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SPEED POST

F.No. 198/107/2015—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.....

Order No. 263/2018-CX dated 01-5-2018 of the Government of India, passed by Shri R. P. Sharma, Principal Commissioner & 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.393(SLM)CE/JPR/2015 dated 08.07.2015, passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Jaipur.

Applicant : Commissioner, Central Excise Commissionerate, Alwar.

Respondent : M/s Sage Metals, Ltd., Alwar

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ORDER

A Revision Application No. 198/107/2015-R.A. dated 09/10/2015 has been filed by the Commissioner, Central Excise Commissionerate, Alwar (hereinafter referred to as the applicant) against the Order-in-Appeal No. 393(SLM)CE/JPR/2015 dated 08.07.2015, passed by the Commissioner (Appeals), Central Excise Commissionerate, Alwar, whereby the applicant's first appeal has been rejected.

2. The brief facts leading to the present proceeding before the Government are that the respondent M/s Sage Metals Ltd., Alwar, had filed rebate claim for duty of excise paid on exported goods and the same was rejected by the original adjudicating authority. Being aggrieved, the respondent filed appeal against this order before Commissioner (Appeals) and the same was allowed by the Commissioner (Appeals) vide the above said order-in-appeal dated 08.07.2015.

3. The revenue has filed the present revision application mainly on the ground that respondent had already availed the facility of obtaining duty free materials under Advance Licenses and Notification No. 96/2009-CUS dated 11.09.2009 and, therefore, rebate of duty under Rule 18 of the Central Excise Rules, 2002 could not be given to the respondent.

4. A personal hearing was offered on 09.04.2018 which was attended by Sh. S.C. Kamra, Advocate, for the respondent. He furnished written submissions to emphasise the Order-in-Appeal is just and proper. However, no one availed Personal hearing for the applicant.

5. The Government has examined the matter and has found that the revenue's main case is that the respondent was under obligation to export the finished goods under Bond only and duty of excise was not payable since the inputs had been procured by the respondent under Notification No. 96/2009-Customs dated 11.09.2009. On the other hand the respondent has claimed that they had imported raw materials duty free under Notification No. 96/2009-CUS dated 11.09.2009, they did not procure duty free inputs from indigenous manufacturer under Notification No. 44/2001-CE (NT) dated 26.06.2001 and there was no legal bar for payment of Central Excise duty on the exported good manufactured from duty free imported raw materials. The Government has also found that the applicant has not cited any legal provision to support its above case that the Central Excise duty on the exported goods was paid erroneously. The applicant has made general reference to Notification No. 96/2009-CUS dated 11.09.2009, Notification No. 44/2001 CE(NT) and Rule 19(2) of Cenvat Credit Rule 2002. But these provisions do not provide any condition regarding non payment of Central Excise duty on the exported goods when these were manufactured from the duty free raw materials procured under Advance Licenses. On the contrary, payment of duty on clearance of

manufactured goods is a general rule as per Section 3 of the Central Excise Act and Rule 4 of the Central Excise Rules, 2002. Compulsory availment of exemption from Central Excise duty is stipulated in Section 5A(1A) of the Central Excise Act only when absolute exemption is provided. But the applicant has not made out any such case here. Accordingly, no error can be attributed to the respondent if they paid duty on the exported goods. Thus, even if the respondent had option to export the goods without payment of Central Excise duty under Rule 19 of Central Excise Rules, they were also free to pay duty on the exported goods. As regards availment of cenvat credit and its utilization for clearance of the exported goods, it is obvious that the cenvat credit was availed by the respondent on the inputs etc. other than the duty free goods obtained under Advance Licenses and even the applicant has not doubted the correctness of the cenvat credit availed by the respondent. When the validity of the cenvat credit is not in doubt, the respondent was fully eligible to utilize it for payment of Central Excise duty on exported goods and get the rebate of duty under the Rule 18 Cenvat Credit Rules 2004 and Notification No. 19/2004-CE(NT) dated 06.09.2004. In fact, in the present case, which is entirely relating to rebate of excise duty in respect of finished goods, Notification No. 96/2009-CUS dated 11.09.2009, Rule 19(2) of Cenvat Credit Rules 2004 and Notification No. 44/2001 CE(NT), relied upon by the revenue, are not relevant at all as these provisions can be pertinent only when rebate of duty in respect of inputs is claimed and duty free inputs are procured from indigenous sources. Thus, the applicant has not made out any

case to warrant any revision in the order passed by the Commissioner (Appeals).

6. Accordingly, the Revision application filed by the revenue is rejected.

1.5.18

(R. P. Sharma)
Additional Secretary to the Government of India

The Commissioner
Central Excise Commissionerate,
Alwar

Copy to:-

1. M/s Sage Metals Limited, Neemrana, Alwar.
2. The Commissioner (Appeals) Customs, Central Excise & Service Tax, Jaipur.
3. PA to AS(Revision Application)
4. Guard File

1-5-18

NIRMALA DEVI
(Section officer)
(Revision Application unit)