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F.No.195/254/12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6 FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue...19/01/16

Order No. 10/2016-CX dated 15.01.2016 of the Government of India, passed by Smt. Rimjhim Prasad, Joint 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 Order-in-Appeal No. US/506/RGD/11 dated 30.12.11 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-III.

Applicant : M/s Universal Impex, Mumbai.

Respondent : Commissioner of Central Excise, Mumbai-III.

ORDER

This revision application is filed by applicant M/s Universal Impex, Mumbai, against the Order-in-Appeal US/506/RGD/11 dated 30.12.11 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-III with regard to Order-in-Original passed by the Assistant Commissioner of Central Excise (Rebate), Raigad.

2. Brief facts of the case are that the applicant filed rebate claim of duty paid on exported goods under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The rebate claim of Rs.712225/- was rejected on the ground that the applicant failed to follow procedure of self-sealing as provided in para 3(a)(xi) of the Notification No. 19/2004-CE(NT) dated 06.09.2004 and failed to submit triplicate and quadruplicate ARE-1 to range Superintendent vide Order-in-Original No.22/10-11/ACC Rebate/Raigad dated 07.04.2010.

3. Being aggrieved by the said Order-in-Original applicant filed appeal before Commissioner (Appeals) who rejected the same vide the impugned Order-in-Appeal No.US/506/RGD/11 dated 30.12.2011.

4. Now, being aggrieved with the Order-in-Appeal, the applicant has filed this revision application before Central Government under Section 35 EE of Central Excise Act, 1944 mainly on the following grounds:-

4.1 We submit that the triplicate copy of ARE-1 was presented to Khopoli Range Office for getting it duly acknowledged by Excise Official who had to certify the part A of the said ARE-1. The Excise Officials refused to sign the ARE-1.

4.2 In the case of Kumud Drug Pvt Ltd reported in 2010(262) ELT 1177 (Commr. Appl.), it was held that rebate claim on export - Absence of AR-1s - Applicant prepared the ARE-1s that Range Officer refused to sign the same - claims that under such circumstances rebate can be allowed as per several decisions of the Tribunal - documents such as Shipping Bills, Central Excise Invoice submitted showing export of goods and duty payment- Earlier Such ARE-1 signed by RO and rebate granted - fault lies with RO - following the ratio of various Tribunal decisions, it is held that the applicant is entitled to rebate claims - Barot Exports {2006 (205) ELT 321 (Guj)}.

4.3 In the case of Caspro Export before the Commissioner of Central Excise (Appeals), Pune II reported in 2010 (261) ELT 790 (Commr. Appl), it was held that rebate not to be denied on flimsy ground once it has been held that rebate has been filed within time limit, applicant is legally entitled to get back duty paid to government exchequer - Rule 18 of Central Excise Rules, 2002.

4.4 Further, the documents submitted by the applicant establish that the goods had been exported. The applicant in this case has submitted the copies of Shipping Bills. There is an endorsement to the effect that the goods had been exported. There

is no dispute with regard to duty payment and there is no dispute whether the goods had been exported or not. There is only a technical lapse, which may please be condoned.

4.5 The applicant in this case has submitted the Original & Duplicate copies of ARE-1, Part-B of which is duly endorsed by Customs and also submitted copy of Shipping Bill, Bill of Lading and BRC. There is an endorsement on Part-B of ARE-1 that the goods had been exported. There is no dispute with regard to duty payment and there is no dispute whether the goods had been exported or not. There is only a technical lapse of not following the proper procedure as laid down in Para 3 (a)(xi) of the Notification No.19/2004-CE (NT) dated 16.09.2004, which may please be condoned.

5. Personal hearing was scheduled in these cases on 22.06.2015 and 09.11.2015. Hearing held on 22.06.2015 was attended by Shri Hemant Shah on behalf of the applicant, who reiterated the grounds of revision application and also requested to condone the procedural lapses as the same was first time export. Nobody attended hearing on behalf of department. A written submission was also made during the hearing as under:

5.1 The subject export is our first export of goods with dock stuffing and accordingly the first claim for refund of excise duty. The ARE-1 for the said shipment was prepared after the complete consignment was received at JNPT Container Terminal. The stuffing of the containers was done under custom supervision and thereafter the ARE-1 was signed by the custom official at JNPT.

