F.No.195/580/12-RA

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GOVERNMENT OF INDIA
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DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005.

F NO. 195/580/12-RA/1461 Date of Issue: 03.04.2018.

ORDER NO. 107 /2018/CX(WZ)/ASRA/MUMBAI DATED 28.03.2018, OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT,1944.

Applicant : M/s Ravi Dyeware Co.Ltd., Mumbai.

Respondent : Commissioner, Central Excise, Raigad

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against Order-in-Appeal No. US/151/RGD/ 2012 dated 29.2.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-II Commissioner of Central Excise, Raigad.

ORDER

This revision application is filed by M/s Ravi Dyeware Co.Ltd., Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/151/RGD/2012 dated 29.2.2612 passed by the Commissioner of Central Excise (Appeals), Mumbai-II with respect to Order-in-Original No. 08/10-11/AC(Rebate)/Raigad dated 12.04.2011 passed by the Assistant Commissioner, of Central Excise (Rebate), Raigad.

2. Brief facts of the case are that the applicant, a merchant exporter, has exported the goods manufactured by M/s Harish Chemical Engg. Enterprises and filed a rebate claim under Rule 18 of the Central Excise Rules, 2002 read with Notification No.19/2004-CE(NT) dated 6.9.2004. The original authority rejected the rebate claim on the ground that the goods were not exported directly from factory or warehouse in terms of condition stipulated in para 2(a) of the Notification No.19/2004-CE(NT) dated 6.9.2004.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals) who rejected the same.

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

4.1 The Commissioner (Appeals II) Central Excise, Mumbai has failed in appreciating that the rebate claim of Rs.233604/- was rejected by the Respondent without issuance of Show Cause Notice to the Applicant before rejecting the rebate claim and thus the Respondent had not given any natural justice to the Appellant before deciding the issue in dispute. The letter under F.No.V-15 Reb/Ravi Dyeware/RGD/10/15760 dated 26.11.2010 addressed to the Applicants by Respondent (Exhibit 'D') cannot be treated as

a Show Cause Notice. It has been held in case of HEG Ltd. V/s Commisssioner (Appeals) 2001(137) ELT 992b that proper Show Cause Notice not issued before rejection of Applicant's claim, Applicants given only a letter fixing date of personal hearing being given to Applicants nor a Show Cause Notice being issued Principles of Natural justice violated. Also held in the case of J.K. Synthetics Ltd. V/s Union of India 2010 (19) STR 295 (Del.) Show Cause Notice contents of issuance of Show Cause Notice under Rule 10 of erstwhile Central Excise Rules, 1944 in particular format is a mandatory requirements of law - Letter issued by Department does not specify amount sought to be recovered from petitioner.

4.2 The rebate sanctioning authority should point out deficiency of any in the claim within 15 days of lodging the same and ask the exporters to rectify the same within 15 days queries deficiency shall be pointed out at one go and piecemeal queries should be avoided. The claim of rebate of duty on export of goods should be disposed of within a period of two months. The respondent did not adhere to the instructions contained in the said circular but rejected the claim offer one and half year abruptly technically on the ground the condition 2 (a) laid down under Notification 19/2004 CE (NT) dated 06.09.2004 was violated.

4.3 It is submitted that the condition of direct exports from the factory in Notification No. 19/2004 CE (NT) dated 06.09.2004 has been waived in pursuance of Circular No. 294/10/94 CX dated 30.01.1997 issued under F. No. 209/2/97- CX 6. In the instant case the goods were identifiable and also the same were stuffed in the container along with the goods of the manufacturer and were stuffed after obtaining permission from custom authorities under

Supervision of the Excise Officer after obtaining permission from the Customs. Hence the charge of the respondent regarding contravention of condition 2 (a) of the Notification 19/2004 (CX) NT dated 06.09.2004 is baseless.

