the respondent also during the personal hearing for the reasons already discussed in the above Para 4. The respondent has claimed that this product is correctly classifiable under CETH 29051450 and the same was approved by the jurisdictional range superintendent in their central excise registration certificate which is amended from time to time. The government finds force in this argument of the respondent after having perused the central excise registration certificate and above all the revenue authorities never initiated any proper action for changing the classification of the said product prior to the present proceeding and hence the applicant's claim that the product is covered under CETH 33109059 is not found supported by any convincing material. The respondent has also contended that department's wrong classification apart, the product exported by them is neither an intermediate product nor a byproduct. Reliance is placed by the respondent on S. B. Sarkar's Words & Phrases of Excise, Customs & Service Tax and the Larger Bench judgement of Tribunal in the case of Markfed Vanaspati & Allied Industries Vs CCE [2000(116)ELT 204]. The government has examined the above decisions which clearly support the respondent's claim and in the absence of any contrary material provided by the applicant, the government fully agrees with the respondent's case that CIS-3 Hexanol is not manufactured as a byproduct during the manufacturing of Menthol as it is undoubtedly manufactured subsequent to the manufacturing of

Menthol by undertaking totally separate manufacturing process. Thus the applicant has failed to establish that the exported goods are covered under Sr. No. 135 of the above notification No.12/2012. Moreover, the duty payment of the exported goods was not opposed by the jurisdictional authorities at the time of export and the rebate of duty was claimed against the duty paid on the exported goods only. Considering all these facts, the government does not find any fault in the Commissioner (Appeals)'s order and no merit in the revision application.

6. Accordingly, the revision application is rejected.


12.10.18

(R. P. Sharma)

Additional Secretary to the Government of India

The Commissioner of Central Excise ,
Meerut-I.Meerut.

G.O.I. Order No. 534/18-Cx dated 12-10-2018

Copy to:-

1. The Commissioner of Central Excise, Hapur (Erstwhile Meerut-II).
2. The Commissioner (Appeals) , Meerut-I.
3. M/s Mentha & Allied Products Pvt. Ltd., Rah-e-Raza, Civil Lines, Distt. Rampur(UP)
4. P.S to AS (RA).
5. Guard file.

Attested


(Ashish Tiwari)

Assistant Commissioner (Revision Application)