5.2 The ARE-1 was then forwarded by us to excise range office from where the goods were purchased to authenticate the same as required. The authentication of ARE-1 by excise officials is being required to confirm that the excise duty as charged in the invoices have been debited in relevant record by manufacturer.

5.3 The Excise officers refused to sign the ARE-1 as the same was put to them after lapse of 48 hours of removal of goods from manufacturers premises. As this was our first instance of export, our staff had presumed to submit the ARE-1 within 48 hours of stuffing of containers and after authentication by custom officials.

5.4 However after lapse of 4 months, the ARE-1 was signed by excise official, after which we could submit the refund claim.

5.5 In this particular instance we have submitted all the documents leaving no doubt about export of the subject consignment and confirmation have been received from excise authorities about payment of excise duty which is now being claimed back as refund. Due to lack of experience, there have been technical lapses in sequence of getting the ARE-1 signed from respective authorities. There are at least five different documents confirming export of goods and a technical fault of delay in

signing of ARE-1 which is merely to confirm debit of excise duty should not form the ground for refusal of claim.

6. Government has carefully gone through the relevant case records available in case files, oral & written submission and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records, Government observes that the applicant's rebate claim under Rule 18 of Central Excise Rules 2002 was rejected on the ground that the applicant did not submit the triplicate and quadruplicate ARE-1 to jurisdictional Range Superintendent within 24 hours of the date of clearances and also failed to follow the procedure of self-sealing as prescribed in para 3(a)(xi) of the Notification No. 19/2004-CE(NT) dated 06.09.2004. Commissioner (Appeals) upheld the impugned Order-in-Original. Now, the applicant has filed this revision application on the grounds stated in para (4) above.

8. Government observes that as per Notification No.19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 ibid, the manufacturer exporter registered under Central Excise Rules, 2002 and merchant exporter who procure and export goods directly from the factory or warehouse can exercise the option of exporting the goods sealed at the place of dispatch by a Central Excise Officer or under self-sealing.

8.1 The exporter shall present the goods along with 4 copies of application in Form ARE-1 to the Superintendent or Inspector of Central Excise having jurisdiction over the factory of production who shall verify the identity of goods mentioned on the application and the particulars of the duty paid or payable, and if found in order, shall seal each package or container and endorse each copy of the application as token of having such examination done. The various copies of ARE-1 are then distributed as prescribed.

8.2 Where the exporter desires self-sealing and self-certification for removal of goods from the factory, the owner, working partner or Managing Director among others of the manufacturing unit shall certify on all copies of ARE-1 that the goods have been sealed in his presence and shall distribute the various copies as prescribed including to the jurisdictional Superintendent or Inspector of Central Excise within 24 hours of removal of goods.

8.3 From a plain reading of the above provisions it is clear that if goods are cleared from a factory for export under claim for rebate it has to be under the cover of an ARE-1 duly certified for purpose of identity of goods either by the Superintendent/Inspector or the person from the factory as the case may be. This duly verified/certified ARE-1 is then certified by the Customs after due verification/examination that goods have been exported. Government notes that the

verification on ARE-1 prior to clearance from factory and thereafter by the Customs at the time of export helps to establish that the goods which were cleared from the factory are the same which are exported and without having followed the procedure as described in the Notification it cannot be established that goods which were cleared from factory were the ones actually exported or goods exported cannot be correlated with goods cleared from factory.

8.4 Therefore, Government notes that nature of above requirement is both a statutory condition and mandatory in substance which also finds support in various judgments of the Apex Court:

8.4.1 Hon'ble Supreme Court in case of Sharif-ud-Din, Abdul Gani – (AIR 1980 SC 3403) has observed that distinction between required forms and other declarations of compulsory nature and/or simple technical nature is to be judiciously done. When non-compliance of said requirement leads to any specific/odd consequences, then it would be difficult to hold that requirement as non-mandatory.

