

SPEED POST



F. No. 195/13/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..13/03/23

Order No. 62/2023-CX dated 13-03-2023 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. TVM-EXCUS-000-APP-233-2017 dated 11.10.2017, passed by the Commissioner of Central Tax & Central Excise (Appeals), Cochin.

Applicants : M/s Safil Industries Pvt. Ltd., Kollam.

Respondent : Commissioner of CGST & Central Excise, Thiruvananthapuram.

ORDER

A Revision Application No. 195/13/SZ/2018-RA dated 27.12.2017 has been filed by M/s. Safil Industries Pvt. Ltd., Kollam (hereinafter referred to as the Applicant), against Order-in-Appeal No. TVM-EXCUS-000-APP-233-2017 dated 11.10.2017, passed by the Commissioner of Central Tax & Central Excise (Appeals), Cochin. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, set aside the Order-in-Original No. 09/KLM/2015 (REBATE) dated 14.07.2015, passed by the Assistant Commissioner of Central Excise, Kollam, vide which a rebate claim of Rs. 5,17,129/- was sanctioned in favour of the Applicants herein.

2. Briefly stated, the Applicants exported Flanges, Finished Profile Filters etc. to the Units situated in Cochin Special Economic Zone (CSEZ), Cochin on payment of duty amounting to Rs. 5,17,129/-. Rebate claim for the duties so paid was filed on 16.04.2015. During the processing of the claim, it was noticed that in respect of ARE-1 No. 116/2014-2015 the quantity indicated was 3470 pieces whereas on the corresponding invoice the quantity indicated was 4105 pieces. Further in respect of ARE-1 No. 129/2014-15 the quantity of Finished Profile Filters shown of ARE-1 was 47,000 numbers whereas in the invoice only 33,550 numbers were shown whereas in the first page of the invoice the quantity was 34150 and in the second page balance was 13450. Accordingly, a show cause notice dated 02.06.2015 was issued to the Applicants. The original authority, however, vide Order-in-Original dated 14.07.2015, sanctioned the rebate as claimed. On an appeal filed by the department, the Commissioner (Appeals) has set aside the aforesaid Order-in-Original dated 14.07.2015.

3. The Revision Application has been filed, mainly, on the grounds that the original authority had, after comparing the documents, tallied the quantities which has not been factually controverted by the Commissioner (Appeals); that the discrepancies in the ARE-1s were due to clerical error which are adequately explained by the respective excise invoices; that the Commissioner (Appeals) had allowed the appeal on the solitary ground that the sanctioning authority had not compared and satisfied that the documents filed by the Applicant tallied with copy received from the Customs Officer; and that the rebate could not be denied on technical grounds. The department has filed a written reply, vide letter C No. IV/16/182/2017-RC dated 21.06.2018.

4. Personal hearing in the matter was fixed on 06.02.2023, when no one appeared for the Applicant. Therefore, second opportunity was granted on 27.02.2023, when Sh. Manoj Pillai, Advocate appeared for the Applicant. After proceeding with the hearing for some time, Sh. Pillai requested for a short

adjournment so that he could verify the factual position with records. Accordingly, last and final opportunity was granted on 10.03.2023. Sh. Manoj Pillai, Advocate appeared for the Applicant on 10.03.2023 and stated that a WP(C) No. 8424/2023 had been filed before Hon'ble Kerala High Court, against the GOI Order No. 56/2023-CX dated 09.02.2023 in RA No. 195/155/SZ/2017-RA, wherein the Hon'ble High Court has been requested to stay the present proceedings as well. Upon being asked whether any stay/injunction has been granted in the matter, Sh. Pillai stated that no such order has been passed by the Hon'ble High Court. Therefore, the hearing was taken up in continuation of hearing held on 27.02.2023. Sh. Pillai stated that their clients have no other documents to furnish, in addition to those already submitted with the RA, to substantiate their say. He reiterated the contents of the RA. Sh. Pradeep Kumar, Assistant Commissioner supported the Order of Commissioner (Appeals).

5. The Government has carefully examined the matter. It is not disputed that the quantities mentioned on ARE-1s and the excise invoices do not tally. The Assistant Commissioner has, however, satisfied himself with the contention that the quantities in ARE-1s were wrongly stated due to clerical error after comparing the net and gross weights between ARE-1s and the invoices. The Commissioner (Appeals) has, on the other hand, allowed the appeal of the department by relying on the para 3(b) (ii) of Notification 19/2004-CE (NT) dated 06.09.2004, which provides that the original authority was required to compare the duplicate copy of the ARE-1 received from the officer of Customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer before sanctioning the rebate, which has not been done in this case. In other words, the Commissioner (Appeals) has essentially pointed out that the Assistant Commissioner, while holding that the purported mistake had been reconciled, had not made any reference to the quantity certified to have been received in the SEZ Unit by the customs officer. The Government finds that in respect of both the ARE-1s, the customs officer of the SEZ has certified that the quantities indicated on the respective ARE-1s have been received in the SEZ Unit. This certification would obviously be based on the actual receipt of the items by the SEZ Unit to whom the deemed export has taken place. Nothing has been placed on record, despite the opportunity being given, to indicate that the SEZ Unit had received quantities other than those indicated on the ARE-1s and the customs officer has, by certifying the quantity indicated on ARE-1, only perpetuated the mistake which is claimed to be a clerical mistake by the Applicants. Therefore, there is merit in Commissioner (Appeals)'s findings that the Assistant Commissioner has taken the discrepancy in the quantity as having been reconciled without making reference to the actual quantity received by the SEZ Unit as certified by the Customs officer. While holding so, the Government also observes that in the case of ARE-1 No. 129/2014-15, the gross and net weight were initially indicated as 3112.3 Kg & 2981.7 Kg, respectively

which have been altered, without any authentication, to 3678.00 Kg & 3547.00 Kg, respectively. Since these alterations are without any authentication, the Assistant Commissioner could not have, in any case, relied upon these altered figures to observe that as the net and gross weights indicated on the ARE-1s tallied with those indicated on the invoices, the quantities should also be taken to have been tallied. As such, in the facts and circumstances of case, the Government does not find any infirmity in the impugned Order-in-Appeal.

6. The revision application is, accordingly, rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India


M/s Safil Industries Pvt. Ltd.,
Madanthacode, Nellimukku P.O.,
Kareeora, Kollam-691509.

G.O.I. Order No. 62 /23-CX dated 13-03-2023

Copy to: -

1. The Commissioner of CGST & Central Excise, Thiruvananthapuram, GST Bhavan P.B. No. 13, Press Club Road, Thiruvananthapuram-695001.
2. The Commissioner of Central Tax & Central Excise (Appeals), C.R. Building, I.S. Press Road, Cochin-642018.
3. M/s Taxaide, T.C. 26/1747, Kalyan, UR-72, Uppalam Road, Trivandrum-695001.
4. PPS to AS (RA)
5. Guard File
6. ✓ Spare Copy.
7. Notice Board.

ATTESTED


अश्वनी कुमार लॉ / Ashwani Kumar Lau
अधीक्षक / Superintendent (R.A. Unit)
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
Room No. 606, 6th Floor, B-Wing
14, Hudco Vishala Building, New Delhi-110066