

SPEED POST



F. No. 195/23/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..11/01/24

Order No. 03 /2024-CX dated 11-01-2024 of the Government of India, passed by Ms. Shubhagata Kumar, 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. 478/2017 CT dated 30.11.2017, passed by the Commissioner of Central Tax (Appeals-II), Bengaluru.

Applicant : M/s Bangalore Refinery Pvt. Limited, Bengaluru.

Respondent : The Commissioner of CGST, Bengaluru (North West).

ORDER

Revision Application, bearing No. 195/23/SZ/2018-RA dated 06.03.2018, has been filed by M/s Bangalore Refinery Pvt. Limited, Bengaluru (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 478/2017 CT dated 30.11.2017, passed by the Commissioner of Central Tax (Appeals-II), Bengaluru. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, upheld Order-in-Original No.110/16-17 dated 20.12.2016, passed by the Deputy Commissioner of Central Excise, Jalahalli Division, Bangalore-II Commissionerate, Bengaluru vide which rebate claim amounting to Rs. 11,96,595/- filed by the Applicant was rejected.

2. Briefly stated, the Applicants were engaged in manufacture of gold jewelry falling under chapter 71 of the Central Excise Tariff Act,1985 and were also availing the facility of Cenvat credit under Cenvat Credit Rules,2004. The Applicant had imported 26.993 Kgs. of gold Dore bars classifiable under CETH 71081200 claiming benefits of Serial no. 318 of Notification no. 12/2012-Cus dated 17.03.2012 by following the procedure set out under Customs (Import of Goods at concessional rate of duty for manufacture of excisable Goods) Rules, 1996 for manufacture of Gold bars of purity .995 as per condition 34 of the said Customs notification. In terms of RBI Circular 25 dated 14.08.2013, 20% of every lot of import should have been exclusively made available for export. From the record placed before this Revisionary Authority, it has been gathered that for meeting their export obligation of 20% in terms of RBI Circular 25 dated 14.08.2013, 5087.62 grams of pure gold obtained after refining the above mentioned imported gold Dore bars was captively consumed by the Applicant for manufacture of 5545 grams of 22 Karat gold containing 5082 grams of pure gold, which was subsequently exported. For the purpose of captive consumption of 5087.62 grams of pure gold, the Applicants raised an invoice to themselves and paid Central excise duty amounting to Rs.11,96,595/- by the way of debiting the same in their Cenvat credit account. Thereafter, the Applicant filed a rebate claim of Rs.11,96,595/- under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 21/2004-CE (NT) dated 06.09.2004. The claim of rebate filed by the Applicant was rejected vide the above mentioned O-I-O of the lower adjudicating authority on the ground that the Applicant had availed the credit on input Dore bar and thus has

violated the conditions prescribed under Notification No. 21/2004- dated 06.09.2004, hence, the rebate claimed under Rule 18 of Central Excise Rules, 2002 read with Notification no. 19/2004-CE (N.T.), dated 06.09.2004 is not admissible. Aggrieved, with the O-I-O, the Applicant preferred an appeal with the Commissioner (Appeals), who rejected the appeal vide the impugned O-I-A and upheld the O-I-O passed by the LAA.

3. The Revision Application has been filed, mainly, on the grounds that the Applicant has followed all the provisions of Rule 18 of Central Excise rules, 2002 and notification No. 21/2004-CE(NT); that the applicant had submitted all necessary details to the department in relation to the verification of input-output ratio; that it is not legal and proper to reject the refund claim on the ground of procedural short-falls; that since the goods exported by them i.e. gold jewelry was exempt from duty, they are seeking rebate of duty paid by them on the input used by them in manufacture of gold jewelry i.e. gold bars.

4. Personal hearing, in the matter, was held on 09.10.2023. Sh. R.V. Shetty, Advocate and Sh. Suresh Dhruv, Managing Director of the Applicant company, appeared for the Applicants and submitted that the Applicants imported gold Dore bars under RBI scheme under DGFT licence upon payment of duty as applicable , after which 80% was made into standard gold bars and 20% made into 22 carat jewellery and exported to Dubai; that there is negligible waste in gold processing ,around 0.1% only; that the invoice generated was a self-invoice. The Advocate further prayed that the duty paid should be refunded as per rules since export is not in question and duties as applicable have been paid at the time of import. The scheme is an incentive, hence, refund should not be denied.

5. The Government has carefully examined the matter. It is observed that the claim of rebate in this case has filed under Notification No.21/2004-CE(NT) dated 06.09.2004. It is undisputed that the final product exported i.e. gold jewellery was fully exempt from payment of Central Excise duty. It has been correctly held by the Commissioner (Appeals) at para 10.2 of the impugned OIA that the rebate claim is admissible subject to fulfillment of conditions of the Notification No.21/2004-CE(NT) dated 06.09.2004. Thus, the issue in hand is to decide as to whether the conditions and the procedure stipulated under the said

notification was followed by the Applicant or not, which ultimately determines the admissibility of the rebate claimed.

