

REGISTERED
SPEED POST



195/488-489/2018-RA
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. 718-719/18-CX dated 27/12-2018 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI R.P. Sharma, Additional Secretary to the Government of
India under section 35EE of Central Excise Act, 1944.

SUBJECT : Revision Applications filed under Section 35EE of
Central Excise Act, 1944, against the Order-in-Appeal
No. JAL-EXCUS-OOO-APP-48-49-18 dated
09.08.2016, passed by the Commissioner of Central
Excise and Customs (Appeals), Chandigarh

APPLICANT : M/s Osho Gears & Pinions Ltd

RESPONDENT : The Commissioner of Central Goods & Service Tax,
Ludhiana

ORDER

Two Revision Applications No. 195/488-489/2016-RA have been filed by M/s Osho Gears & Pinions Ltd, (hereinafter referred to as the applicant) against the Order-in-Appeal No. JAL-EXCUS-OOO-APP-48-49-18 dated 09.08.2016, passed by the Commissioner of Central Excise and Customs (Appeals), Chandigarh, whereby the orders of the original adjudicating authority rejecting the rebate claims of the applicant have been upheld.

2. Brief facts leading to the filing of the Revision Applications are that the applicant had filed rebate claims which were rejected by the original adjudicating authority for the reason that the applicant had not exported the goods within the stipulated time period of six months from the date of clearance of goods from applicant's factory premises in terms of provision of the Notification No. 19/2004-Cx (N.T) dated 06.09.2004. The applicant's appeal filed before the Commissioner (Appeals) against the Orders-in-Original are also rejected vide aforementioned Order-in-Appeal and the present revision applications have been filed mainly on the ground that as per the provision of Section 51 of the Customs Act, 1962, the correct date of export is the date of let export order issued on 29.5.2013 i.e. when the goods were permitted by the proper officer of customs for export and loading thereof and not the date when the goods were actually shipped on 01.06.2013. Further extension of time period is not a mandatory condition but is only a procedural requirement as per the notification No. 19/2004.

3. Personal hearing was held on 03.12.2018 and Sh. Sudeep Singh, Advocate, appeared for personal hearing on behalf of the applicant who reiterated the above discussed grounds of revision which are already stated in their revision application. He also placed reliance on the Calcutta High Court's decision in the case of M/s Kosmos Healthcare Pvt. Ltd vs Assistant

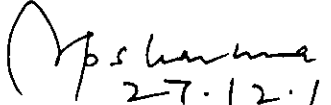
Commissioner of Central Excise, Kolkata-1 2013(297)ELT345(Cal.) wherein it is held that even if there is delay in exporting the goods within the stipulated period of six months the matter can be remanded back to concerned Commissioner for condonation of delay. Further he relied upon the decision in the cases of A.S. Forgings & Vardhman Spinning and General Mills Limited., 2003(153)ELT 306(Tri.-Del.) and 2005(190)ELT 38(Tri.-Del) respectively.

4. The Government has examined the matter and it is observed that while the departmental case is that the goods cleared from the factory premises on 31.11.2012 were actually shipped for export on 01.06.2013 after expiry of six months in violation of mandatory condition specified in Para 2 (b) of Notification No. 19/2004 , the applicant has claimed that the date of let export order issued on 29.05.2013 is the relevant date for counting the 6 months period and thus they had exported the goods well within specified period of six months. Moreover, the condition relating to export of goods within six months period is procedural in nature and rebate of duty can not be denied on this ground. The original adjudicating authority and Commissioner (Appeals) have considered the date of mate receipt as the relevant date for counting the six months period and has concluded that the goods were exported beyond specified period of six months as the mate receipt was issued on 01.06.2013 only. The mate receipt is found to be relevant by the lower authorities in the light of explanation (B) in Section 11 B of Central excise Act as per which 'relevant date' in case of goods exported by sea or air is the date on which the ship or aircraft in which such goods are loaded, leaves India. Thus actual shipment of the exported goods is taken by the lower authorities as the export of goods. The Government also does not agree with the applicant's claim as the 'let export' order given under Section 51 is an order permitting clearance and loading of the goods for exportation only and it is not the actual export at all. Loading of the goods in ship/aircraft for export and actual shipment of the goods takes place after the permission given by the Customs Officer in the form of Let Export Order and thus the stage of export arises after Let Export Order. Such Let Export Order is not