4.4 The respondent has failed to appreciate that the total quantity of 12000 Kgs. of excisable goods removed by the manufacturer from their factory against ARE I No. 33 dated 13.09.2008, had been duly exported by the applicant on 25.09.2008, as well, as on 24.11.2008, respectively and there is no dispute raised by the Department relating to the fact of export of the said goods by the Applicant. Also, there is no dispute that the manufacturer M/s Harish Chemical Engineering Enterprise, had paid Central Excise Duty to the tune of Rs.2,33,604/- (Rupees Two Lakhs Thirty Three Thousand Six Hundred Four Only) on the said excisable goods and the entire procedure laid down under Rule 18 of the Central Excise Rules, 2002 had been meticulously followed by the applicants in effecting export of the said goods.

4.5 The applicant has relied upon various case laws in favour of their contention.

5. Personal Hearing was held on 8.2.2018 was attended by Shri Atul Pachkhede, Consultant of M/s Ravi Dyeware Co. Ltd. the applicant who reiterated the submissions filed through revision application along with the written submissions of case laws filed. It was pleaded that Order-in-Appeal be set aside and Review Application be allowed. Nobody attended the hearing on behalf of department.

6. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned order-in-original and order-in-appeal.

7. On perusal of case records, Government observes that in the impugned Order-in-Appeal, it has been held that rebate claims were not admissible as the goods were not exported direct from factory or warehouse as laid down in condition 2(a) of Notification No.19/04-CE(NT) dated 6.9.04. The applicant has filed this revision application on grounds mentioned in para (4) above.

8. The department has contended that the applicant has not exported the goods directly from factory or warehouse and as such, violated the condition 2(a) of the Notification No.19/2004-CE(NT). The applicant has stated that the goods can be exported from factory or warehouse or any other place permitted by the CBEC by a general or special order. The CBEC vide Circular No.294/10/97-Cx dated 30.1.1997 has prescribed the procedure for export of goods from place other than factory or warehouse. Applicants have stated that they have complied with requirement of the said circular dated 30.1.1997

9. Government notes that the admissibility of these rebate claims mainly depends on the compliance of provisions and procedure laid down in CBEC Circular dated 30.01.1997. The relevant paras of said Circular are as under:

> *"8.1 An exporter; (including a manufacturer-exporter) desiring to export duty paid excisable goods (capable of being clearly identified) which are in original factory packed condition/not processed in any manner after being cleared from the factory stored outside the place of manufacturer should make an application in writing to the Superintendent of Central Excise incharge of the Range under whose jurisdiction such goods are stored. This application should be accompanied with form AR4 duly completed in sixtuplicate, the invoice on which they have purchased the goods from the manufacturer or his dealer and furnish the following information :*
>
> *(a) Name of Exporter*

(b) Full description of excisable goods along with marks and/or numbers

(c) Name of manufacturer of excisable goods

(d) Number and date of the duty paying document prescribed under Rule 52A under which the excisable goods are cleared from the factory and the quantity cleared.

(e) The rate of duty and the amount of duty paid on excisable goods.

8.2 The AR-4 form should have a progressive number commencing with Sl. No. 1 for each financial year in respect of each exporter with a distinguishing mark. Separate form should be made use of for export of packages/consignments cleared from the same factory/warehouse under different invoices or from the different factories/warehouses. On each such form it should be indicated prominently that the goods are for export under claim of rebate of duty.

8.3 On receipt of the above application and particulars, the particulars of the packages/goods lying stored should be verified with the particulars given in the application and the AR-4 form, in such manner and according to such procedure as may be prescribed by the Commissioner.

8.4 If the Central Excise Officer deputed for verification of the goods for export is satisfied about the identity of the goods, its duty paid character and all other particulars given by the exporter in his application and AR-4, he will endorse such forms and permit the export.

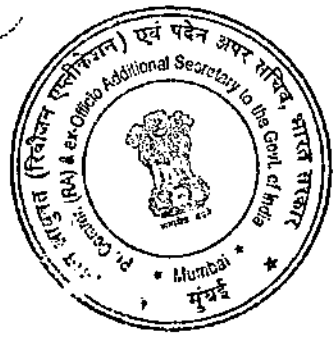
8.5 The exporter will have to pay the supervision charges at the prescribed rates for the services of the Central Excise Officer deputed for the purpose.

