

SPEED POST



F.No. 195/14/SZ/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 16/2/23

Order No. 57/ 2023-CX dated 15.02.2023 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. MAD-CEX-000-APP-64&65-2017 dated 31.08.2017, passed by the Commissioner of CGST & Central Excise (Appeals), Madurai.

Applicant : M/s Deepak Exports, Sivakasi.

Respondent : Commissioner of CGST & Central Excise, Madurai

ORDER

A Revision Application No. 195/14/SZ/2018-RA dated 08.12.2017 has been M/s Deepak Exports, Sivakasi (hereinafter referred to as the "Applicant"), against the Order-in-Appeal No. MAD-CEX-000-APP-64&65-2017 dated 31.08.2017, passed by the Commissioner of CGST & Central Excise (Appeals), Madurai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, allowed the appeal no. 12/2016(D)-TVL filed by the department (hereinafter referred to as the "Respondent") and set aside the Order-in-Original No. 21/2016 (Rebate) dated 28.07.2016, passed by the Assistant Commissioner of Central Excise, Tuticorin Division, Tuticorin. The impugned O-I-A covers two appeals viz. 12/2016(D)-TVL and 13/2016(D)-TVL, the Applicant has challenged only the order passed with respect to appeal no. 12/2016(D)-TVL in this revision application.

2 Brief facts of the case are that the Applicants herein had filed rebate claim, under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004, in respect of the duties of Central Excise paid on exported goods, as per details below:

ARE1 No. & Date	C.Ex. Invoice No. & Date	Amount of Duty paid (in Rs.)	S. Bill No. & Date	Date of shipment	Rebate claimed (in Rs.)
001/2015-16 dt. 30.07.15	218 dated 30.07.15	86,250/-	2253143 dated 06.08.2015	12.08.2015	86,250/-

The claim was sanctioned by the Assistant Commissioner vide O-I-O No. 21(2016) Rebate dated 28.07.2016. The Respondent department filed an appeal against the aforesaid OIO on the grounds that the goods had not been exported directly from the Factory or a Registered Warehouse after the payment of duty, in terms of 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 department herein has been allowed by the Commissioner (Appeals) by holding that co-relatability could not be established and hence, rebate was not permissible to the Applicants herein. Aggrieved thereby, the Applicants have filed the present Revision Application.

3 The Revision Application has been filed, mainly, on the grounds that the goods were cleared from the manufacturing premises to the port; that procedure under Para 7 of Chapter 8 of CBEC supplementary instructions were followed; that co-relatability is established, and that procedure under Circular No.294/10/94-CX was not applicable in this case as the same is applicable for removal of duty paid goods from warehouse for export by following the ARE-1 export procedure.

4 Personal hearing in the matter was held on 15.02.2013, in virtual mode. Sh. B. Ganeshan, Consultant appeared for the Applicants and reiterated the contents of the RA. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5.1 The Government has carefully examined the matter. Issue involved in the present case is whether the rebate has rightly been held not permissible by the Commissioner (Appeals) in light of the fact that the Applicants herein had not directly exported the goods from the factory or warehouse and as co-relatability could not be established.

5.2 The Government observes that the Applicants herein had not followed 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."

The goods, in this case, were not exported directly from the factory of manufacture or 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.

5.3 The Government observes that the provisions of Rule 18 *ibid* and the notification dated 06.09.2004 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.....

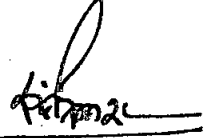
*12. The procedure which has been laid down in the notification dated 6 September, 2004 and CBEC's Manual of Supplementary Instructions of 2005 is to facilitate the processing of an application for rebate and to enable the authority to be duly satisfied that the two-fold requirement of the goods having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

5.4 Further, the Government observes that the subject condition being mandatory in nature, the contravention thereof cannot be remedied by establishing substantial compliance. Hence, there is no need to examine the issue of co-relatability.

5.5 In view of the above, the Government does not find any infirmity with the impugned OIA.

6 The Revision Application is, accordingly, rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

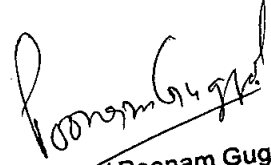
M/s Deepak Exports,
2/310A, Bose colony, Naranapuram Road,
Sivakasi-626189.

G.O.I. Order No. 57/23-CX dated 15.02.2023

Copy to: -

1. The Commissioner of Central Goods & Service Tax, Madurai, C.R.Building, B.B.Kulam, Madurai-625002.
2. The Commissioner of Central Goods & Service Tax(Appeals), Coimbatore, 6/7 A.T.D. Street, Race Course Road, Coimbatore-641018.
3. PS to AS (RA)
4. Guard File.
5. Spare Copy.
6. Notice Board.

ATTESTED



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