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F.No.195/1477/12-RA.CX
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue 29/1/16

ORDER NO.12/2016-CX DATED 25.01.2016 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 the Order-in-Appeal No. 212-CE/MRT-I/2012dated 24.07.2012 passed by the Commissioner of Central Excise (Appeals), Meerut-I
Applicant	:	M/s Themis Medicare Limited, Haridwar
Respondent	:	Commissioner of Customs & Central Excise, Meerut-I

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ORDER

This revision application is filed by M/s Themis Medicare Limited, Haridwar(herein after referred to as applicant) against the Order-in-Appeal No. 212-CE/MRT-I/2012 dated 24.07.2012 passed by the Commissioner of Customs & Central Excise (Appeals), Meerut-I with respect to Order-in-Original No. R-167/2011 dated 26.09.2011, passed by the Assistant Commissioner, Central Excise, Dehradun.

2. Brief facts of the case are that the applicant are engaged in the manufacture of drugs and medicines. They filed rebate claim of duty for Rs. 28,033/- under Notification No. 21/2004-CE(NT) dated 06.09.2004 in respect of the inputs used in the manufacture of their export goods. The rebate sanctioning authority vide Order-in-Original No. R-167/2011 dated 26.09.2011 rejected the rebate claim of Rs. 11,053 on the grounds that the goods excisable goods were cleared for export by them in respect of ARE-2 Nos 12/2010 dated 15.07.2010, 14/2010 dated 12.08.2010 and 22/2010 dated 25.10.2010 are without obtaining prior permission of the Assistant Commissioner of Central Excise to the effect in terms of Notification No. 21/2004-CE(NT) dated 06.09.2004. The applicant is entitled for rebate of duty of input stage only when they have obtained the proper permission of the jurisdictional Deputy/Assistant Commissioner in terms of the relevant provisions of the notification ibid. Thus the applicants were alleged to have contravened the provisions of Notification no. 21/04-CE(NT) dated 06.09.2004 read with chapter 8 of the CBEC's Excise Manual of Supplementary Instructions.

3. Being aggrieved by the impugned Order-in-Original, the applicant filed an appeal before the Commissioner (Appeals), who rejected the same vide Order-in-Appeal No. 212-CE/MRT-I/2012 dated 24.07.2012. The Commissioner (Appeals) on passing the order has observed that the applicant has failed to comply with both the conditions i.e. No. 1 & 2 laid down under Notification no. 21/2004-CE(NT) dated 06.09.2004.

4. Thus, the applicant filed this revision application under Section 35 EE of Central Excise Act, 1944 before the Central Government on the following grounds:

4.1. That the appeal filed by the applicant was not considered on merits. That in the discussion and findings, the Commissioner (Appeals) has mentioned the rebate claim as Rs 75,238/-, whereas the amount of rebate claim was Rs. 28,033/- only. That this could have been considered typographical error only when their submissions were made in point no. 1 of their Appeal would have been included. That their grounds of appeal were not considered, the mentioning of rebate claim amount of Rs. 75,238/- leads to the conclusion that the order was issued without considering their submission made in their appeal.

4.2. That in the last paragraph of the appellate order it has been mentioned that an amount of Rs. 11,056/- as rebate claim is not admissible. Whereas the applicant has sought relief in appeal was to allow the reject amount of rebate claim i.e. Rs. 9860/- out of R. 11,056/-. That the order was issued without taking into consideration the grounds of appeal.

4.3. The applicant has placed reliance on the following case laws:-

- Allanasons Ltd 1999(111)ELT 295 (GOI)
- Krishna Filaments Ltd 2001 (131)ELT 726 (GOI)
- Moderns Process Printers 2006 (204)ELT 632 (GOI)

5. Personal hearing in the captioned case was held on 04.11.2015which was attended by Shri S.B. Lal, Consultant who appeared on behalf of the company and submitted a written submission which is as under:-

5.1. That the applicant seeks relief from the order of the Commissioner (Appeals) under Order-in-Appeal which has been passed relying upon incorrect documents or figures and allegations involving procedural lapses of rectifiable nature.

5.2. That the main allegation of rejection of rebate claim was that the input-output declaration in respect of the exported goods was not filed before manufacture and export of the goods.

5.3. That the procedural lapse was admitted and rectified to the satisfaction of the competent authority which verified and agreed to the input-output ratio. That there was no discrepancy in the amount of the submitted rebate claim.

5.4. The applicant has placed reliance on the following case laws:-

- M/s Murli Agro Products Ltd, Nagpur 2006 (200)ELT 175 (GOI)
- UOI Vs A.V. Narasimhalu 1983 ELT 1534 (SC)
- Order No. 1513-1514/2012-CX dated 05.11.2012 2014 (313)ELT 924 (GOI)

5.5. That the provisions as to filing of declaration are intended to allow the proper officer to verify the correctness of the ratio of input and output mentioned therein and to draw satisfaction that there is no likelihood of evasion of duty. That this satisfaction was in fact , drawn by the proper officer in instant case and needful permission was issued . That the purpose of declaration was met with and therefore the denial is against the spirit of law and is uncalled for.

5.6. That there is no likelihood of evasion of duty even at a date later than the date of export, the benefit of rebate claim is not deniable.

