

REGISTERED
SPEED POST



F.No.195/278/2013-RA
195/815-817/2013-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.....8/8/18.....

Order No. 520-523/18-Cx dated 6-8-18 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 orders-in-appeal No.223(RDN)CE/JPR-I/2012 dated 31.12.12 & 70-72(VC)CE/JPR-I/2013 dated 28.6.13 passed by the Commissioner (Appeals) Jaipur

Applicant : M/s Kaizen Organics Pvt. Ltd., Jaipur

Respondent : Commissioner of CG&ST, Jaipur

ORDER

04 revision applications F.No.195/278/2013-RA dated 28.2.13 & 195/815-817/2013-RA dated 30.8.13 are filed by M/s Kaizen Organics Pvt. Ltd., Jaipur (hereinafter referred to as the applicant) against Orders-in-Appeal No. 223(RDN)CE/JPR-I/2012 dated 31.12.12 & 70-72(VC)CE/JPR-I/2013 dated 28.6.13, passed by the Commissioner of Central Excise (Appeals), Jaipur, whereby the applicant's appeal against the Order-in-Original ordering recovery of rebate of duty under Section 11A of the Central Excise Act was rejected.

2. The brief facts of the case are that the applicant had filed rebate claims for the duty paid on the exported goods which were rejected by the original authority on the ground that the exported goods as mentioned in the commercial invoices, packing lists, shipping bills and bill of lading, which was natural Menthol Powder BP/USP, did not tally with the description of the goods as Menthol Powder in AREs-1 and the central excise invoices. The classification of these two descriptions of the goods also differed as Menthol Powder was classifiable under Chapter 29 and natural Menthol Powder BP/USP was classifiable under Chapter 30 of the Central Excise Tariff Act. Moreover, the applicant did not have any licence from the Drug Controller to manufacture the natural Menthol Powder BP/USP and thereby these goods could not have been manufactured and cleared from the factory of the applicant under the AREs-1. The appeal of the applicant was, however, allowed by the Commissioner (Appeals) vide OIA No.277(GRM)CE/JPR-I/2007 dated 5.9.07 by holding that rebate of duty was admissible on the exported goods. But this OIA was not accepted by the department and a revision application was filed before the Government with a request to set aside the OIA. Allowing the said revision application of the department, the Joint Secretary to the Government of India, vide his Orders No.1585/10-Cx dated 20.10.10, 1420/11-Cx dated 20.10.11 and 485/09-Cx dated 9.12.2009, set aside the above referred OIA and held that the rebate of duty was not admissible to the applicant as the goods exported by them as per shipping bill etc. were entirely different from the goods which had been cleared under the AREs-1. Being aggrieved, the applicant filed 4 Writ Petitions No.2994/2010, 552/2011, 12226/2011 and 1175/2012 before the High Court of Judicature of

Rajasthan at Jaipur with a request to set aside the Government's above mentioned Orders on the ground that they had exported the same goods which had been manufactured and cleared from their factory under AREs-1. In the meantime, proceedings to recover the rebate of duty granted in compliance of the Commissioner (Appeals)'s above Orders were initiated against the applicant and the recovery was confirmed by the Additional Commissioner vide his Orders No.91/2011 dated 25.5.11, 47(CE)JP-1/2012-Addl.Commr dated 8.3.12, 64(CE)JP-1/2012-Addl.Commr dated 16.4.12 and 48(CE)JP-1/2012-Addl.Commr dated 28.3.12. The applicant's appeals against the above mentioned Orders of the Additional Commissioner were also rejected by the Commissioner (Appeals) vide Orders-in-Appeal dated 31.12.12 and 18.6.13 and upheld the Orders regarding recovery of erroneously granted rebate of duty to the applicant. The present revision applications are filed by the applicant against these 2 Orders-in-Appeal with a request to set aside the Orders of the lower authorities regarding recovery of duty from the applicant. The above mentioned 4 Writ Petitions filed by the applicant against the Government of India's Orders are decided by the Hon'ble High Court of Rajasthan vide its Order dated 6.3.13.

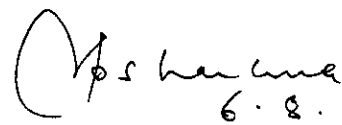
3. A personal hearing was held in this case on 31.5.18 and it was availed by Shri Arun Goyal, Advocate, for the applicant, who pleaded that their Writ Petitions in this matter have been disposed off by the High Court vide Order dated 6.3.13 and accordingly the matter needs to be remanded back to the original authority for re-consideration as per last para of the High Court's Order. However, no one appeared for the respondent either on the earlier hearing date on 19.4.18 or even on 31.5.18 and no request for any other date of the hearing was also received from which it is implicit that the respondent is not interested in availing the personal hearing.

