

REGISTERED  
SPEED POST



F.No. 195/263/2017—R.A.  
195/264/2017---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.....

Order No. 700-701/2018 --CX dated 24-12-18 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 Applications filed under section 35 EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. 58(AK)CE/JPR/17 dated 18/04/2017 and 59(AK)CE/JPR/17 dated 19/04/2017 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Jaipur.

Applicant : M/s RSWM Ltd., Banswara (Rajasthan)

Respondent : Commissioner of Central Excise, Jaipur

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**ORDER**

Two Revision Applications Nos. 195/263/2017-RA and 195/264/2017-RA both dated 19/07/2017, are filed by M/s RSWM Ltd., Banswara (Rajasthan) (hereinafter referred to as applicant) against Orders-in-Appeal nos. 58(AK)CE/JPR/17 dated 18/04/2017 and 59(AK)CE/JPR/17 dated 19/04/2017, passed by the Commissioner (Appeals), Jaipur, whereby the appeals of the applicant against the orders-in-original disallowing rebate of duty has been rejected.

2. The brief facts leading to the present proceedings are that the applicant had procured the raw materials without payment of duty by availing exemption under Notification No. 43/2001-CE (NT) dated 26/06/2001 issued under Rule 19(3) of the Central Excise Rules, 2002 for use in the manufacture of finished excisable goods which were exported on payment of duty against which rebate of duty was claimed in terms of Rule 18 of the Central Excise Rules, 2002. One rebate claim for Rs. 1.09,084/- was rejected by the original adjudicating authority and the applicant's appeal against this order-in-original was also rejected by the Commissioner (Appeals) vide Order-in-Appeal no. 58(AK)CE/JPR/17 dated 18/04/2017. However, the other rebate claim of Rs. 4,07,627/- was allowed by the original adjudicating authority. But on being agitated by the department before Commissioner (Appeals), the revenue's appeal against the said order-in-original was allowed by the Commissioner (Appeals) vide Order-in-Appeal No. 59/(AK)/CE/JPR/17 dated 19/04/2017 on the ground that as per the provisions of the notification no. 43/2001-CE(NT) dated

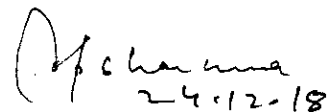
26/06/2001, as amended by notification no. 10/2004-CE-(NT) dated 03/06/2004, the export goods should have been cleared without payment of duty under Rule 19 of Central Excise Rules, 2002. The present revision applications have been filed on the ground that Notification 10/2004-CE (NT) has been quashed by Hon'ble Gujarat High Court and the department's appeal against the said high court judgement has been dismissed by the Apex Court and thus the orders-in-appeal are erroneous.

3. Personal hearing was granted on 12/11/2018 which was attended by Sh. Himanshu Bansal, Advocate, on behalf of the applicant who reiterated the above-mentioned grounds and relied upon Hon'ble Gujarat High Court's judgement in the cases of M/s Zenith Spinners Vs UOI [2015(326) ELT 97(GUJ)], M/s Centurion Laboratories Pvt. Ltd. Vs UOI [2017(350) ELT479 (GUJ) and 2017(352) ELT 328 (GUJ)] and the Apex Court's judgement in the case of UOI Vs Zenith Spinners[2015(326) ELT 23 (SC)] in support of their case. However, no one appeared for the respondent and no request for any personal hearing was also received from them from which it is implicit that the respondent is not interested in personal hearing. Hence, the revision applications are taken up for decision on the basis of available records.

4. The government has examined the matter and it is evident that the rebate claims have been disallowed only on the ground that the applicant was not required to pay central excise duty on the exported goods in the light of notification no. 43/2001-CE (NT) dated 26/06/2001 as amended by notification no. 10/2004-CE (NT) dated 03/06/2004. But this ground for rejection is no more valid after Hon'ble Gujarat High Court in the case of M/s Zenith Spinners Vs UOI

[2015(326) ELT 97 (GUJ)] has quashed notification no. 10/2004-CE (NT). Further, revenue's appeal against the High Court's decision has been dismissed by the Apex Court in its Order dated 28/08/2015, reported as UOI Vs Zenith Spinners [2015 (326) ELT 23 (SC)]. Subsequently the decision in the case of M/s Zenith Spinners has been reiterated by the Gujarat High Court in two decisions of M/s Centurion Laboratories Pvt. Ltd. Vs UOI [2017 (350) ELT 479 (GUJ)] and [2017 (352) ELT 328 (GUJ)]. The decision in the case of M/s Zenith Spinners was brought to the notice of Commissioner (Appeals) also but he has erroneously held in his order that the Gujarat High Court's decision is not upheld by the Hon'ble Supreme Court even when it is clear from the above cited Supreme Court's decision that the departmental appeal against the High Court's decision was dismissed. Thus the Commissioner (Appeals) has wrongly construed the entire issue and consequently issued erroneous order.

5. In view of the above discussion, the two Orders-in Appeal passed against the applicant are set aside and the revision applications filed by the applicant are allowed.

  
24.12.18

(R. P. Sharma)

Additional Secretary to the Government of India

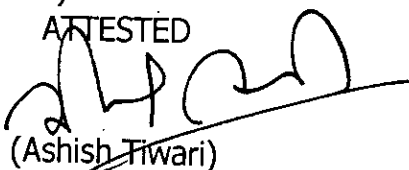
M/s RSWM Ltd.,  
Lodha, District Banswara,  
Rajasthan-327 001

G.O.I. Order No. 700-70 / 19-Cx dated 24-12-2018

Copy to:-

1. Commissioner of Central Excise, Udaipur.
2. Commissioner of Central Excise (Appeals), Jaipur.
3. PA to AS(Revision Application)

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)