

REGISTERED
SPEED POST



F.No. 195/180/2018-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. 12/4/21.....

Order No. 78/21- CX dated 9-4-2021 of the Government of India passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under Section 35EE of the Central Excise Act, 1944.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 444 (CRM)CE/JDR/2018 dated 15.05.2018 passed by the Commissioner (Appeals), Central Excise & GST, Jodhpur.

Applicant : M/s Mashi Exports, Pali.

Respondent : Commissioner of CGST, Jodhpur

ORDER

A Revision Application No. 195/180/2018-RA (CX) dated 09.08.2018 has been filed by the M/s Mashi Exports, Pali (hereinafter referred to as the applicant) against the Order-In-Appeal No. 444(CRM)CE/JDR/2018 dated 15.05.2018, passed by the Commissioner(Appeals), Central Excise & GST, Jodhpur, wherein the Order-in-Original No. 03/2014-R dated 18.12.2014, passed by the Assistant Commissioner, Central Excise and Service Tax Division, Pali, has been set aside.

2. The brief facts of the case are that the applicant had filed rebate claim of Rs. 1,10,128/- in respect of central excise duty paid on export goods i.e. Henna Powder (not mixed with any other ingredient), under Rule 18 of Central Excise Rules, 2002 read with Notification no. 19/2004-CE(NT) dated 06.09.2004. The original authority sanctioned the said rebate claim. Being aggrieved with the Order-in-Original dated 18.12.2014, the respondent department filed an appeal before the Commissioner (Appeals) on the ground that the exported item, Henna Powder (or paste), not mixed with any other ingredient (Classified under CETH 33059040), is exempted from duty in terms of Notification No. 12/2012-CE dated 17.03.2012. As no duty was payable by the applicant on the export goods, the sanctioned rebate was not admissible. The Commissioner (Appeals) allowed the appeal on the same ground.

3. The instant revision application has been filed on the ground that the exemption from excise duty in respect of their export product, "*Henna Powder or Paste not mixed with any other ingredient*", is not absolute but conditional and hence it was not mandatory for them to avail the exemption under the said notification. Thus, the Order-in-Appeal merits revision.

4. Personal hearing, in virtual mode, was held on 26.03.2021. Sh. Pradeep Jain, Chartered Accountant, attended the hearing on behalf of the applicant. He stated that:-

(i) The exported goods, Henna Powder, is exempt from central excise duty only if no other ingredient was mixed. This being a conditional exemption, it was open to the applicant to avail it or otherwise. They opted not to avail the exemption and paid duty. Therefore, the rebate is admissible.

(ii) Even if duty was paid by mistake, following the ratio of judgment of Hon'ble Gujarat High Court in the case of M/s Arvind Ltd. Vs UOI [2014 (300) ELT 481 (Guj)], the rebate cannot be denied.

None appeared for the respondent department and no request for adjournment has been received. Hence, the matter is taken up for disposal on the basis of facts available on records.

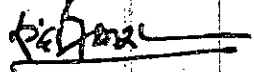
5.1 The Government has examined the matter. It is not disputed by the applicant that the exported product, '*Henna Powder not mixed with any other ingredient*', is not leviable to duty as per Notification no. 12/2012-CE dated 17.03.2012. It has been stressed that the

exemption is conditional as henna powder in pure form is only exempted and duty is to be paid if it is mixed with some ingredient. But the applicant has nowhere mentioned that the henna powder exported was mixed with other ingredient and hence, dutiable. Rather, there is a positive averment that the Henna powder was not mixed with any other ingredient.

5.2 The applicant has cited the case of Arvind Ltd. (supra) in their favour. But in the case of Arvind Ltd., the issue was relating to availment of wrong exemption notification. In the instant case, the item exported is clearly covered by the exemption and there is no ambiguity in the matter. In the case of M/s Fresenius Kabi Oncology Ltd. Vs UOI [2016 (336) ELT 289 (Cal.)] wherein the Hon'ble Calcutta High Court has held that:-

"If the goods exported by the petitioner were covered by the description under clause (A) of the relevant entry, such goods were absolutely exempted from the whole of duty of excise leviable thereon. As a consequence, there was no occasion for the petitioner to pay any duty for removing the goods from the petitioner's manufacturing facility for the export thereof."

6. In view of the above, there is no infirmity in the impugned Order-in-Appeal. The Revision Application is, therefore, rejected.


(Sandeep Prakash)

Additional Secretary to the Government of India

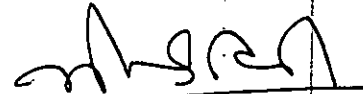
M/s Mashi Exports
Agarwal Lane, Sindhi Colony,
Pali-306 401. (Rajasthan)

Order No. _ _/21-Cx dated 2021

Copy to:

1. Commissioner of Central Goods & Service Tax, Jodhpur.
2. Commissioner (Appeals) Central Excise & GST, Jodhpur.
3. Assistant Commissioner, CGST, Division, Pali.
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

Attested


(Ashish Tiwari)

Assistant Commissioner (Revision Application)