

SPEED POST



F. No. 195/139/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... 29/07/24

Order No. 16/2024-CX dated 29-07-2024 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 Nos. 193/2018CT dated 18.04.2018, passed by the Commissioner of Central Tax (Appeals-II), Bengaluru.

Applicant : M/s Essentra India Pvt. Ltd, Bengaluru.

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

.....

ORDER

Revision Application, bearing No. 195/139/SZ/2018-RA dated 01.08.2018, has been filed by M/s Essentra India Pvt. Ltd, Bengaluru (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 193/2018 CT dated 18.04.2018, passed by the Commissioner of Central Tax (Appeals-II), Bengaluru. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, upheld the Order-in-Original No.21/R/2017 dated 06.09.2017, passed by the Assistant Commissioner of Central Tax, NWD-1 Division of CGST Commissionerate-Bengaluru(North-west).

2. Briefly stated, the Applicants herein are manufacturers of Printed and self-Adhesive Tear Tapes falling under CETH 39191000 of the Central Excise Tariff Act, 1985. The Applicant filed a cumulative rebate claim of Rs. 35,76,679/- for the goods exported by them under ARE-1s during the period of June, 2016. After the due process of law, the lower Adjudicating authority vide OIO No.21/R/2017 dated 06.09.2017 sanctioned an amount of Rs.12,48,452/-, whereas, an amount of Rs. 23,28,227/- was rejected. The reason assigned by the lower Adjudicating Authority for rejecting the claim amounting to Rs.23,28,227/- was that sale proceeds in respect of the goods exported were short received and ,thus, rebate claim corresponding to short realization of BRC was rejected.

Aggrieved, the Applicants preferred an appeal with the Commissioner (Appeals). The Commissioner (Appeals) vide OIA No. 193/2018 CT dated 18.04.2018 held that as per RBI guidelines issued by RBI/2014-15/309/AP(D/R) series Circular No.37 dated 20.11.2014, the period of realization and repatriation of export proceeds is nine months from the date of export. It can be further extended by three months. It was further held by the Commissioner (Appeals) that as per the provisions of Foreign Exchange Management Act, the exporter was bound to receive the foreign exchange towards export of goods and services, thus, held that there is violation of RBI Guidelines and FEMA Act and therefore the export has become prohibited. It was further held by the Commissioner (Appeals) that Para 2(g) of notification 19/2004-CE(NT) dated 06.09.2004 stipulates that "the rebate of duty paid on those excisable goods, export of which is prohibited under any law for the time being in force, shall not be made. Accordingly, the Commissioner (Appeals) finally held that lower Authority has rightly rejected the rebate claim of Rs. 23,28,227/- on those consignments where the sales proceed were not received and upheld the OIO.

3. The Revision Applications has been filed, mainly, on the grounds that in terms of Rule 18 of the Central Excise Rules, 2002 or the notifications issued thereunder, there is no requirement of any realization of exports proceeds. The Applicant relied upon the decision of Hon'ble High Court of Allahabad in the case of M/s Jubilant Life Science vs Union of

India {2016 (341) ELT 44 (All)}.Further it has been submitted that Non realization of export proceeds does not in itself make the export goods prohibited as Foreign Exchange Management Act,1999 and the guidelines issued by RBI permits non realization/short realization of export proceeds under certain conditions.

4. Personal hearing in the matter was held on 10.01.2024. Sh. Jayaram Hiragange, Advocate appeared for the Applicants. Sh. Hiragange submitted that the Commissioner(Appeals) has rejected their rebate claim in the OIA by erroneously rfelying on a case that is not applicable in their case. He quoted order No.696-699-CX dated 24.12.2018 passed by the G.O.I where the Revisionary Authority has held that realization of proceeds cannot be a precondition for granting rebate; that taxes should not be exported ; that many cases such as Jubilant Life Sciences , SRF case of 2022 etc. support their case; that there is no FEMA violation for which para 2(g) could be invoked and therefore their application should be allowed by setting aside the OIA. No one appeared for the Respondent department nor has any request for adjournment etc. been received. Therefore, it is presumed that the department has nothing to add in the matter.

