

REGISTERED  
SPEED POST



F.No. 195/10,10A-10F/17-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue... 11.12.18

ORDER NO. 652-658/2018-CX dated 6-12-2018 OF THE GOVERNMENT OF INDIA,  
PASSED BY SHRI R. P. SHARMA, ADDITIONAL SECRETARY TO THE GOVERNMENT  
OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed under section 35EE of the  
Central Excise Act, 1944 against the Order-in-Appeal No.  
177-183(AK) CE/JPR/2016 dated 14.10.2016 passed by  
the Commissioner of Customs & Central Excise (Appeals),  
Jaipur.

APPLICANT : M/s National Tools (Export), Jodhpur.

RESPONDENT : Commissioner of Central Excise, Jodhpur.

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**ORDER**

Seven Revision Applications No. 195/10A-10G/17-RA have been filed by M/s National Tools (Export), F-53, MIA, Bansi Phase-I, Jodhpur (hereinafter referred to as the applicant) against the Commissioner (Appeal)'s Orders-in-Appeal Nos. 177-183(AK)CE/JPR/2016 dated 14.10.2016 whereby recovery of Rs. 2,05,576/- duty with interest has been upheld against the erroneously sanctioned rebate of duty earlier.

2. The brief facts of the case are that the applicant had filed claims for rebate of duty paid on inputs used in manufacture of export goods under Rule 18 of the central Excise Rules, 2002 and Notification No. 21/2004-CE (NT) dated 06/09/2004 which were sanctioned by the original adjudicating authority. The Department filed appeal against these orders-in-original before Commissioner (Appeals) on the grounds that the applicant had not declared all inputs to the department and the rebate of duty on wastage in excess of SION norms had also been claimed. However, the Commissioner (Appeals) rejected the departmental appeals and thereafter the revenue challenged the Orders-in-Appeal before the Government of India on the above discussed grounds. The Joint Secretary (RA) in his order dated 27/07/2011 held that while rebate of duty could not be denied merely due to non-declaration of inputs, the rebate of duty in respect of inputs contained in wastage was to be restricted as per SION norms. The jurisdictional Assistant Commissioner then passed orders-in-original nos. 80-86/2012-R dated 02/05/2012 as per the directions of the JS (RA) and reduced the rebate claim by Rs. 3,98,982/- for the reason that the applicant had availed excess rebate of duty in respect of wastage. The applicant again filed an appeal before the Commissioner (Appeals) on the grounds that the original adjudicating authority has miscalculated the excess amount of rebate of duty in the context of wastage allowed as per SION norms and the demand of Rs. 1,77,775/- should have been ordered. The Commissioner (Appeals) partly accepted the error with regard to determination of excess rebate of duty granted to the applicant and accordingly upheld the orders-in-original to the extent of recovery of Rs. 2,05,576/- along with interest. The present revision applications

have now been filed before the government on the ground that denial rebate of duty in respect of all inputs used in the manufacture of exported goods, including wastage, and restricting the rebate claim to the extent of wastage allowed as per SION norms only is erroneous in the light of Hon'ble Rajasthan High Court's order dated 02/11/2016 in their own case.

3. A personal hearing was held on 15/11/2018 which was availed by Sh. O. P. Aggarwal, C.A., on behalf of the applicant who reiterated the grounds of revision already pleaded in their revision application. However, no one appeared for the respondent and instead a letter dated 13/11/2018 was received from Assistant Commissioner, Jodhpur, stating that he had nothing more to add in this matter and the case may be decided on the basis of available records.

4. The government has examined the matter and observed that the issue regarding admissibility of the rebate of duty to the applicant has already been considered by the Central Government earlier and it was held vide its order no.992/11-CX dated 26/07/2011 that the rebate of duty was admissible in respect of inputs contained in wastage to the extent allowed under SION norms fixed under Export Import Policy. This order of the central government was accepted by the applicant also in as much as they did not challenge this order before the High Court and rather joined the proceeding before the original adjudicating authority for determination of excess rebate of duty sanctioned to them and for admissibility of correct amount of rebate of duty. Above all, the applicant did not question the applicability of SION norms in their case even before the Commissioner (Appeals) which is evident from Para 11 of the Order-in-Appeal dated 30/09/2016 wherein it is expressly observed that the appellant has not disputed the application of SION norms. Considering the above facts, it is evident that the issue regarding admissibility of rebate of duty as per SION norms is already settled in this particular case and the Commissioner (Appeals), while passing the order dated 14/10/2016, has followed the earlier order of the Government of India which was not disputed by the applicant also. Moreover, the Commissioner (Appeals) has been quite reasonable as he has reduced the excess rebate amount by correcting the calculation error committed earlier by the original adjudicating authority. Now questioning the

Commissioner (Appeal)'s order by raising a fresh plea for the first time before the government in their revision applications that rebate of duty is admissible to them in respect of all inputs irrespective of wastage and the same cannot be restricted in the light of SION norms amounts to reopening the settled issue. As regards the order dated 02/11/2016 of Hon'ble Rajasthan High Court, as referred to in Para 3 of grounds of appeal in the revision application, it is noticed that the said order of the High Court is in reference to subsequent Order dated 16/11/2011 of the Central Government and Hon'ble Court has set aside the said Order dated 16/11/2011 only. But, as discussed above, neither the validity of the government's order dated 26/07/2011 was ever challenged before the Hon'ble High Court nor the said order has been quashed in its Order. Thus, the order of the Hon'ble High Court dated 02/11/2016 is case specific only and cannot be applied to the earlier order of the Government of India dated 26/07/2011 which attained finality after it was not challenged before the High Court. Considering these facts and the legal position, the government does not find any fault in the order of the Commissioner (Appeals) which is passed in compliance of earlier government's Order dated 26/07/2011.

5. Accordingly, the revision applications filed by the applicant are rejected.

(R. P. SHARMA) 6-12-18

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

M/s National Tools (Export),  
F-53, MIA, Basni, Phase-I,  
Jodhpur.

Copy to:- G.O. No-652-658/2018-GA dt-6-12-18

1. The Commissioner of Central GST, C-1-A, Panchvati Colony, Ratanada, Jodhpur.
2. The Commissioner of Customs & Central Excise (Appeals), Jaipur.
3. PS to AS(RA)
4. Guard File.

ATTESTED  
  
(ASHISH TIWARI)  
ASSISTANT COMMISSIONER