

**SPEED POST**



F. No. 195/05-10/2022-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 26/8/22

Order No. 21-36/2022-CX dated 26-08-2022 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 Applications filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. LUD-EXCUS-001-APP-01.06.2022 dated 09.03.2022 passed by the Commissioner (Appeals), CGST, Ludhiana.

Applicants : M/s SEL Manufacturing Company Ltd., Nawanshahar, Punjab.

Respondent : The Commissioner of CGST, Jalandhar.

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**ORDER**

Six revision applications, bearing nos. 195/05-10/2022-RA all dated 24.05.2022, have been filed by M/s SEL Manufacturing Company Ltd., Nawanshahar, Punjab (hereinafter referred to as the Applicant) against the Order-in-Appeal No. LUD-EXCUS-001-APP-01.06.2022 dated 09.03.2022, passed by the Commissioner (Appeals) CGST, Ludhiana. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeals filed by the Applicant herein against the Order-in-Original No. 09-14/DC/R/2019 dated 10.04.2019, vide which six rebate claims filed by the Applicant herein were rejected.

2. Brief facts of the case are that the Applicant was engaged in manufacturing and export of goods falling under Chapter Heading 52051110, 52021000, 63049250 and 63109020 of the Schedule to the Central Excise Tariff Act, 1985. They exported goods against six ARE-1s, dated 28.06.2017 and 29.06.2017, and filed six rebate claims, totally amounting to Rs. 19,98,912/-, under Rule 18 of the Central Excise Rules, 2002 in respect of Central Excise Duty paid on the exported goods. The original authority observed that the aforesaid goods have been cleared on payment of duty at tariff rate i.e. 12.5% whereas they were otherwise claiming exemption under Notification No. 30/2004-CE dated 09.07.2004. As such six show cause notices all dated 10.05.2018 were issued seeking rejection of the rebate claims. Pursuant thereto, the rebate claims were rejected, vide the aforesaid Order-in-Original dated 10.04.2019. The appeals filed by the Applicant herein have been rejected vide the impugned Order-in-Appeal.

3. The revision applications have been filed, mainly, on the grounds that the Applicant has correctly paid the excise duty and is legally eligible for the rebate; that Notification No. 30/2004-CE is a conditional notification; that they can avail the benefits of Notification Nos. 29/2004-CE and 30/2004-CE, both dated 09.07.2004, simultaneously; that they can chose to avail any benefit if multiple benefits are available or forego any benefit; and, therefore, rebate claims may be sanctioned.

4. Personal hearing, in the matter, was held on 29.07.2022, in virtual mode. Sh. Rajat Dosi, Advocate appeared for the Applicant and reiterated the contents of the RA. He also requested that the compilation sent by e-mail on 28.07.2022 may be taken on record. Sh. Aneesh Diwan, Superintendent appeared for the department. After making submissions for some time, Sh. Diwan requested time for making written submissions. The written submissions dated 23.08.2022 have been received thereafter. In the further hearing held on 24.08.2022, in virtual mode, Sh. Rajat Dosi, Advocate stated that, in this case, duty has been paid on exports goods at tariff rate i.e., 12.5% instead of 4% as per the Notification No. 29/2004-CE dated 9.7.2004, which is an unconditional exemption. Hence, they may be

permitted rebate in cash proportionate to 4% and the remaining amount may be allowed by way of re-credit. Sh. Aneesh Diwan, Superintendent stated that department's submissions dated 23.08.2022 had been emailed for consideration. Accordingly, the rebate is not admissible in the present case. Upon being asked, he stated that there is no record of any contravention of Board's Circular No. 795/28/2004-CX dated 28.07.2004 and Circular No. 267/01/ 2006-CX.8 dated 01.02.2007 by the Applicant herein at the relevant time.

5.1 The Government has carefully examined the matter. It is observed that, at the relevant time, the subject excisable goods were covered by two notifications, both dated 9.7.2004, i.e., Notification No. 29/2004-CE and Notification No. 30/2004-CE. In terms of Notification No. 29/2004-CE, the effective rate of duty was notified as 4% as against the tariff rate of 12.5%, without any conditions. The Notification No. 30/2004-CE, on the other hand, fully exempted the goods subject to certain conditions. It is not disputed that the Applicant herein was availing exemption under Notification No. 30/2004-CE but chose to pay duty in respect of subject export consignments.

