



F. No. 198/116/2015-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...28/10/22

Order No. 66/2022-CX dated 28-10-2022 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. 201/2015(CXA-I) dated 26.08.2015, passed by the Commissioner of Central Excise (Appeals-I), Chennai.

Applicant : Commissioner of CGST & Central Excise, Chennai (Outer) .

Respondent : M/s Jumbo Bags Ltd., Chennai

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ORDER

A Revision Application No. 198/116/2015-RA dated 23.12.2015 has been filed by the Commissioner of Central Excise, Chennai – I Commissionerate, presently, Commissioner of CGST & Central Excise, Chennai Outer, Chennai (hereinafter referred to as the Applicant) against the Order-in-Appeal No.201/2015(CXA-I) dated 26.08.2015, passed by the Commissioner of Central Excise (Appeals-I), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, allowed the Appeal of M/s Jumbo Bags, Chennai (hereinafter referred to as the Respondent) by way of remand with directions, against the Order-in-Original No. 230/2014 (R) dated 12.06.2014, passed by the Maritime Commissioner of Central Excise, Chennai – I Commissionerate, Chennai.

2. Brief facts of the case are that the Applicant herein filed 01 rebate claim, under Rule 18 of the Central Excise Rules, 2002, in respect of Central Excise duty paid on the exported goods, for a total amount of Rs. 3,55,666/-. The original authority rejected the rebate claim on the ground that the Respondent had not submitted the original/duplicate copies of ARE1 along with the rebate claim and further that the claim was not submitted within the stipulated time period of one year. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), who vide the above mentioned OIA dated 26.08.2015, held that the time bar is not an issue in this case as the date of initial submission of the claim and not the date of re-submission shall be considered for counting the limitation for submission of claim. Further, the non-submission of original documents shall not come in way of sanction of rebate and the original authority shall pass order afresh after verifying the documents concerned.

3. The Revision Application has been filed, mainly, on the grounds that the Commissioner (Appeals) has no powers to remand the case back to original authority in view of the amendment of Section 35A (3A) with effect from 11.05.2011, vide Finance Act, 2001; that the submission of original copies of ARE1 for filing the rebate claim is statutory

in nature and, thus, can not be diluted. A reply has been filed by the Respondent vide letter dated 12.10.2022.

4. Personal hearing, in virtual mode, was held on 28.10.2022. Sh. Prince Kumar, Superintendent appeared for the department but did not state anything to add. Sh. Rajkumar E, Manager (Commercial) appeared for the Respondent and reiterated the contents of the written submissions dated 12.10.2022

4.1 The Government has examined the matter carefully. First contention of the department is that the production of original copy of ARE-1 is a statutory requirement and, hence, cannot be diluted. The Government finds that the requirement of producing original copy of ARE-1 is stipulated in para 3 (b)(i) of the notification no. 19/2004-CE(NT) dated 06.09.2004, issued under Rule 18-ibid.

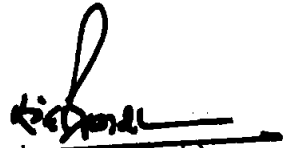
4.2 The Hon'ble Bombay High Court has, in the case of UM Cables Ltd., Vs. Union of India {2013 (293)ELT641 (Bom)}, held that the 'conditions and limitations' for the grant of rebate, as specified in Para 2 of the notification, are mandatory whereas matters of 'procedure', i.e. those specified in para 3 of the notification, are directory. Similar view has been taken by the 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)}. The Hon'ble Bombay High Court has, in the case of Zandu Chemicals Limited Vs. Union of India {2015 (315) ELT 520 (Bom)}, followed the judgment in UM Cables (Supra) and held that the procedural requirements are capable of substantial compliance. Since, in the present case, the Department's case is limited to the Respondent herein not following the procedure prescribed under para 3 of the notification dated 06.09.2014, the Commissioner (Appeals) has correctly held that it is open to the Respondent to show and establish substantial compliance.

4.3 Applicant's second contention is that the Commissioner (Appeals) has no power to remand back the case. The Government observes, that in the instant case, the Commissioner (Appeals) has only directed the original authority to verify the documents

submitted by the Respondent and on verification if they are found to be correct then the claim shall be sanctioned. Government is of the view that the order of Commissioner (Appeals) can not be considered as a remand simpliciter as the Commissioner (Appeals) has only directed the original authority to verify the documents and thereafter proceed as per the directions given by him.

4.4 As such, there is no infirmity in the impugned order of Commissioner (Appeals).

5. In view of the above, the Revision Application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

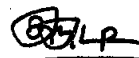
The Commissioner of CGST & Central Excise, Chennai (Outer),
No. 2054-III, Avenue, 12th Main Road,
Newry towers, Anna Nagar, Chennai - 600034

G.O.I. Order No. 66/22-CX dated 28.10.2022

Copy to:

1. M/s Jumbo Bags Ltd., GNT Road Athipedu Village, Allingivakkam, PO, Chennai – 600067.
2. The Commissioner of Central Excise (Appeals-I), 26/1, Mahatama Gandhi Road, Nungambakkam, Chennai - 6000034.
3. PA to AS(RA).
4. ~~Guard file.~~
5. Spare Copy.

ATTESTED



28.10.22

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