

SPEED POST



F.No. 198/66/2017-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... 11/01/2023

Order No. 28/2023-CX dated 11-01-2023 of the Government of India, passed by Sh. Sandeep Prakash, 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 Order-in-Appeal No. MDU-CEX-000-APP-012-2017 dated 20.02.2017, passed by the Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai.

Applicant : Commissioner of CGST & Central Excise, Madurai

Respondent : M/s Esaa Exports, Tuticorin

ORDER

A Revision Application No. 198/66/2017-RA dated 18.05.2017 has been filed by the Commissioner of Central Excise, Tirunelveli, presently, Commissioner of CGST and Central Excise, Madurai, (hereinafter referred to as the "Applicant"), against the Order-in-Appeal No. MDU-CEX-000-APP-012-2017 dated 20.02.2017 passed by the Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, allowed the appeal filed by M/s Esaa Exports, Tuticorin (hereinafter referred to as the "Respondent") and set aside the Order-in-Original No. 08/2016 (Rebate) dated 07.03.2016, passed by the Assistant Commissioner of Central Excise, Tuticorin Division, Tuticorin.

2 Brief facts of the case are that the Respondents herein had filed rebate claim, under Rule, 18 of the Central Excise Rules, 2002, in respect of the duties of Central Excise paid on exported goods, as per details below:

A.No.	ARE1 No. & Date	C.Ex. Invoice No. & Date	Amount of Duty paid	S. Bill No. & Date	Date of shipment	Rebate claimed in Rs.
126/20 16	009 13.09.15	1791 13.09.15	20,855	3016577, 15.09.2015	26.09.2015	20,855

The claim was rejected by the Assistant Commissioner on the grounds that the goods had not been exported directly from the Factory or a Registered Warehouse after the payment of duty, as Rule 18 ibid read with notification no. 19/2004-CE (NT) dated 06.09.2004, which allows a rebate of duty paid on goods only if the goods had been exported directly from the factory or warehouse after payment of duty unless otherwise permitted by the Board by a general or special order. The Appeal filed by the Respondent herein has been allowed by the Commissioner (Appeals). Aggrieved thereby, the Applicant department has filed the present Revision Application.

3 The Revision Application has been filed, mainly, on the grounds that the notification no. 19/2004-CE (NT) recognizes factory and warehouse alone as the premises from which the goods should be cleared for export; that admittedly the goods in the present case had not been cleared directly from factory or warehouse; and that, therefore, the Commissioner (Appeals) has erred by allowing the rebate. The Respondents herein have, vide their letter dated 09.01.2023, submitted that the Government with the purpose of reducing litigation has increased the monetary limits for filing appeals by Revenue before all appellate forum. Hence the Revision Application does not merit consideration.

4 Personal hearing in the matter was fixed on 14.12.2022 and 11.01.2023. No one appeared for either side nor any request for adjournment has been received. The Respondents have, vide letter dated 09.01.2023, stated that they do not prefer to appear for personal hearing. Hence, the case is taken up for disposal based on records.

5.1 The Government has carefully examined the matter. The Respondent has taken a preliminary objection based on monetary limits prescribed for filing appeals by the Department before CESTAT, High Courts and Supreme Court. The Government observes that the latest instruction F.No. 390/Misc/116/2017-JC dated 22.08.2019, issued in this regard, do not lay down any monetary limits in respect of Revision Applications preferred before the Government. Even earlier instructions issued by the Board, from time to time, did not prescribe any monetary limits in respect of revision applications to be filed before the Government. This is evidently due to the reason that the monetary limit in respect of the revision applications to be filed before the Government is provided in the proviso to sub-section (1) of Section 35EE itself. Thus, the monetary limit having been provided in the statute itself there would be no need to issue separate instructions in this regard. Therefore, the subject contention cannot be accepted.

5.2.1 The substantial issue involved in the present case is whether the rebate ought to have been allowed by the Commissioner (Appeals) despite the Respondent herein not following the requirements of notification no. 19/2004-CE(NT). Condition 2(a) of the notification is relevant and reads as under:

"(2) (a) that the excisable goods shall be exported after payment of duty, directly from a factory or a warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order."

