

**REGISTERED
SPEED POST**



**F.No.195/131-133/12-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...31/3/14

ORDER NO. 100-102/2014-CX DATED 26.03.2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D.P.SINGH, 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 the order-in-appeal No.CMB-CEX-000-APP-206-11 dated 23.11.12 passed by the Commissioner of Customs & Central Excise (Appeals), Coimbatore

APPLICANT : M/s Renaissance RTW Asia (P) Ltd., Tirupur

RESPONDENT : Commissioner of Customs & Central Excise, Coimbatore

ORDER

These revision applications are filed by the applicants M/s Renaissance RTW Asia (P) Ltd., Tirupur against the orders-in-appeal No.CMB-CEX-000-APP-206-11 dated 23.11.12 passed by the Commissioner of Customs & Central Excise (Appeals), Coimbatore with respect to orders-in-original No. 129-131/2010 dated 13.12.10 passed by the Deputy Commissioner of Central Excise, Tirupur Division.

2. Brief facts of the case are that M/s. Renaissance RTW Asia (P) Ltd., No.1, Thennampalayam, Tirupur 641604 [hereinafter referred to as M/s. RRAPL] holders of Central Excise Registration No.AADCR0043CXM001 are manufacturer exporter of Knitted Garments falling under Chapter 61 of the Schedule to the Central Excise Tariff Act, 1985. M/s. RRAPL filed the following rebate claims in respect of duty paid on the Knitted Readymade Garments manufactured and exported by them under 29 ARE-1s:

Sl.No	File reference number	Date of filing	Amount of rebate claimed
1.	C.NO.V/60/18/17/2010-RB	02-03-2010	Rs.4,80,416/-
2.	C.NO.V/60/18/18/2010-RB		Rs.2,91,027/-
3.	C.NO.V/60/18/19/2010-RB		Rs.4,92,236/-
TOTAL			Rs.12,63,679/-

2.1 On perusal of the said claims, it has been observed intera alia as follows:

(i) M/s RRAPL have cleared 100% Polyester Knitted Garments or Polyester /Cotton Blended Knitted Garments for export on payment of duty on payment of duty at the rate of 4% adv. whereas the applicable duty was 8% adv. vide Notification No.11/2009-CE dated 07-07-2009.

(ii) They have declared that they paid duty under various debit entries of RG23A Part II but they did not produce any evidences to show that proper duty had been discharged

(iii) They did not file the triplicate and quadruplicate copies of 29 ARE-1s to the jurisdictional Superintendent of Central Excise within 24 hours of removal of the goods as required.

2.2 In view of this position, the rebate claims filed by M/s.RRAPL appeared to be not sustainable under Section 11-B of Central Excise Act, 1944 and as such it appeared that the said claims merit rejection.

2.3 Hence, a notice was issued on 01-09-2010 to M/s. RRAPL requiring them to show cause within thirty days to the Deputy Commissioner of Central Excise, Tirupur Division, Tirupur as to why the aforesaid claims should not be rejected as not sustainable for the reasons discussed in paras 2 and 3 supra.

2.4 As M/s. RRAL averred that they have filed the triplicate copy of ARE-1s to the Superintendent along with ER-3 returns, a reference was made to the Superintendent of Central Excise, Tirupur IV Range to send a factual report on this. The R.O., Tirupur IV Range has sent the triplicate copies of 28 ARE-1s stating inter alia as follows:

2.4.1 Since the assessee have not furnished the serial number of the ARE-1 in their statement meant for debiting the duty, payment of duty in respect of these ARE-1s cannot be verified;

2.4.2 One ARE-1 No.271/06-08-2009 has not been submitted by M/s RRAPL;

2.4.3 As per the Instructions it is essential that excisable goods shall be exported after payment of duty; ARE-1 is the export document which shall be prepared in quintuplicate; when the goods are dispatched by self-sealing and self-certification, the exporter shall send triplicate and quadruplicate copies to the Superintendent of Central Excise having jurisdiction over the factory within 24 hours of removal of goods; M/s. RRAPL have neither prepared the ARE-1 nor furnished the copies of the same to the R.O. within 24 hours of removal of goods; as per their own admission in the course of personal hearing they submitted the ARE-1s after filing the quarterly ER3 which itself was filed long after the due date;

2.4.4 The credit of duty was availed on account on account of Target Plus Scheme; M/s. RRAL did not pay the duties in cash at the time of import; they availed themselves of the Target Plus Scheme and took credit on notional basis; based on the notional credit taken, they debited the duty and claim rebate; these aspects have to be taken into account at the time of sanctioning rebate.