8.4.2 It is a 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 therein as held by the Apex Court in the case of Government of India Vs. Indian Tobacco Association 2005 (187) ELT 162 (S.C.); Union of India Vs. Dharmendra Textile Processors 2008(231) ELT 3 (S.C.). Also it is settled that a Notification has to be treated as a part of the statute and it should be read along with the Act as held by in the case of Collector of Central Excise Vs. Parle Exports (P) Ltd – 1988(38) ELT 741 (S.C.) and Orient Weaving Mills Pvt. Ltd. Vs. Union of India 1978 (2) ELT J 311 (S.C.) (Constitution Bench).

9. Government notes that it is an undisputed fact on record that in the present case the goods have been cleared by the applicant from the factory of the manufacturer on invoices only between 19.04.2007 to 23.04.2007 and dispatched to JNPT Container Terminal for stuffing. They had prepared the ARE-1 only on 24.04.2007 subsequent to clearance from the factory after the complete consignment was received at JNPT. It was only signed by Customs officials and the triplicate copy was submitted to the jurisdictional Superintendent of Central Excise on 18.02.2008. The impugned goods were thus cleared from the factory without an ARE-1 bearing certification about the goods cleared from the factory either under excise supervision or under self-sealing and self-certification procedure. The conditions and procedure as laid down under Notification No. 19/2004-CE(NT) dated 06.09.2004 for sealing of goods at the place of dispatch were not followed. Correlation can therefore not be said to have been established as to whether the goods that were cleared from the factory, were the same as those exported.

10. Government also observes that the applicant relied on the various judgments regarding procedural relaxation on technical grounds. The point which needs to be

emphasized is that when the applicant seeks rebate under Notification No.19/2004-CE (NT) dated 06.09.2004, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under Rule 18 ibid, the applicant should have ensured strict compliance of the conditions attached to the said Notification. Government places reliance on the judgment in the case of Mihir Textiles Ltd. Versus Collector of Customs, Bombay, 1997 (92) ELT 9 (S.C.) wherein it is held that:

"concessional relief of duty which is made dependent on the satisfaction of certain conditions cannot be granted without compliance of such conditions. No matter even if the conditions are only directory."

11. Government therefore holds that not following the basic procedure of export cannot be treated as a minor procedural lapse for the purpose of availing benefit of rebate of duty on impugned export goods. As such, there is no merit in the plea of the applicant that the lapse on their part be considered as procedural laps of a technical nature which may be condoned.


12. Moreover, the explanation given by the applicant that due to ignorance of law the proper procedure was not followed by them, also does not appear to be credit worthy. In any case, ignorance of law is no excuse not to follow something which is required to be done by the law in a particular manner. This principle has been recognized and followed by the Apex Court in a catena of its judgments.

13. In view of above discussion, Government finds no infirmity in Order of Commissioner (Appeal) and hence upholds the same.

14. Revision Application is rejected being devoid of merit.

15. So, ordered.

M/s Universal Impex,
301, Sai Commercial,
Gonvandi Station Road (E),
Mumbai-400088.


(RIMJHIM PRASAD)
Joint Secretary to the Government of India


Attested:

सुप्रीम अफिसर
सुप्रीम अफिसर
असिस्टेंट (स. अ.)
Under Secretary (RA)

Order No. 10/2016-CX dated 15.01.2016

Copy to:

1. Commissioner of Central Excise, Raigad Commissionerate, Ground Floor, Kendriya Utpad Shulk Bhavan, Sector-17, Khandeshwar, Navi Mumbai-410026.
2. Commissioner of Central Excise (Appeals), Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhavan, Plot No.C-24, Sector-E, Bandra Kurla Complex, Bandra (E), Mumbai-51.
3. The Assistant Commissioner of Central Excise (Rebate), Raigad, Central Excise Maritime Commissionerate, Raigad Ground Floor, Kendriya Utpad Shulk Bhavan, Sector-17, Khandeshwar, Navi Mumbai-410026.
4. Guard File.
5. PA to JS (RA).
6. Spare Copy.

ATTESTED


(Shaukat Ali)

Under Secretary (Revision Application)

शुकात अली
Shaukat Ali
Under Secretary (RA)

