

**SPEED POST**



F. No. 195/136/SZ/2018-R.A.  
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...06/2/24

Order No. 04/2024-CX dated 06-02-2024 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 Applications filed under section 35 EE of the Central Excise Act, 1944, against the Order-in-Appeal No. GUN-EXCUS-000-APP-242-17-18 dated 20.03.2018, passed by the Commissioner of Central Tax & Customs (Appeals), Guntur, Sub-Office @ Visakhapatnam.

Applicant : M/s Nutra Specialities Pvt. Ltd., Nellore.

Respondent : The Commissioner of Central Goods & Service Tax, Guntur .

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**ORDER**

Revision Application No. 195/136/SZ/2018-R.A. dated 18.06.2018, has been filed by M/s Blue Mount Textiles, Mettupalayam (hereinafter referred to as the Applicant), against the Order-in-Appeal No. GUN-EXCUS-000-APP-242-17-18 dated 20.03.2018, passed by the Commissioner of Central Tax & Customs (Appeals), Guntur, Sub-Office @ Visakhapatnam. The Commissioner (Appeals) has, vide the impugned Orders-in-Appeal, upheld the Order-in-Original No. 54/2015-CE (R) dated 23.12.2015, passed by the Deputy Commissioner of Central Excise, Nellore Division.

2. Brief facts of the case are that the Applicant was earlier a 100% Export Oriented Unit with Registration No. as AACCN1943QEM001. On 17.03.2015, the Applicant got itself debonded after paying the applicable duties on imported and indigenous capital goods, finished goods, raw material etc. lying in stock and emerged as a new DTA unit with a new registration No. AACCN1943QEM003. Subsequently, the Applicant exported some of their debonded goods vide ARE-1 No. 021/15-16 dated 22.04.2015, ARE-1 No. 033/15-16 dated 29.04.2015 and ARE-1 No. 034/15-16 dated 29.04.2015. Thereafter, the Applicants filed refund applications in respect of exports made under ARE-1 No. 021/15-16 dated 22.04.2015 for Rs. 22,263/- , ARE-1 No. 033/15-16 dated 29.04.2015 for Rs. 75,819/- and ARE-1 No. 034/15-16 dated 29.04.2015 for Rs. 65,930/-, claiming rebate of Central Excise duty paid for export of goods under Notification No. 19/2004-CE(NT) dated 06.09.2004. The verification report submitted by the jurisdictional Range officer revealed that duty for the goods exported vide the above mentioned ARE-1s has not been paid either through the Account current or through Cenvat Credit Account. Accordingly, three Show cause notices in respect of each ARE-1 were issued the Applicant, proposing to reject the rebate claims. After due process of law, the lower Adjudicating authority rejected all the three rebate claims vide Order-in-Original No. 54/2015-CE (R) dated 23.12.2015 relying on Government of India's decision dated 18.03.2014 passed in revision application No. 195/1217-1218/2011-RA filed by M/s Positive Packaging Industries Ltd. reported vide 2014 (307) E.L.T. 822 (GOI) involving an identical issue. Aggrieved, the Applicants filed an appeal with the jurisdictional Commissioner (Appeals). Commissioner (Appeals) vide the impugned OIA held that the lower adjudicating

authority has rightly relied on the Revisionary Authority's decision and accordingly upheld the OIO and rejected Applicant's appeal. Hence, this revision application.

3. The Revision Application has been filed mainly on the grounds that the appellate authority failed to consider that duty was already paid on the goods exported through the challan when the applicant exited the EOU scheme and the same is not disputed; that the appellate authority has completely overlooked the fact that the original authority has far exceeded and traversed beyond the scope of the show cause notices; that the appellate authority also failed to comprehend that the unit of Applicant remained essentially the same but only its status changed from EOU to DTA unit and that the reliance placed by the appellate authority on the decision of the revisionary Authority in the case reported in 2014 (307) ELT 855(GOI) is erroneous and misplaced for the reason that in the instant case what was paid as duty was only the Central Excise duty and not Customs duty and finished goods were not removed under Rule 19 of CE Rules but under Rule 18 ibid which deals with rebate of duty paid; whereas in the case of Positive Packaging Industries, whose decision has been relied upon by the Appellate Authority and LAA, what was sought to be claimed as refund was the duty of Customs.

4. Personal hearing in the matter was held on 20.11.2023. Sh. Narayanswamy Vishwanathan, Advocate appeared for the Applicant and Sh. Shashi Mohan, Superintendent appeared for the respondent department. Sh. Narayanswamy submitted that the Applicants have paid duty at the time of debonding and there is no ground to seek duty upon the same goods a second time. Sh. Shashi Mohan, Superintendent submitted that the relevant entries in the register should have reflected the goods against which ARE-1s were obtained. Sh. Narayanswamy once again prayed for rebate to be granted as prayed for.