After following the due process of law, the adjudicating authority rejected the said rebate claims.

3. Being aggrieved by the said orders-in-original, applicant filed appeal before Commissioner (Appeals) who upheld the impugned orders-in-original and rejected the appeal.

4. Being aggrieved by the impugned orders-in-appeal, the applicant has filed these revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The applicants respectfully further submit that the orders passed by the First Appellate Authority is against the intended purpose of the provisions of law

governing the subject and without appreciating the facts of the case. It is also submitted that the orders have been passed by stretching the interpretation of the notification beyond the required position and therefore, the same is liable to be set aside on consideration of the points furnished hereunder:-

- The department has not disputed the fact of exporting the goods under the cover of all the 29 ARE-is for which the rebate has been claimed for.
- The payment of duty was done from the accumulated Cenvat Credits on inputs due to exports as the applicants were not able to use such credits since all the clearances effected by the applicants were for exports only.
- It is respectfully submitted that the applicants are eligible for clearing the goods without payment (under Bond/LUT) of duty in terms of Notification No.42/2001 CE(NT) dated 26.6.2001 and also on payment of duty in order to get rebate of the duty on exported goods vide Notification No.19/2004 CE(NT) dated 6.9.2004. The applicants have paid duty at the rate of 4% adv. instead of 8% adv. (the tariff rate prevailed at the time of export in respect of the exported good) so as to cover the exports both under Bond/LUT and on payment of duty.
- In the circumstances, the applicants paid 50% of the effective rate from the accumulated credits and adjusted the balance towards Bond/LUT. The adjudicating authority has decided that this is not permissible and acceptable in the absence of any circular/notification or rule to this effect.
- It is submitted that there are no rules/circulars/notifications contrary to this also. Both the notifications are open and the applicants can very well opt for both the notifications. The applicants did not hide any fact from the knowledge of the department.

- After paying 4% of Adv. on exported goods the applicants have sought for rebate of that amount only and not more than that.
 - The entire export activities were with the knowledge of the department and the applicants were filing the returns in form ER3s for every quarter. The fact of filing ER3s on quarterly basis has been admitted by the adjudicating authority in the Order in Original itself.
 - If the procedure of paying 50% of duty from Cenvat Credit accumulation and balance towards Bond/LUT was not correct, the same should have been objected by the department immediately on filing the ER3s. The objection has been made only when the rebate claim has been filed.
 - It is submitted respectfully that, various higher appellate forums and the Honourable higher courts of law that rebate should not be denied on technical grounds and the exporters should not be made to run from pillar to post. In this regard the Honourable GOI in the case of In re: Non-ferrous materials Technology Development centre by its order in revision 1994(71) E.L.T. 1081 (G.O.I) had held that "It is a trite law rebate of duty on export should not be denied for technical breach of some conditions. "Non-observance of procedure is not a ground for denial of rebate claim.
5. Personal hearing was scheduled in this case on 14.2.14 and 20.3.14. Personal hearing held on 20.3.14 at Chennai was attended by Shri R.Arumugam, Consultant on behalf of the applicant who reiterated the grounds of revision application. Nobody attended hearing on behalf of the respondent department.
6. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned orders-in-original and orders-in-appeal.
7. On perusal of records, Government observes that in the instant cases, applicant had paid duty on the goods cleared for export @4% whereas duty was payable @8% in

terms of Notification No.11/2009-CE dated 7.7.09. Applicant had claimed rebate claim of duty paid @4% and contended that portion of exports cleared without payment of duty may be considered as partly cleared under Notification No.42/2001-CE(NT) under LUT/Bond. The triplicate copy of ARE-1 was also not submitted to prove the payment of duty. AS such, the original authority rejected the said rebate claims. Commissioner (Appeals) upheld the impugned orders-in-original. Now the applicant has filed these revision applications on the grounds stated above.