5.2 It is their contention that, since the goods were covered by two notifications, they could avail of them simultaneously. On the first blush, this contention of the Applicant appears attractive, especially as the Board has itself, vide Circular No. 795/28/2004-CX dated 28.04.2004, clarified that an assessee could chose to simultaneously avail the benefits of both of these notifications. However, in the present case, the Applicant has not paid duty on export goods, by availing exemption Notification No. 29/2004-CE but has paid tariff rate of duty @ 12.5%. Therefore, the present case is not a case of simultaneous availment of the aforesaid notifications. As such Board's clarifications and legal submissions on the issue of simultaneous availment of two notifications or the assessee having right to chose to avail any benefit when multiple benefits are available have no relevance to the present case.

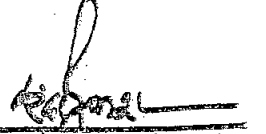
5.3 Now, the question arises as to whether the Applicants could have chosen to forego the benefit of Notification No. 29/2004-CE. The Government observes that, as per subsection (1A) of Section 5A of the Central Excise Act, 1944, where an exemption in respect of any excisable goods from the whole of excise duty leviable thereon has been granted absolutely, the manufacture of such excisable goods shall not pay the duty of excise of such goods. Therefore, there is no doubt that the Applicant herein could not have paid duty beyond what is notified as per the Notification No. 29/2004-CE. Perhaps, it is in this light, that the Applicant has during personal hearing requested that they may be permitted rebate in proportion to 4% duty leviable as per the Notification No. 29/2004-CE and the remaining amount paid may be allowed by way of re-credit. However, on careful

consideration of the facts of the case, the Government is not persuaded to accept this contention for the following reasons.

- i) As per Board's Circular No. 795/28/2004-CX dated 28.07.2004 and Circular No. 267/01/2006-CX8 dated 01.02.2007, a manufacturer could avail of the benefits of the aforesaid notifications simultaneously, subject to maintaining separate accounts etc. In the present case, since the Notification No. 29/2004-CE was never claimed, at the relevant time, the safeguards to ensure compliance with the said notification could not have been followed by the Applicant herein. In fact, the question of following safeguards itself would not have arisen.
- ii) Since the Circulars dated 28.07.2004 and 01.02.2007 are not applicable in the facts of this case, the reliance placed by the department on the CBEC's, Excise Manual of Supplementary Instructions (Para 4.1 of Part-II of Chapter 8) wherein it is provided that the export goods shall be assessed to duty in the same manner as the goods cleared for home consumption, becomes applicable. The Government has taken a similar view in the decision reported in 2014(314)ELT991(GOI).
- iii) The fact that Applicant paid duty at the tariff rate despite an unconditional exemption being available establishes that the intention was to encash credit available in their CENVAT account, which encashment was otherwise not permissible/ possible.
- iv) With the introduction of GST w.e.f. 01.07.2017, the subject goods are not covered by Central Excise Duty anymore and the question of allowing re-credit in the CENVAT credit account, which do not exist anymore, also does not arise.

5.4 Before parting with the matter, it would be important to reiterate that the Applicant was bearing goods for home consumption at 'Nil' rate of duty, by availing exemption under notification no. 30/2004-CE. However, they chose to pay duty on the export goods at tariff rate i.e., @ 12.5%. When, the rebate claims in respect of duty so paid were challenged by the department, the Applicant has agitated the matter as if the department was coming in way of the simultaneous availment of two notifications – one of which, i.e., notification no. 29/2004-CE was never claimed by them at all. Thus, the Applicant paid duty at tariff rate, despite an unconditional notification being available, in clear contravention of Section 5A(1A) *ibid*. By paying duty at higher rate and claiming rebate thereof, the attempt apparently was to encash as much of accumulated CENVAT credit as possible. In this light, the Government is constrained to observe that the entire exercise was non-bonafide.

6. In these peculiar facts and circumstances of the case, the Government does not consider it to be a fit case for revision. The revision applications are, accordingly, rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

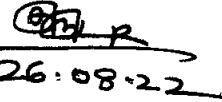
M/s SEL Manufacturing Company  
Limited, Village Sekhon Majra,  
P.O. Rahon Distt., S.B.S. Nagar,  
Nawanshahar, Punjab-144514.

G.O.I. Order No. 31-36/22-CX dated 26-08-2022

Copy to:

1. The Commissioner of CGST, Jalandhar, C.R. Building, Model Town Road, Jalandhar-144001.
2. The Commissioner (Appeals), CGST, Commissionerate Ludhiana, GST Bhawan, F-Block, Rishi Nagar, Ludhiana-141001.
3. M/s. RSA Legal Solutions, 937A, JMD Megapolis, Sohna Road, Sector-48, Gurgaon-122001.
4. PS to AS (RA).
5. Guard File.
6. Spare Copy

ATTESTED



(लक्ष्मी राघवन)  
(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त संचालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi