

F.No.195/997/13-RA(CX)

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F.No.195/997/13-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... 12/12/18

Order No. 664/2018-Cx dated 7-12-2018 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.MRT/EXCUS/002/APP/152/2013-14 dated 10.10.2013, passed by the Commissioner (Appeals) Meerut-II.

Applicant : M/s Jubilant Agri & Consumer Products Ltd. Gajraula

Respondent : Commissioner of Central Goods & Service Tax, Meerut.

ORDER

A Revision Application No.195/997/13-RA(CX) dated 13.10.2013 is filed by M/s Jubilant Agri and Consumer Product Limited(Foremerly Jubliant Industries Ltd.) Bhartiagram, Gajraula, District Amroha-244223, Uttar Pradesh (hereinafter referred to as the applicant) against the Order-in-Appeal No. .MRT/EXCUS/002/APP/152/2013-14 dated 10.10.2013, passed by the Commissioner (Appeals), Meerut-II, whereby the applicant's appeal filed against the original adjudicating officer's order has been rejected.

2. The revision application is filed mainly on the ground that recovery of any excess rebate of duty confirmed by the Original Adjudicating Authority and upheld by the Commissioner (Appeals) for the reason that lesser amount of export proceeds was received in comparison to higher amount of FOB declared in the ARE-1 is not maintainable as BRC is not a relevant document for sanctioning of rebate of duty and they had been sanctioned rebate of duty of that much amount only which was actually paid by them on the exported goods.

3. A personal hearing was held in this case on 06.09.2018 and it was availed by Shri J. Devarajan, Sr. V.P. (Indirect Tax), on behalf of the applicant and Shri Nitish Karnatak, Assistant Commissioner, Div-I, CGST, NOIDA for the respondent. During the hearing Shri Devarajan mainly reiterated the above stated grounds of revision in general and even informed that even when BRC is not an essential document they had furnished BRCs in this case to the Divisional Authority.

4. The Government has examined the matter and it is observed that a part amount of the rebate of duty already granted to the applicant is ordered by the lower authorities mainly on the ground that the actual export proceeds realized by the applicant as per the BRCs is lesser than the value of the exported goods shown in the

export documents like ARE-1. Thus, the rebate of duty is sought to be linked with the Bank Realization Certificate and not to the actual duty amount paid by the applicant on the exported goods. But no authentic reason is given by the lower authority in his Order for supporting his action for recovery of rebate of duty amount in the above discussed situation on the basis of BRCs as in Rule 18 of Central Excise Rules, 2002 and Notification No.19/2004-C.E.(N.T.) dated 6.9.2004 it is nowhere stipulated that rebate of duty will be sanctioned or recovered later on by taking into account the amount of exported proceeds realized by the exporter as per BRC. In fact in these relevant legal provisions it is nowhere envisaged that BRC will have to be produced either before or after grant of rebate of duty on the exported goods. Even Excise Manual of Supplementary Instruction, 2005 does not mention any such condition. Even the Hon'ble Allahabad High Court in its two decisions in the case of Polyplex Corporation Ltd. Vs. Joint Secretary (Finance) & Others, reported as 2014-TIOL-605-HC-AllCX, and its Order dated 11.8.16 in the applicant's own case in Writ No.1484 of 2011 it has been categorically held that the rebate of duty cannot be denied on the basis of non-production of BRC and by following the Circular No. 354/70/97-CX dated 13.11.1997. Accordingly, the Govt. agrees with the contention of the applicant that the Commissioner (Appeals) has committed an error by linking the recovery of rebate with the BRCs. Further, the above stated legal provisions in Rule 18 and Notification No.19/2004 unambiguously provide that the rebate of duty in respect of exported goods is to be paid equivalent to the actual duty paid thereon and there is no provision to reduce the rebate of duty in the event of receiving lesser export proceeds as per the BRC. Since in this case there is no allegation that rebate of duty was paid higher than the amount of excise duty paid on the exported goods to the applicant, the

Government is convinced that there is no valid basis to say that excess rebate of duty was earlier paid and accordingly no amount is recoverable from the applicant.

5. In view of the above discussions, the Order-in-Appeal No. MRT/EXCUS/002/APP/152/2013-14 dated 10.10.2013 is set aside and the revision application is allowed.

R.P. Sharma
7.12.18

(R.P.Sharma)

Additional Secretary to the Government of India

M/s Jubilant Agri and Consumer Product Limited
(Formerly Jubliant Industries Ltd.)
Bhartiagram, Gajraula,
District Amroha-244223 Uttar Pradesh

Order No. 664/18-Cx dated 7-12-2018

Copy to:-

1. Commissioner of Central Goods & Service Tax, Dehradun, 'E' Block, Nehru Colony, Haridwar Road, Dehradun-248001
2. Commissioner of Customs & Central Excise (Appeals), Meerut-II, Opp. CCS University, Mangal Pandey Nagar, Meerut- 250 005.
3. The Deputy Commissioner, Custom & Central Excise, 'E' Block, Nehru Colony, Haridwar Road, Dehradun-248001, Uttaranchal
4. PA to AS (Revision Application)
5. Guard File

ATTESTED

R. Prakash
7/12/18

(Ravi Prakash)

OSD (Revision Application)

Recd Original copy

Lalit KUMAR SHARMA

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Jubilant Life Sciences Ltd
13/12/2018