6. Para 5 of Notification No.21/2004-CE(NT) dated 06.09.2004 dealing with "procedure of export" provides that procedure prescribed under Notification No. 19/2004-CE(NT) dated 06.09.2004 or Notification No.42/2001-CE(NT) dated 26.06.2001 shall be followed. It is observed that the Commissioner (Appeals) in paras 10.2 to 10.6 of impugned OIA has aptly recorded as to how Notification No.21/2004-CE(NT) dated 06.09.2004 is not applicable to the goods which are either chargeable to nil rate of duty or are wholly exempt from the duty. Consequently, the rebate is also not admissible to the export goods which are exempt. The Government does not find any infirmity with this finding of the Commissioner (Appeals).

7. It has been contended by the applicant that substantive benefit cannot be denied on a procedural lapse. However, The Government notes that the prescribed conditions and limitations in respect of any notification where the benefit is subjected to the fulfilment of such conditions etc., the non-fulfillment of the same cannot be dismissed as a mere procedural lapse. Rather the conditions of such notifications are to be strictly followed to enjoy the benefit extended by that notification. The applicant in this case intended to claim rebate under Notification No.21/2004-CE(NT) dated 06.09.2004, but from the OIO placed on record , it is observed that the Applicant did not comply with the condition 1 and 2 of the said notification in totality and in time. The said condition is reproduced below as:-

(1) Filing of declaration- The manufacturer or processor shall file a declaration with the Assistant Commissioner or Deputy Commissioner having jurisdiction over factory of manufacture describing the finished goods proposed to be manufactured or processed along with their rate of duty leviable and manufacturing /processing formula with particular reference to quantity or proportion in which the materials are actually used as well as quality. The declaration shall also contain the tariff classification, rate of duty paid or payable on the materials used, both in words and figures, in relation to the finished goods to be exported.

The condition is clear and unambiguous that the requisite declaration is to be filed before the intended export. In this case, it is observed that the goods were exported vide shipping bill No. 4189153 dated 01.08.2014, whereas, as per para 17.1 of the OIO, the declaration was filed by the Applicant on 12.05.2015 i.e. almost 9 months after the export. This declaration too was found to be incomplete, as details in respect of processing formula with particular reference to quantity or proportion in which the materials are actually used as well as quality were not provided. This resulted in non-verification of input-output ratio, thus, condition 2 of Notification No.21/2004-CE(NT) dated 06.09.2004 was also not fulfilled. The Applicant claims that they had fulfilled the required conditions; however, no evidence in the form of any document which evidences the filing of declaration by the Applicant before the export of goods has been placed on record. It is also seen that a letter dated 21.07.2014 addressed to the Superintendent of Central Excise , Yashwantpur-III Range, Bangalore has been placed by the Applicant on record, however, the same is in respect of intimation of claim of duty draw back and the same does not have the details required to be furnished in the declaration to be filed in compliance of condition No.1 of the notification under which the rebate has been claimed.

7.1 The Government observes that as per Rule 18 *ibid*, where any exempted goods are exported, the Central Government may, by notification, grant rebate of duty paid on inputs used in such excisable goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the Notification No. 21/2004-CE(NT) dated 06.09.2004 has been, accordingly, issued prescribing the 'conditions and limitations' as well as the 'procedure' for grant of rebate.

7.2 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.

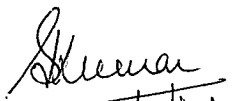
While the conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory.” (emphasis supplied)

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 1&2 of the notification no. 21/2004-CE(NT) are mandatory in nature, which the applicant failed to comply with.

7.3 It is settled issue that a benefit under a conditional notification cannot be extended in case of non-fulfillment of conditions and /or non-compliance of procedure prescribed as held by the Apex Court in the case of Government of India Vs Indian Tobacco Association {2005 (187) E.L.T. 162(S.C.)}; Union of India Vs Dharmendra Textiles Processors {2008 (231) E.L.T. 3 (S.C.)}. Also it is a settled position that a notification has to be treated as a part of the statute and it should be read along with the Act as held in the case of Collector of Central Excise Vs Parle Exports (P) Ltd {1988 (38) E.L.T. 741 (S.C.)} and Orient Weaving Mills Pvt. Ltd. Vs Union of India {1978 (92) E.L.T. 9 (S.C.)} Constitution Bench.

8. In view of the above, the Government holds that the Orders of the lower authorities are sustainable and are, accordingly, upheld.

9. The revision application is, therefore, rejected.


11/11/24
(Shubhagata Kumar)

Additional Secretary to the Government of India

M/s Bangalore Refinery Private Limited,
No.6/1, Plot No. 20-A, KIADB Main Road,
1st Cross, 1st Phase, Peenya Industrial Area,
Bengaluru
Karnataka-560058.

G.O.I. Order No. 03 /24-CX dated 11-01-2024

Copy to:

1. The Commissioner of Central Goods & Services Tax (North West), 2nd Floor, BMTC Bus Stand Complex, Shivaji Nagar, Bengaluru-560051.
2. The Commissioner of Central Tax (Appeals-II), Bengaluru, Traffic & Transit Management Centre, BMTC Bus Stand, Domluru, HAL Airport Road, Bengaluru-560071.
3. PPS to AS(RA).
4. Guard file.
5. ~~Spare Copy.~~
6. Notice Board.

ATTESTED



रीतेश कुमार / RITESH KUMAR
अधीक्षक / Superintendent (R.A. Unit)
वित्त मंत्रालय / Ministry of Finance
राजस्व विभाग / Department of Revenue
Room No. 605, 6th Floor., B-Wing
14, Hudco Vishala Building, Bhikaji Cama Place,
New Delhi-110066