8.6 The disposal of different copies of AR4 forms should be in the following manner :

(i) the original and duplicate copies are to be returned to the exporter for being presented by him along with his shipping bill, other documents and export consignment at the point of export.

(ii) triplicate and quadruplicate copies to be sent to the Superintendent In-charge of the Range in whose jurisdiction the factory from which the excisable goods had been originally cleared on payment of duty is situated. That Superintendent will requisition the relevant invoice duty paying document which the manufacturer shall handover to the Superintendent promptly under proper receipt and the Superintendent will carry out necessary verification, and certify the correctness of duty payment on both triplicate and quadruplicate copies of AR4. He will also endorse on the reverse of manufacturers' invoice "goods exported - AR-4 VERIFIED", (and return it to the manufacturer under proper receipt). He will forward the triplicate copy to the Maritime Commissioner of the Port from where the goods were/are exported. The quadruplicate copy will be forwarded to his Chief Accounts Officer. The Range Superintendent will also maintain a register indicating name of the exporter. Range Division/Commissionerate indicating name of the exporter's godown 'warehouse etc.' are located and where AR-4 is prepared, AR-4 No. and date, description of item corresponding invoice No. of the manufacturer; remarks regarding verification, date of dispatch of triplicate and quadruplicate copy.

(iii) the quintuplicate copy is to be retained by the Superintendent In-charge of the Range from where the goods have been exported for his record.



(iv) the sixtuplicate copy will be given to the exporter for his own record.

8.7 The goods, other than ship stores, should be exported within a period of six months from the date on which the goods were first cleared from the producing factory or the warehouse or within such extended period (not exceeding two years after the date of removal from the producing factory) as the Commissioner may in any particular case allow, and the claim for rebate, together with the proof of due exportation is filed with the Assistant Commissioner of Central Excise before the expiry of period specified in Section 11B of the Central Excise Act, 1944 (1 of 1944).

8.8 The rebate will be sanctioned, if admissible otherwise after following the usual procedure."

10. Government observes that in this case the applicant cleared the goods from manufacturer M/s Harish Chemical Engineering Enterprises at Ankleshwar and brought the said goods at their premise at Taloja, which was admittedly not a registered warehouse. However, the above said circular dated 30.1.1997 provides for the export of goods from a place other than factory or registered warehouse subject to compliance of procedure laid down therein. Hence, rebate claims cannot be rejected merely on the grounds that the goods have not been exported directly from the factory or warehouse. The whole case is required to be seen in context of compliance of the said circular dated 30.1.1997. The department has not brought out any violation of circular dated 30.1.1997 by the applicant. Moreover, the applicant kept the department informed that they are routing their goods through Taloja godown. The applicant got their goods stuffed in presence of excise authority. As such, the applicant cannot be alleged to have violated the provisions contained in the above said circular.

11. Government in the instant case relies on GOI's Order No.12-30/2012-CX dated 12.01.2012 Re-M/s Cipla Ltd. wherein Revisionary Authority observed as under :

"8. On perusal of case records, Government observes that department has mainly contested the impugned orders in appeal on the ground that instant rebate claims are not admissible as the goods were not exported direct from factory or warehouse as laid down in condition 2(a) of Notification No.19/04-CE(NT) dated 06.09.04 and the relaxed procedure laid down in CBEC Circular No.294/10/97-Cx dated 30.01.97 relaxing the above said condition is not applicable to the said goods as the same are not easily identifiable.

