

SPEED POST



F.No. 198/219/2016-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...11/10/22

Order No. 54/2022-CX dated 11-10-2022 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 Application filed under section 35 EE of the Central Excise Act, 1944, against the Order-in-Appeal No. MDU/CEX/000/APP/62 to 72/2016 dated 15.06.2016, 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. 198/219/2016-RA dated 15.11.2016 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/62 to 72/2016 dated 15.06.2016 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. 26/2015 (Rebate) dated 31.08.2015, passed by the Assistant Commissioner of Central Excise, Tuticorin.

2. Brief facts of the case are that the Respondents herein had filed rebate claims, 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.
239/2015	046 26.02.15	05993 24.02.15	43670, 29888	8032522, 25.02.2015	27.02.2015	73558
240	058 23.02.15	2971 23.02.15	42370	8026924, 25.02.2015	27.02.2015	42370
274	059 11.03.15	3468 11.03.15	21614	8341186, 13.03.2015	21.03.2015	21614
275	001 11.04.15	52 07.04.15, 53 07.04.15, 54 07.04.15,	30195, 40889, 50717	8951841, 11.04.2015	22.04.2015	121801
276	002 20.04.15	17 11.04.15	33109	9094539, 20.04.2015	22.04.2015	33109
277	025 20.10.14	660 20.10.14	78829	5686824, 23.10.2014	27.10.2014	78829
11/2016	01,02,03/ 16.06.15	03100086 43 02.06.15, 03100087	27900, 26353, 13263, 40258	1238168, 17.06.2015	20.06.2015	105188

		12 03.06.15, 770 05.06.15, 338 05.06.15				
12	04 02.07.15	875 15.06.15	10949	1560135, 02.07.2015	04.07.2015	10949
81	05 15.06.15	874 15.06.15	21246	2459482, 18.08.2015	26.08.2015	21246
82	07 07.07.15	14004641 97 07.07.15 14004642 04 07.07.15	24633, 24633	2460623, 18.08.2015	26.08.2015	49267
83	08 19.08.15	770 19.08.15	23790	2509420, 20.08.2015	26.08.2015	23790
TOTAL REBATE CLAIMED						581721

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 allows a rebate of duty paid on goods only if it 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; that the claimants had not followed the procedure prescribed by the Board vide Circular No. 294/10/47 dated 30/01/1997; that the said Circular stipulates that an exporter desiring to export pre-paid excisable goods (capable of the being clearly identified) which are in original factory packed condition/not processed in any manner after being cleared from the factory should make an application in writing to the Superintendent of Central Excise in charge of the

range under whose jurisdiction such goods are stored after which the Range Officer may verify such goods prior to export; that in the present case, these instructions have not been followed; and that, therefore, the Commissioner (Appeals) has erred by allowing the rebate.

4. The personal hearing was held, in virtual mode, on 07.10.2022. Sh. Richard, AC, appeared for the Applicant and reiterated the contents of the RA. Sh. Shanmuga Sundaram, Advocate appeared for the Respondent and supported the impugned OIA. He also submitted that in view of Board's instructions of 2019 prescribing monetary limits for litigation, the RA should be rejected.

5. The Revision Application has been filed with a delay of about 55 days. Delay, which is attributed to the administrative exigencies, is condoned.

6.1 The Government has carefully examined the matter. The Respondent has, at the outset, taken a preliminary objection based on monetary limits prescribed for filing appeals by the Department before CESTAT, High Courts and Supreme Court, in terms of instruction F.No. 390/Misc/116/2017-JC dated 22.08.2019. The Government observes that the said instruction prescribes monetary limits below which appeals should not be filed before CESTAT, Hon'ble High Courts and Hon'ble Supreme Court, in legacy matters of Central Excise and Service Tax. The said instruction does 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.

6.2.1 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.

6.2.2 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 elucidated and 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.....

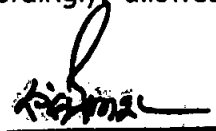
*12. The procedure which has been laid down in the notification dated 6 September, 2004 and CBEC's Manual of Supplementary Instructions of 2005 is to facilitate the processing of an application for rebate and to enable the authority to be duly satisfied that the two-fold requirement of the goods having 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.

6.2.3. 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.

7. In view of the above, the Government finds that the impugned Order-in-Appeal cannot be sustained. The Revision Application is, accordingly, allowed and the impugned Order-in-Appeal is set aside.



(Sandeep Prakash)

Additional Secretary to the Government of India

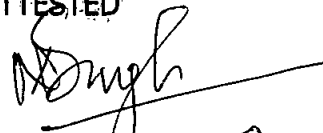
The Commissioner CGST & Central Excise,
C.R. Building, Lal Bahadur Shastri Marg,
Madurai – 625 002.

G.O.I. Order No. 54/22-CX dated 11-10-2022

Copy to: -

1. M/s Esaa Exports, 52, Levegepuram, Tiruchendur Road, Tuticorin -628 003.
2. The Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai, C.R. Building, Lal Bahadur Shastri Marg, Madurai – 625 002, Tamil Nadu.
3. Shri Shunmuga Sundaram, Advocate Consultant, G-4, Divya Sundri Apartments, Opp. New Bus Stand, Perumalpuram, Tirunelveli- 627 007
4. PS to AS (RA)
5. Guard File.
6. Spare Copy

ATTESTED



N. G. Singh
Supd (RA)