5. The Government has carefully examined the matter. At the outset, the Government observes that the Applicant in the revision application has emphasised that the Central Excise duty paid by them as EOU at the time of debonding should be treated as duty paid by them on the goods exported as DTA unit. Thus, the

issues involved in the instant relevant application to be deliberated and discussed upon are:

- (i) Can goods of an EOU unit debonded after payment of duty be treated as duty paid export goods under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) date 06.09.2004?
- (ii) Admissibility of Credit of duty paid by an EOU unit at the time of debonding to DTA unit.

6. On the first issue the Government observes that in the instant case, the goods were exported by the new DTA unit for which rebate has been claimed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) date 06.09.2004. The subject rebate claim was denied by the original authority on the ground that the Respondents failed to comply with the condition 2 (a) of the notification no. 19/2004-CE (NT) dated 06.09.2004 as no duty was found to have been paid on the goods exported.

6.1 Condition 2 (a) of the notification 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."*

Therefore, in terms of condition 2(a) of the notification under which rebate has been claimed, it is imperative that exported goods must be duty paid. It was reported by the Central Excise Superintendent in his verification report that goods exported vide ARE-1 No. 021/15-16 dated 22.04.2015 for Rs. 22,263/- , ARE-1 No. 033/15-16 dated 29.04.2015 for Rs. 75,819/- and ARE-1 No. 034/15-16 dated 29.04.2015 for Rs. 65,930/- were cleared without payment of duty as duty on those goods has not been paid either through Account Current or debited in RG 23A part II. The Applicant has contended that the duty paid by the EOU unit during debonding should be treated as duty paid on the goods exported by the new emerged DTA unit. It is undisputed that the Applicant paid duty amounting to Rs. 5,93,369/- on EOU stock vide challan no. 00023 at the time of exit from EOU scheme. However, the moot question involved here is as to whether at that time

the EOU was exporting that stock. The answer is no. The EOU was exiting from the EOU scheme to domestic tariff area on payment of applicable customs and excise duty on the imported and indigenous capital goods, raw materials, consumables, spares, fuels, and finished goods in stock at the time of de-bonding in terms of the existing provisions of Exim Policy read with relevant para of Handbook of Procedures. The goods exported on which rebate has been claimed were exported by the emergent DTA unit with a new Registration No. AACCN1943QEM003 and not the earlier EOU having its Registration No. as AACCN1943QEM001. Therefore, the Government holds that the duty paid by the EOU on finished stock was for debonding of the said stock and not for any export and the said duty paid cannot be treated as duty paid on the goods exported by the emergent DTA unit. Further, it has also not been evidenced that the exported goods were the same which were debonded.

6.2 The Government observes that the provisions of rule 18 of the Central Excise Rules, 2002 and the notification 19/2004-CE (NT) 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 judgments of the Hon'ble High Courts as well. Such as 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(a) of the notification no. 19/2004-CE (NT) are mandatory in nature, which the applicant has not complied with.

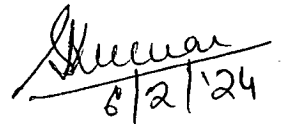
7. On the second issue, from the documents placed on record, the Government observes that the Applicant earlier was an EOU unit with Central Excise registration

No. AACCN1943QEM001 till 17.03.2015 after which it converted to a DTA unit with Central Excise registration No. AACCN1943QEM003 after getting itself debonded. After conversion it became entirely a new unit with a new Central Excise registration number and a new status. The new DTA unit emerged could have taken credit of the duty paid by the earlier EOU unit on the finished goods. There was no embargo or restriction on it in doing so. However, from the record placed, it has come to fore that the goods or related duty amount had not been entered in the respective registers RG23A part I & RG 23A part II of the converted DTA unit.

8. It is settled issue that 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.

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

10. The revision application is, therefore, rejected.

  
6/2/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

To,

M/s Nutra Specialities Pvt. Ltd.,  
Survey No.69, Chandrapadi Village,  
Vinjumur Mandal, Nellore District,  
Andhra Pradesh-524228

Order No. 04/24-CX dated 06-02-2024

Copy to:

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2. Commissioner of Central Goods & Service Tax (Appeals), Guntur, 3<sup>rd</sup> Floor C.R. Building, Kannavarihota, Guntur-522004.
3. Sh. N. Vishwanathan, advocate, Flat-8A, "RAMS" No.26, South Mada Street, Sri Nagar Colony, Saidapet, Chennai-600015.
4. PPS to AS(RA)
5. Guard File.
6. Notice Board
7. Spare Copy

ATTESTED

  
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