9. As against above, the respondent exporter herein has submitted that they neither had any intention nor had actually contravened any of the stipulated provision or procedure in its true sense. It is further stated that entire exercise was for the sole purpose of consolidation of export goods into proper full container load cargo for shipment through proper respective ports and all the export documents were accordingly synchronized with that of Central Excise clearance documents and the minor differences (if any) which remain non-harmonized were only of limited procedural errors category which may be excused and should not be used against their substantial claims of export benefit. The respondent exporter further gave his explanation to the said non-observance of stipulated provisions by way of providing his explanation for the interpretation of relevant Notification/CBEC Circular. The respondent has not disputed the fact that goods were exported from a place other than factory of manufacture. But they are mainly contending that they have fulfilled all the procedural requirements of CBEC Circular dated 30.01.97.

10. Government notes that the admissibility of these rebate

claims mainly depends on the compliance of provisions and procedure laid down in CBEC Circular dated 30.01.97. The relevant paras of said Circular are as under:

"8.1.....

8.8....."

11. In these cases, the ARE-I form prepared by both manufacturer and respondent M/s Cipla Ltd., contain the description of export goods, Batch/Mark No. duty paid details, Central Excise Invoice & Commercial Invoice No. The Shipping Bill has the Reference of relevant ARE-I Nos. The Part-II on reverse of ARE-I contains the Customs Certification about export of goods vide relevant Shipping Bills. Customs has certified that goods mentioned on ARE-I have been exported vide relevant Shipping Bill. At the same time Part-1 on reverse side of ARE-I has the endorsement of Central Excise Officers, which denotes that identity of goods and its duty paid character is established. The Central Excise Officers are required to verify the particulars of packages/goods lying /stored with the particulars given in ARE-I Form and if the Central Excise Officer is satisfied about identity of goods, its duty paid character and all the particulars given by the exporter in his application, he will endorse the ARE-I Form and permit export. In this case no contrary observation is made by Central Excise Officers and therefore, they have made endorsement in ARE-I after doing the requisite verification and allowed exports. In view of this position, Government finds no force in the contention of department that Central Excise Officers have not made verification as required under CBEC Circular dated 30.01.97. Department has not stated as to what processing was done at the godown. Respondent party has also not claimed that they have done any processing at the godown. The certification by Central Excise Officers in ARE-I is certainly required to be done after verifying that goods are the

original packing. The Central Excise Officers have nowhere pointed out that goods were not in original packing. So the contention of department that goods were not in original packing is not sustainable.

12. The respondent has submitted Index Chart /Co-relation Chart of Central Excise Invoices/ARE-I with that of Export Invoices / Shipping Bills and Lorry Receipt / GRN/ Delivery Challans. Government on careful study of said co-relation Chart, notes that the export goods have unique Batch number for each export item. The same export order No.is mentioned on the Central Excise Invoice and Commercial Export Invoice. The ARE-I has the detail of Central Excise Invoice and Commercial Invoice. The cross reference of ARE- 1 Invoice and Shipping Bills is available on ARE-I and shipping bills. The ARE-I duly certified by Central Excise Officers and Customs Officers leave no doubt that duty paid goods cleared from factory have been exported as there is no reason to doubt the endorsement of Customs Officers on the ARE-I Form. Moreover, the clear identification No. in the Form of Batch no. is available on each package and therefore exported goods are obviously identifiable In number of cases the triplicate copy of ARE-Iis verified by jurisdictional Central Excise

13. It is also seen that the respondent exporter might have failed in taking proper prior permission / registration upto the full satisfaction of the applicant Commissioner herein but it is there that he always kept the jurisdictional Central Excise office well informed and has invariably taken signatures of Central Excise authorities as well as written permission from Customs authorities for the purpose of impugned exports in a manner as above. Government observes that substantial compliance of provisions of above said Circular dated 30.01.97 has been done by the respondent as discussed above. Government also notes that although there are a catena of judgements that the substantial exports benefits should not be denied on mere procedural infractions until and unless there is some evidence to point out major violation to defraud the Government revenue, but for this