It is not disputed that the goods were not exported directly from the factory or a warehouse. Further, the goods were also not exported in accordance with the Board's Circular dated 30.01.1997. This Circular prescribes the procedure to be followed in case the goods are not exported directly and the authority competent to permit the same. The Circular also prescribes the safeguard that the competent authority should exercise, i.e., verification of goods before permitting exports from a place other than the factory or the warehouse. Thus, this Circular is in the nature of general order by the Board which requires a specific permission to be obtained from the Range Superintendent, who may grant such permission subject to prescribed safeguards. Therefore, there is no doubt that requirements of condition 2(a) of the notification dated 06.09.2004 are not fulfilled in this case.

5.2.2 The Government observes that the provisions of rule 18 of the Central Excise Rules, 2002 and the notification dated 06.09.2004 issued by the Government, under the said rule 18, have been interpreted by the Hon'ble Bombay High Court, in the case of UM Cables Limited vs. Union of India {2013 (293) E.L.T. 641 (Bom.)}, in the following manner:

"10. Rule 18 of the Central Excise Rules, 2002 empowers the Central Government by a notification to grant a rebate of duty on excisable goods or on materials used in the manufacture or processing of such goods, where the goods are exported. The rebate under rule 18 shall be subject to such conditions or limitations, if any, and the fulfilment of such procedure as may be specified in the notification. Rule 18, it must be noted at the outset makes a clear distinction between matters which govern the conditions or limitations subject to which a rebate can be granted on the one hand and the fulfilment

of such procedures as may be prescribed on the other hand. The notification dated 6 September, 2004 that has been issued by the Central Government under Rule 18 prescribes the conditions and limitations for the grant of a rebate and matters of procedure separately. Some of the conditions and limitations are that the excisable goods shall be exported after the payment of duty directly from a factory or warehouse, except as otherwise permitted by the CBEC; that the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as may be allowed by the Commissioner; that the market price of the excisable goods at the time of export is not less than the amount of rebate of duty claimed and that no rebate on duty paid on excisable goods shall be granted where the export of the goods is prohibited under any law for the time being in force. The procedure governing the grant of rebate of central excise duty is specified in the same notification dated 6 September, 2004 separately.....

11. The Manual of Instructions that has been issued by the CBEC specifies the documents which are required for filing a claim for rebate.....

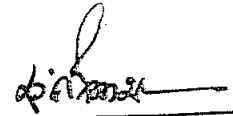
*12. The procedure which has been laid down in the notification dated 6 September, 2004 and CBEC's Manual of Supplementary Instructions of 2005 is to facilitate the processing of an application for rebate and to enable the authority to be duly satisfied that the two-fold requirement of the goods having been exported and of the goods bearing a duty paid character is fulfilled. The procedure cannot be raised to the level of a mandatory requirement. Rule 18 itself makes a distinction between conditions and limitations on the one hand subject to which a rebate can be granted and procedure governing the grant of a rebate on the other hand. **While the conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory.**" (emphasis supplied)*

The judgment in UM Cables (supra) has been followed by other Hon'ble High Courts as well. Ref. Jubilant Life Sciences Ltd. {2016 (341) ELT 44 (Allahabad)}, Raj Petro Specialties {2017 (345) ELT 496 (Gujarat)}, Triputi Steel Traders {2019 (365) ELT 497 (Chattisgarh)}, Haldia Petrochemicals Ltd. {2019 (368) ELT 502 (Calcutta)}.

Thus, it is clear that conditions and limitations specified in Para 2 of the notification no. 19/2004-CE(NT) are mandatory in nature.

5.2.3 As such, it was incorrect of the Commissioner (Appeals) to have allowed the appeals by recording substantial compliance with condition 2(a), which is only permissible in respect of procedural matters and not in respect of the 'conditions and limitations', compliance whereof is mandatory.

6 In view of the above, the Revision Application is allowed and the impugned Order-in-Appeal is set aside.



(Sandeep Prakash)

Additional Secretary to the Government of India

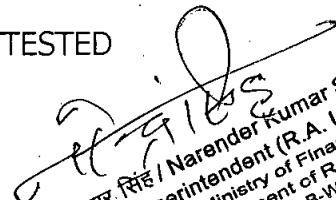
The Commissioner CGST & Central Excise,
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G.O.I. Order No. 28/23-CX dated 11-01-2023

Copy to: -

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2. The Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai, C.R. Building, Lal Bahadur Shastri Marg, Madurai – 625 002, Tamil Nadu.
3. PS to AS (RA)
4. Guard File.
5. Spare Copy.
6. Notice Board.

ATTESTED



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