5. In this case the rebate claim has been partially rejected to the extent that where the proof of realization of the export proceeds, in form of BRC, has not been produced before the original authority has been disallowed. However, it has not been disputed that the goods in this case were in fact exported out of India. Therefore, the question that arises for consideration is whether a rebate claim can be denied in terms of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT), if export proceeds are not realized.

5.2. In the present case, the appellate authority has proceeded on a premise that by not submitting the BRCs within stipulated period, the Applicant has violated the provisions of FEMA and the guidelines issued thereunder and therefore the exported goods have become prohibited *ab-initio*. Accordingly he has concluded that rebate in respect of prohibited goods is not admissible in terms of para 2(g) of Notification of Notification No. 19/2004-CE(NT) dated 06.09.2004.

The Government observes that Para 8 of the FEMA provides that "Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank". Thus, an exporter is required to take all reasonable steps to realise sale proceeds from an overseas buyer, but does not make this mandatory. There is no express provision that in case the sale proceeds are not

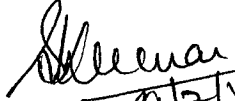
realised by the exporter , the exports made would stand vitiated/"prohibited". The OIA merely states that the sale proceeds were not realized due to non-payment by the buyer but there is nothing on record to indicate that the fault lay with the Applicant for the non-realisation.

5.3 The Government observes that as per Rule 18 *ibid*, where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on 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. Notification No. 19/2004-CE(NT) dated 06.09.2004 has been, accordingly, issued prescribing the 'conditions and limitations' as well as the 'procedure' for grant of rebate. The said notification dated 06.09.2004 does not prescribe the realisation of export proceeds and submission of BRC as a mandatory pre-condition for sanction of rebate claim. In the present case, the original authority has proceeded on a premise that the proof of realisation of export proceeds and submissions of BRC is a mandatory condition for sanction of rebate and, accordingly, held that the rebate cannot be sanctioned if the same is not submitted in terms of the provisions of FEMA. There is nothing in Rule 18 or the notification dated 06.09.2004 to hold that the realisation of export proceeds and submission of BRC is a pre-condition for sanction of rebate. Neither does clause 8.3 of Central Excise Manual dealing with the rebate requires the exporter to furnish any undertaking that BRCs would be furnished within a stipulated period. With regards to realization of export proceeds, the Government observes that the mandate for realisation of the same is stipulated under the above mentioned FEMA and RBI Notifications for which Department of Central Excise is not an enforcing agency. Whereas, for central Excise authorities Rule 18 and notification No. 19/2004-CE(NT) dated 06.09.2004 are the guiding and governing legal provisions.

5.4 The Government further observes that if there is any violation of the FEMA and RBI Notifications for non- realization of the value of the exported goods , the matter should be referred to the concerned Government agencies who are entrusted with the task of enforcing these legal provisions. But these cannot be used by the Central Excise authorities to deny the rebate of duty in light of the referred Rule 18 and notification No. 19/2004-CE(NT) dated 06.09.2004 .The Government observes that the Hon'ble Allahabad High Court has decided on the same lines in the case of Jubilant Life Sciences Ltd. vs. UOI. {2016 (341) ELT 44 (All)}. Further, the Government has also taken a similar view earlier in several cases, including in the case of Salasar Techno Engineering Pvt. Ltd.{2018 (364) ELT 1164 (GOI), Order No. 66/2021-CX dated 31.03.2021 in the case of M/s Taurus Agile Technology Pvt. Ltd., New Delhi and Order No. 15-21/2023-CX dated 05.01.2023 in the case of M/s Unilever India Exports Ltd., Bengaluru etc.

6. In view of the above, the Government holds that the Order-in-Appeal impugned herein cannot be sustained and is accordingly set aside.

7. The Revision Application is allowed with consequential relief.


29/7/24
(Shubhagata Kumar)


Additional Secretary to the Government of India

M/s Essentra India Pvt. Ltd.,
#3(Old Plot No.18&23),3rd Main Road,
Phase-I, Peenya Industrial area,
Yeshwantpur,Hobli-Peenya,
Bengaluru-560058.

G.O.I. Order No. 16 /24-CX dated 29-07-2024

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.


29/7/24
ATTESTED (शैलेन्द्र कुमार मीना)
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi