

REGISTERED
SPEED POST



F.No. 195/74/16-RA (CX)
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..7/12/18

Order No. 634/2018-Cx dated ORDER
R.P.Sharma, Principal Commissioner
under Section 35 EE of the Central

Government of India, passed by Shri
Secretary to the Government of India,

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No.GZB-EXCUS-000-APP-0358-15-16 dated 14.03.2016, passed by the Commissioner of Central Excise (Appeals), Meerut-II.NOIDA.

Applicant : M/s Punjab Bavel Gears Ltd, Sahibabad, Ghaziabad.

Respondent : The Commissioner of Central Excise, Ghaziabad.

ORDER

A Revision Application No.195/74/16-RA dated 15.06.2016 is filed by M/s Punjab Bavel Gears Ltd, B-44/1,52/2, Site-IV, Industrial Area, Sahibabad, Ghaziabad (hereinafter referred to as the applicant) against the Order-In-Appeal No. GZB-EXCUS-000-APP-0358-15-16 dated 14.03.2016, passed by the Commissioner of Central Excise (Appeals), NOIDA, whereby the Order-in-Original No. 1273/Rebate/Division-III/GZB/15 dated 30.03.2015 of the Deputy Commissioner of Central Excise confirming recovery of erroneously sanctioned rebate amount of Rs. 15,71,039/- has been upheld.

2. The Revision Application has been filed mainly on the grounds that the Rule 18 of Central Excise Rules,2002 allows rebate of duty without condition of receiving the foreign remittance against export of goods, they had realized export remittance in all the cases and they have fulfilled all the conditions of Notification No. 19/2004-C.E.(N.T.) dated 06.09.2004 to be eligible for rebate of duty in this case.

3. The brief facts leading to the present proceeding are that the applicant had filed five rebate claims of Rs. 15,71,039/- during the period 01/02/2008 to 10/05/2008. The applicant, however, subsequently vide letters dated 15.04.2009 requested the jurisdiction Assistant Commissioner to treat all the five rebate claims as cancelled since they were not in a position to produce the BRCs. Later on the applicant vide letter dated 22.10.2012 requested the Deputy Commissioner to process their rebate claims as they had received the BRCs. But the Adjudicating Authority vide his letter dated 26.11.2012 rejected all the rebate claims as time

barred by considering them as fresh filing of claims after more than one year from the date of export of the goods. On filing of the appeal against the rejection order, the Commissioner(Appeals), vide his order dated 29.01.2013, held that the rebate claims of the applicant were not hit by limitation period and were admissible to the applicant. In compliance of the said order, the rebate claims were sanctioned by the jurisdiction Adjudicating Authority vide orders dated 07.05.2013. But the concerned Commissioner of Central Excise did not accept the order-in-appeal dated 29.01.2013 and filed a Revision Application before the Government. An appeal dated 16.08.2013 was also filed by the department before the Commissioner (Appeals) against the sanctioning order dated 07.05.2013 of the Adjudicating Authority which was rejected by the Commissioner (Appeals) vide Order-in-Appeal dated 27.11.2013. Being aggrieved, the jurisdictional Commissioner filed second Revision Application against the aforesaid Order-in-Appeal dated 27.11.2011 also. Both the Revision Applications were decided by the Joint Secretary(RA) to the Government of India vide Order No.345-354/14-CX dated 31.10.2014 whereby the orders of the Commissioner(Appeals) were set aside and the matter was remanded back to the original Adjudicating Authority for denovo consideration as per the direction given in the order. The Central Government in its above referred orders dated 31.10.2014 held that mere cancellation request of the applicant could not be treated as closure of rebate claims provided the BRCs were received within the extended time limit by the RBI and if no such extension was granted by the RBI then the rebate claims would be treated as time barred as is contended by the Revenue. The Central

Government further directed that the applicant was required to submit formal extension of time limit by the RBI within 90 days of receipt of the order. The applicant filed a writ petition against the above order of the Central Government before the Hon'ble Allahabad High Court, but the same was rejected. Since the applicant could not produce the BRCs within the prescribed time limit and no extension had been provided by the RBI, the jurisdiction original Adjudicating Authority held all the five rebate claims as time barred in accordance with the above mentioned order of the Central Government and he further ordered that the amount of Rs. 15,71,039/- was recoverable from the applicant against the erroneously sanctioned rebate claims of the said amount. The applicant's appeal against the order-in-original dated 30.03.2015 is also rejected by the Commissioner(Appeals) vide his order dated 14.03.2016 holding that the order-in-original has been passed in consonance with the direction of the Central Government. Consequently the present Revision Application has been filed before the Central Government for the reasons discussed in above para 2.

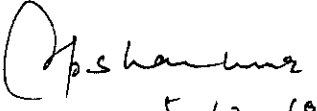
4. Personal hearing was availed by Shri R.M.Saxena, Advocate, on 11.10.2018 who reiterated the above mentioned grounds of revision by furnishing additional submission during the hearing. From department's side the hearing was availed by Shri Raghuvir Sharan, the Assistant Commissioner, CGST, Division-III, who emphasized that the Order-in-Appeal dated 14.03.2016 was legally correct and Revision Application is liable for rejection.

5. The Government has examined the matter and it is evident from the above narrated detailed facts that the issue relating to time limitation of the rebate claim was already

considered by the Central Government vide its Order dated 31.10.2014 and held that the rebate claims would be treated as time barred if the BRCs were not submitted within the extended time limit by the RBI and a period of 90 days was given to the applicant for submission of the BRCs. This order of the Central Government was challenged before the Hon'ble Allahabad High Court as per Revision Application itself and it appears that the writ petition was rejected. Thus the order of the Central Government observing that if the BRCs had not been obtained from RBI within extended time also then all rebate claims would be held as time barred has already attained finality. Accordingly, the lower authorities have correctly held that the rebate claims are time barred in this case as the applicant has failed to give any proof that the RBI had extended the time limit and the BRCs were obtained within the extended time limit. In the Revision Application also the correctness of the order-in-appeal has not been challenged in the face of the Central Government's clear order and instead the aforesaid Government's order dated 31.10.2014 is attacked for the same reasons which were already considered earlier. The correct forum to question the Government's earlier order was the High Court and the applicant had also challenged the same before the Hon'ble Allahabad High Court by filing a writ petition which was ultimately rejected. Consequently the order of the Government's has become final and, therefore, challenging the earlier order dated 31.10.2014 once again for second time by repeating the same argument that BRC is not a condition for rebate of duty is not tenable. In fact, main objective of the present revision application is reopening of the earlier Government's order dated

31.10.2014 before the Government itself and no fault in the order-in-Appeal has been pointed out. Therefore, the Government does not have any valid reason for interference in this matter and the Revision Application is clearly hit by the principal of *res-judicata* as per which once the issue has been decided by a Competent Authority the same issue cannot be agitated again.

6. In view of the above discussion, the Government does not find any error in the order-In-Appeal and accordingly the Revision Application is rejected.


5.12.18
(R.P.Sharma)

Additional Secretary (Revision Application)

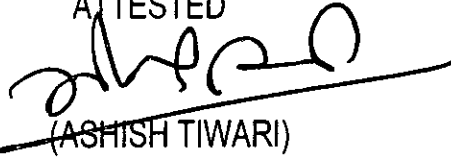
M/s Punjab Bavel Gears Ltd,
B-44/1,52/2, Site-IV, Industrial Area,
Sahibabad, Ghaziabad

G.O.I. Order No. 634/18-Cx dated 5/12/2018

Copy to:-

1. The Commissioner of Goods and Service Tax, NOIDA-II.
2. The Commissioner of Central Excise(Appeals_II), C-56/42, Renu Tower, Sector-62, NOIDA.
3. PA to AS(Revision Application)
4. Guard File

ATTESTED



(ASHISH TIWARI)

ASSISTANT COMMISSIONER(RA)