case, Government wants to keep into consideration the below mentioned observations of the Hon'ble High Court of Gujarat, Ahmedabad vide order dated 21.07.2011 in SCA No. 4449 / 2011 in the matter of M/s Shakti Shipping International vs. UOI where similar case of export of goods as having not done directly from the factory of manufacture but goods procured / stored in distributor's (other) premises and jurisdictional Central Excise Officers have physically verified the goods and endorsed the ARE-1 form, and in similar situation Hon'ble High Court has held that after such substantial compliance and after such endorsement on relevant documents by the Central Excise / Customs Authorities, the exporter should not be deprived of consequential export benefits on the pretext of procedural lapses. In the said case Hon'ble High Court has set aside this Revisionary Authority's order dated 03.12.2011 and allowed the rebate claims.

14. In view of the above circumstances, Government finds its self conformity with the views of the Commissioner (Appeals) herein that the rebate claims of the respondent exporter herein are admissible on the goods exported are identified with the goods cleared from factory of manufacture on payment of duty. The respondent party herein has put forth Index and other detailed (photo copies) of various documents for establishing co-relation of impugned export goods. As this authority could not cross check the same w.r.t. the original records, so the actual verification of relevant documents maybe done by adjudicating authority at this level to confirm the genuineness and correctness of such documents".

12. Government observes in the present case that the applicant had submitted all required documents viz. ARE-1, Excise Invoice, Shipping Bill, Bill of Lading & Mate Receipt etc. to the original authority and there is no doubt about export of goods. From the copies of export documents, Government observes that the details regarding quantity, net weight, gross weight

description etc. are exactly tallying impugned ARE-1 and shipping bills; that the Part-II on reverse of ARE-1 contains the Customs Certification about export of goods vide relevant Shipping Bills; that Customs has certified that goods mentioned on ARE-1 have been exported vide relevant Shipping Bill; that at the same time Part-I on reverse side of ARE-1 has the endorsement of Central Excise Officers, which denotes that identity of goods and its duty paid character is established. The Central Excise Officers are required to verify the particulars of packages/goods lying/stored with the particulars given in ARE-1 Form and if the Central Excise Officer is satisfied about identity of goods, its duty paid character and all the particulars given by the exporter in his application, he will endorse the ARE-1 Form and permit export. In this case no contrary observation is made by Central Excise Officers and therefore they have made endorsement in ARE-1 after doing the requisite verification and allowed exports. The certification by Central Excise Officers in ARE-1 is certainly required to be done after verifying that goods are in original packing. The Central Excise Officers have nowhere pointed out that goods were not in original packing. The cross reference of AREs-1 and Shipping Bills is available on AREs-1 and shipping bills. The AREs-1 duly certified by Central Excise Officers and Customs Officers leave no doubt that duty paid goods cleared from factory have been exported as there is no reason to doubt the endorsement of Customs Officers on the ARE-I Form.

13. Government also notes that there are a catena of judgements that the substantial exports benefits should not be denied on mere procedural infractions until and unless there is some evidence to point out major violation to defraud the Government revenue. Further, Government has decided identical issues in a catena of its judgements, wherein it has been held that in case where the goods could not be exported directly from factory or warehouse in terms of the Notification No. 19/2004-C.E.(N.T.) dated, substantial compliance of aforesaid circular dated 30.01.1997 and resultant export of duty

paid goods, rebate claims have to be held admissible. In view of above position, Government holds that rebate claim is admissible to the applicants.

14. In view of above discussions, Government sets aside the impugned Order-in-Appeal and allows revision application.

15. Revision application thus succeeds in above terms.

16. So, ordered.

28/3/18

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 107 /2018-CX (WZ) /ASRA/Mumbai DATED 28.03.2018.

True Copy Attested

To,

M/s Ravi Dyeware Co.Ltd,
121 Atlanta Nariman Point,
Mumbai-400021

28.3.18
एस. आर. हिरुलकर
S. R. HIRULKAR
CA-C)

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5thFloor,CGO Complex, Belapur, Navi Mumbai, Thane..
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Belapur Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.