8. Government notes that applicant has not paid the proper duty @8% on the said goods though the effective rate of duty was 8%. Applicant has contended that part of the consignment of said exported goods may be treated as cleared under Notification No.42/01-CE(NT) under LUT as manufacturer is entitled to clear excisable goods for export either on payment of duty under Rule 18 or without payment of duty under Rule 19 of Central Excise Rules 2002. In this regard, it is observed that the said both scheme are governed by separate rule and notifications. In order to avail a particular scheme, the claimant has chosen a particular scheme of his choice and then follow the conditions and procedure as laid down in the relevant rule and notification. Once applicant has chosen a scheme he cannot switch over to the other subsequently. In this case he had chosen to export the excisable goods on payment of duty under rebate claim in terms of Rule 18 of Central Excise Rules 2002 read with Notification No.19/04-CE(NT) dated 6.9.04. But he has failed to pay the appropriate duty at the applicable effective rate of duty. The fact is not disputed by the applicant.

8.1 Applicant's claim for treating part clearances under bond/LUT without payment of duty cannot be accepted since applicant had opted for clearance of goods on payment of duty under claim of rebate. Moreover, applicant had not executed any LUT before the central excise authorities. So this pleading cannot be accepted.

8.2 Further the payment of duty is verified by Central Excise Range Superintendent on the triplicate copy of the ARE-1 form. In this case applicant did not prepare and

send the triplicate copy to the Range Superintendent. In this regard, adjudicating authority has stated in para 6 of his order as under:

"6. As M/s. RRAL averred that they have filed the triplicate copy of ARE-1s to the Superintendent along with ER-3 returns, a reference was made to the Superintendent of Central Excise, Tirupur IV Range to send a factual report on this. The R.O., Tirupur IV Range has sent the triplicate copies of 28 ARE-1s stating inter alia as follows:

6.1 Since the assessee have not furnished the serial number of the ARE-1 in their statement meant for debiting the duty, payment of duty in respect of these ARE-1s cannot be verified;

6.2 One ARE-1 No.271/06-08-2009 has not been submitted by M/s RRAPL;

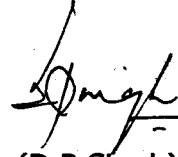
6.2 As per the Instructions it is essential that excisable goods shall be exported after payment of duty; ARE-1 is the export document which shall be prepared in quintuplicate; when the goods are dispatched by self-sealing and self-certification, the exporter shall send triplicate and quadruplicate copies to the Superintendent of Central Excise having jurisdiction over the factory within 24 hours of removal of goods; M/s. RRAPL have neither prepared the ARE-1 nor furnished the copies of the same to the R.O. within 24 hours of removal of goods; as per their own admission in the course of personal hearing they submitted the ARE-1s after filing the quarterly ER3 which itself was filed long after the due date;"

In the said report, Range Superintendent has stated that assessee has not furnished serial number of the ARE-1 in their statement meant for debiting duty and payment of duty in respect of said 28 ARE-1 cannot be verified. Further, they had not submitted ARE-1 No.271/6.8.09. Moreover the duty debited as per ER-3 return in the month of July to December 2009 does not tally with the duty shown debited as per ARE-1.

9. In view of above position the lower authorities have rightly held that it was not possible to confirm the payment of duty in these cases. The fundamental requirement for determining admissibility of rebate claim is that export of duty paid goods is proved beyond doubt. In this case the duty paid nature of goods is not proved and therefore rebate claim are rightly held inadmissible to the applicants under Rule 18 of Central Excise Rules 2002 read with Notification No.19/04-CE(NT) dated 6.9.04. Government does not find any infirmity in the impugned orders-in-appeal and therefore upholds the same.

10. The revision applications are thus rejected being devoid of merits.

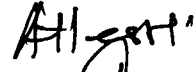
11. So ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

M/s Renaissance RTW Asia (P) Ltd.
No.1, Thennampalyam
Tirupur-641604



(भागवत शर्मा/Anil Kumar Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
दिल्ली मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

GOI Order No. 100-102/14-CX dated 26.03.2014

Copy to:

1. The Commissioner of Central Excise, 6/7, ATD Street, Race Course Road, Coimbatore-641 018.
2. Commissioner of Customs, Central Excise & Service Tax (Appeals) 6/7, ATD Street, Race Course Road, Coimbatore- 641 018.
3. The Assistant Commissioner of Customs, Central Excise & Service Tax, Tirupur Division, Tirupur.
4. Guard File.
- ✓ 5. PS to JS (RA)
6. Spare Copy

ATTESTED



(B.P.Sharma)
OSD (Revision Application)