termed as export of goods under Section 51 of Customs Act, 1962 or any other Section and in Section 2(18) of the Customs Act 'export' is defined as taking out of India to a place outside India which actually materialises on the date of actual shipment of the goods only. Thus even when the "relevant date" as defined in explanation (B) in Section 11B of Central Excise Act is not directly relevant for determining the six months period, actual shipment of the goods is the relevant date. Thus in the light of the definition of 'export' as given in Section 2(18) of Customs Act 01.06.2013 is the date of export in this case and not 29.05.2013 on which let export order was only issued. Accordingly the goods have been exported in this case after six months from the clearance of goods from factory on 30.11.2012 which is clearly in contravention of the condition specified in Para 2 (b) of Notification No. 19/2004. Further the averment of the applicant that the condition of export of goods within six months period is a procedural in nature is also not supported by the text and structure of the Notification No. 19/2004. On the Contrary this condition is undoubtedly substantive in nature Para 2 enumerate 8 mandatory conditions and procedural part of the notification is specified in Para 3 only. Even the Kolkata High Court in the case of M/s Kosmos Healthcare Pvt. Ltd vs Assistant Commissioner of Central Excise, Kolkata-1, 2013(297)ELT345(Cal.), which is relied upon by the applicant itself during the personal hearing, it is clearly held that non adherence of the time limitation condition relating to export of goods within six months is not a mere procedural infraction. The tribunal's decision in the case of M/s Vardhman Spinning & General Mills Ltd vs Commissioner of Central Excise (Appeals), Ludhiana, 2005(190)ELT 38(Tri.-Del), relied upon by the applicant to support their case that the date of let export order should be considered as date of export, is not found relevant in the present case as the decision of single member bench is not founded on proper analysis of concerning notification. The decision in the case of A.S. Forging vs Commissioner of Central Excise, Chandigarh, 2003(153)ELT 306(Tri.-Del.) was relating to proof of export only and, therefore, its reliance is also misplaced. Moreover, the tribunal does not have jurisdiction over the matter relating to rebate of duty and, therefore, the order of the tribunal in the

case of Vardhman Spinning & General Mills Ltd can not be followed as precedent. Their reliance on the Kolkata High Court decision in the case of Kosmos Healthcare pvt ltd, supra, is also of no help as the Hon'ble High Court has just held that delay in export of goods can be condoned by Commissioner, Central Excise in a particular case which is inbuilt in the Para 2(b) of Notification No. 19/2004 itself as per which the period of six months can be extended by Commissioner/Principal Commissioner. But in the instant case the applicant has never approached jurisdictional Commissioner/Principal Commissioner for seeking such extension and, therefore, the question of condonation of the delay did not arise at any stage. In their appeal before the Commissioner (Appeals) also the applicant never accepted the delay in export of goods and did not request for remanding the matter for seeking condonation of delay. Thus, the case of the applicant is not that they had requested the Commissioner for extension of the period for export and he did not consider the case. Rather the fact is that they never requested the Commissioner for extension. Since the correctness of the Order in Appeal is required to be examined in the light of factual and legal position placed before the Commissioner (Appeals) and not beyond it, it will not be appropriate for the Government to remand the matter back to the lower authority for giving extension of the period at this juncture. Therefore, the Government does not find any reason for any interference in the Commissioner (Appeals)'s order.

5. Accordingly, the Revision Applications are rejected.


27.12.18

(R. P. Sharma)

Additional Secretary to the Government of India

M/s Osho Gears & Pinions Ltd
(now Emson Gears Ltd)
D-42, Phase -V, Focal Point,
Ludhiana (Punjab)

ORDER NO 713-719/12 CX dated 27-12-2018

Copy to:-

1. The Commissioner of Goods & Service Tax, Central Excise House, F Block, Rishi Nagar, Ludhiana 141001
2. The Commissioner of Goods & Service Tax (Appeals), Chandigarh-II, C.R. Building, Plot No. 19 Sector 17C, Chandigarh.
3. The Assistant Commissioner of Central Excise, Division_II, Ludhiana, Central Excise House, F Block, Rishi Nagar, Ludhiana 141001.
4. Mr. Sudeep Singh, Advocate, House No. 5, Sector 10-A, Chandigarh
5. P.S. to A.S.
6. Guard File
7. Spare Copy

ATTESTED

(Nirmla Devi)
Section Officer(R.A. Unit)