4. The Government has examined the matter and it is observed that the applicant had filed 4 Writ Petitions against Government of India's Order upholding the original authority's Order regarding rejection of the applicant's rebate claims and the same have been dismissed by the Division Bench of the High Court vide its Order dated 6.3.13. The Hon'ble High Court has unambiguously observed at pages 16 and 17 of its Order that the action of the respondents authorities on the ground of mis-

description of the goods by the petitioner cannot be construed to be untenable and the relief claimed by the petitioner is statutory in nature and would be logically available to them only on strict compliance of the prescriptions in connection therewith. Thus, Hon'ble High Court has upheld the Orders of the Government of India with regard to dis-allowing of rebate of duty to the applicant on the ground of non-tallying of the exported goods with the goods cleared from the factory under ARE-1 and no order to remand this matter to the original adjudicating authority has been made by the Hon'ble High Court in its Order dated 6.3.13. But still the applicant has requested the Government of India to remand this matter back to the original authority on the basis of last para of the High Court's Order at pages 17 and 18 wherein an observation has been made that no final decision has yet been taken by the excise authorities on the reply filed by the applicant to the show cause notices and it is open for the petitioner to produce relevant records, documents and other evidences to substantiate its plea of export of goods manufactured by it, making those worthy of the exemption from payment of central excise duty as envisioned by Rule 19 of the Central Excise Rules. However, Government finds that these observation in the last para of the High Court's Order are out of context, not supported by the factual position of the case and is even contradictory to the decision recorded on pages 15,16 and 17 in the paras preceding the last para of the Order in as much as the show cause notices issued earlier to the applicant regarding rejection of rebate of duty and recovery of erroneously granted rebate of duty to the applicant have been decided and no show cause notice is pending at the level of any Revenue authority in this matter. In fact, all the 4 Writ Petitions were filed before the High Court by the applicant only after Government of India had found the applicant not eligible for the rebate of duty and these Orders of the Government have been categorically upheld by the High Court also in its Order by clearly observing that action of the Revenue authorities on the ground of mis-description of the goods by the petitioner cannot be construed to be untenable and the relief claimed by the petitioner i.e. the rebate of duty can be available only on strict compliance of the prescriptions in connection with the rebate claims. Thus, rejection of the rebate claims have been approved by the Hon'ble High Court and the matter has attained finality. Further, the issue in this matter is not regarding exemption

from payment of central excise duty on the exported goods under Rule 19 of the Central Excise Rules as is referred to in the last para of the High Court's Order and the issue is undoubtedly regarding admissibility of rebate of duty under Rule 18 of the Central Excise Rules. Above all, all the Petitions have been dismissed by the Hon'ble High Court by its above Order and thereby the main issue regarding eligibility of the applicant for rebate of duty in these cases stands finally closed. Apparently wrong facts were placed before the Hon'ble High Court to believe that the issue regarding admissibility of rebate of duty was still open and as a result observations unrelated to the case before High Court are made in the last para of the Order dated 6.3.13. But after considering this Order in totality, the Government is convinced that nothing is left in this matter for reconsideration at the end of the original or Appellate Authority. There is no basis for the request of the applicant to remand this matter back to the original authority for re-consideration because the issue already finalized by the High Court cannot be re-opened by any departmental authority. Instead, in the light of the High Court's Order it is now beyond any doubt that the applicant is not eligible for rebate of duty. Consequently the Additional Commissioner orders for recovery of rebate of duty which was earlier granted in compliance of Commissioner (Appeals)'s Orders upheld by the Commissioner (Appeals) vide his Orders dated 31.12.12 and 28.6.13 cannot be assailed in the revisionary proceeding. Therefore, the Government does not find any infirmity in these two Orders of the Commissioner (Appeals) dated 31.12.12 and 28.6.13 and the revision applications of the applicant are found devoid of any merit.

5. Accordingly, the revision applications filed by M/s Kaizen Organics Pvt. Ltd., are rejected.


6.8.18
(R.P.Sharma)

Additional Secretary to the Government of India

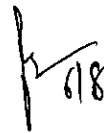
M/s Kaizen Organics Pvt. Ltd.,
G-17 & 18, RIICO Industrial Area,
Bagru Extension-II,
Jaipur

Order No. 520-527/18-Cx dated 6-8-2018

Copy to:

1. Commissioner of Central Goods & Service Tax, New Central Revenue Building, Statue Circle, "C" Scheme, Jaipur-302005
2. Commissioner of Central Customs & Excise (Appeals), Jaipur, New Central Revenue Building, "C" Scheme, Jaipur-302005
3. The Additional Commissioner, Central Excise Commissionerate, Jaipur-I, New Central Revenue Building, Statue Circle, "C" Scheme, Jaipur-302005
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED



(Ravi Prakash)
OSD (Revision Application)