

SPEED POST



F. No. 195/131/2017-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. 3/11/22

Order No. 76 | 2022-CX dated 03-11-2022 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. HYD-EXCUS-001-APP-73-16-17 dated 29.11.2016, passed by the Commissioner of Customs & Central Excise (Appeals), Hyderabad.

Applicant : M/s Agri Life, Medak (Telangana).

Respondent : The Pr. Commissioner of CGST & Central Excise, Hyderabad.

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ORDER

A Revision Application No. 195/131/2017-RA dated 28.02.2017 has been filed by M/s Agri Life, Medak District, Telangana (hereinafter referred to as the Applicant) against the Order-in-Appeal No. HYD-EXCUS-001-APP-73-16-17 dated 29.11.2016, passed by the Commissioner of Customs & Central Excise (Appeals), Hyderabad. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 157/2015-16 (R) dated 08.06.2015, passed by the Deputy Commissioner of Customs & Central Excise, Jinnaram Division, Hyderabad.

2. Brief facts of the case are that the Applicant herein filed a rebate claim for Rs. 1,10,962/- , under Rule 18 of the Central Excise Rules, 2002, in respect of duty paid on goods exported, on 06.05.2014, under LUT No. 32/2013 dated 15.05.2013 against ARE-1 No. 12 dated 06.05.2014. However, it was found that the duty on the goods was paid only on 06.06.2014, which was subsequently claimed as rebate on 26.03.2015 under the above mentioned claim. The original authority, vide the aforesaid O-I-O rejected the rebate claim in cash but allowed it by way of re-credit in their Cenvat account. The Respondent department filed an appeal with the Commissioner (Appeals) who allowed the appeal and set aside the order of the original authority.

3. The Revision Application has been filed, mainly, on the grounds that it is erroneous on part of the department to state that duty on the exported goods should have been paid by way of Cenvat debit or by the way of GAR-7 challan on the date of clearance, whereas, Rule 8(1) of Central Excise Rules, 2002 clearly states that the assessee is allowed to pay the duty by sixth of next month. In fact the same can be paid subsequently also along with interest; that other Divisions of the department are sanctioning rebates in identical cases by way of Cenvat credit; that the Commissioner (Appeals) is in error to hold that Excise Duty is required to be paid immediately on export; that the Commissioner (Appeals) in the impugned O-I-A has not given any findings as to how the OIOs on identical issues could not be applied to their case.

4. In the personal hearing held, in virtual mode, on 02.11.2022, Sh. PVB Chary, Advocate appeared for the Applicant and requested that written submissions dated 28.10.2022 may be taken on record. He reiterated the contents of the RA and the written submissions dated 28.10.2022. Upon being asked, Sh. Chary confirmed that re-credit was availed in terms of OIO dated 08.06.2015, which has not been recovered in terms of OIA dated 29.11.2016. No one appeared for the respondent department nor any request for adjournment has been received. Hence, it is presumed that the department has nothing to add in the mater.

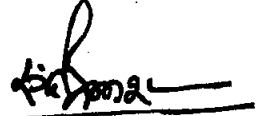
5. The Government has carefully examined the case. The short point involved herein is whether a rebate claim in respect of duty paid subsequent to removal of goods for export is admissible. The Commissioner (Appeals) has held that the submission of the Applicant during the appellate proceedings that a manufacturer is allowed to pay duty on monthly basis and the said facility would apply to export clearances too is not consistent with condition 2(a) of Notification No. 19/2004-CE(NT) which lays down that the goods shall be exported after payment of duty. Therefore, the exporter was required to pay duty if they intended to claim rebate of such duty paid in terms of Notification No. 19/2004-CE (NT). However, the Government observes that the Applicants have correctly pointed out that in terms of Rule 8 of the Central Excise Rules, 2002, the duty can be paid by sixth of next month. Further, the Government observes that as per Para 2, Chapter IV of the CBEC's Central Excise Manual, supplementary rebate claim is permitted provided it is filed within the limitation period provided under Section 11B of the Central Excise Act, 1944. Further, the Board has, vide Circular No. 510/06/2000-CX dated 03.02.2000, stated that if the rebate sanctioning authority has reasons to believe that the duty has been paid in excess than that should have been paid he shall, after granting the rebate, inform the jurisdictional Assistant/Deputy Commissioner who shall scrutinize the correctness of assessment and take necessary action wherever necessary. In Para 4 of said Circular following is laid down:

"4. Same principle should be applied to cases where any short payment of duty is noticed and the assessee pays the differential duty prior to sanction of rebate, whether he pays before or after adjudication of the case of short

payment. The rebate of the full amount of duty paid on the goods exported (not the fine and/or penalties imposed, if any) should be allowed, provided the initial rebate claim was for the said full duty, or a supplementary claim was filed within the limitation period."

Thus, the rebate of the duty subsequently paid, i.e., subsequent to the removal of the goods for export is not unknown to Central Excise. The rebate is payable even in a case where duty is paid after adjudication. In the present case, it would appear from records that the goods were initially exported without payment of duty under LUT, which had expired. However, subsequently, the Applicants herein paid the full duty within sixth date of next month from the date of clearance of goods for export and, thereafter, filed the rebate claim. Therefore, keeping in view the Rule position and departmental instructions on the issue, in this case, there should be no difficulty in allowing the rebate of the duty paid subsequently, as was done by the original authority by way of recredit in CENVAT Credit account.

6. In view of the above, the Revision Application is allowed and impugned Order-in-Appeal is set aside.



(Sandeep Prakash)

Additional Secretary to the Government of India

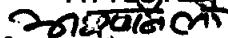
M/s Agri life,
Plot No.-154/A5-1, SVCIE,
Medak District, Telangana-502325.

G.O.I. Order No. 76/22-CX dated 3-11-2022

Copy to:

1. The Pr. Commissioner of CGST & Central Excise, Hyderabad, Opposite L. B. Stadium Road, Bashirbagh, Hyderabad-500004.
2. The Commissioner of Customs & Central Excise (Appeals), 7th Floor, Kendriya Shulk Bhawan, Opp. L. B. Stadium Road, Bashirbagh, Hyderabad-500004.
3. M/s R. Muralidhar, Advocate, B-201, High rise Apartments, lower Tankbund Road, Hyderabad-500080.
4. PA to AS(RA).
5. Guard file.
6. Spare Copy.

ATTESTED



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