5.7. That Pharmaceutical sector is one of the highly regulated sectors in India. That the detailed composition of the drugs is approved by the Drug Regulator under the provisions of the Drug & Cosmetics Act, 1940 and rules there under which in

turn is accepted by Central Excise authorities to draw reasonable satisfaction. That such declaration was available and rebate claim was filed accordingly.

5.8. That the Government policy for export promotion and the international business practice is not to export taxes and rebate benefits are allowed to exporters to neutralize tax/duty incidence in respect of the export goods. That mere procedural lapse of rectifiable nature cannot land should not take away the benefits announced in terms of larger objectives of export promotion.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records Government observes that in the case under consideration it is an admitted fact that goods have been cleared for export under Rule 18 of the Central Excise Rules, 2002 without following the conditions prescribed under Notification no. 21/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rule, 2002. The rebate claims were thus rejected by the original authority. The Commissioner (Appeals) also rejected the appeal filed by the applicant. Now the applicant has filed this Revision Application on grounds mentioned in para 4 and 5 above.

8. Government finds that the Rule 18 of Central Excise Rules 2002 provides that where any goods are exported, the Central Government may, by Notification, grant rebate of duty paid on such excisable goods or duty paid on material used in manufacture or processing of such goods and the rebate shall be subject to such condition or limitation, if any, and fulfillment of such procedure, as may be specified in the Notification. The said procedure is spelt out in Notification no. 21/2004-CE(NT) as amended and provides for rebate from the whole of the duty paid on excisable goods used in the manufacture or processing of export goods under the said Notification. Fulfillment of the conditions laid down in the notification is mandatory. In the case of applicant they have not complied with conditions and provision of Notification No.21/2004-CE (NT) dated 6/09/2004.

9. Government notes that in the present case, it is an undisputed fact that the applicant, a unit registered with Central Excise, availed benefit of rebate under Rule 18 for inputs used in manufacture of goods for the purpose of export but failed to fulfill the conditions and did not follow the prescribed procedure in respect of some of the ARE 2.

10. In reference to the above, Government first proceeds to examine the conditions stated to be not fulfilled as laid down under Notification No. 21/2004-CE(NT) dated 06.09.2004.

10.1. Government observes that export of goods under claim for rebate on inputs used in manufacture of export goods is governed by Rule 18 of Central Excise Rules, 2002 and Notification No.21/2004-CE(NT) dated 06.09.2004 read with Chapter 8 of CBEC's Central Excise Manual and finds that first condition laid down is that of filing of declaration which states that the manufacturer or processor shall file a declaration with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture, describing the finished goods proposed to be manufactured or processed along with their rate of duty leviable and manufacturing/processing formula with particular reference to quantity or proportion in which the materials are actually used as well as the quality. The declaration shall also contain the tariff classification, rate of duty paid or payable on the materials so used, both in words and figures, in relation to the finished goods to be exported. In the instant case it is a fact on record that the applicant failed to file any such declaration. Though the CBEC Excise Manual of Supplementary Instructions part-V para 3.2 of Chapter 8 simply states that for the sake of convenience and transparency input and output norms notified under EXIM Policy may be accepted, this provision cannot be claimed to do away with the provisions of Notification No. 21/2004-CE(NT). Neither has the applicant at any point prior to export claimed that the input output ratio as per EXIM policy will be followed. The applicant cannot claim the input rebate as a matter of right when he has failed to follow the provisions of Notification No. 21/2004-CE(NT) without giving explanation for any valid reasons for not filing the declaration. In this case applicant has not admitted the occurrence of any unintentional procedural lapse and rather termed the demand of such declaration as illegal and bad in law.

10.2 Another condition laid down under the above referred Notification is that of verification of Input-Output Ratio. The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall verify the correctness of the ratio of input and output mentioned in the declaration filed before commencement of export of such goods, if necessary, by calling for samples of finished goods or by inspecting such goods in the factory of manufacture or process. If after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is satisfied that there is no likelihood of evasion of duty, he may grant permission to the applicant for manufacture or processing and export of finished goods. The condition is of such a nature that the declaration has to be filed and verification of the input output ratio is to be carried out prior to export of goods because once the goods are exported no such verification could be possible to ascertain the correctness.

10.3 Government, therefore, holds that non fulfilling the statutory conditions laid down under the impugned Notification and not following the basic procedure of export as discussed above, cannot be treated as just a minor or technical procedural lapse for the purpose of availing the benefit of rebate on the impugned goods. As

such there is no force in the plea of the applicant that this lapse should be considered as a procedural lapse of technical nature which is condonable in terms of case laws cited by applicant.

11. Government notes that nature of above requirement is both a statutory condition and mandatory in substance for removal of goods for exports under claim for rebate of duty either on the final goods exported or on the inputs contained therein.

11.1 It is in this spirit and this background that 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.

11.2 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).

11.3. Government notes 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. 21/2004-NT dated 06.09.2004, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under such Notification No.21/2004-NT dated 06.09.2004 the applicant should have ensured strict compliance of the conditions attached to the Notification No.21/2004-NT dated 06.09.2004. Government place 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.*"

12. Further, Government finds that there is no provisions under Rule 18 of Central Excise Rules 2002 for condonation of non-compliance with the conditions and procedure laid down in the Notification allowing rebate under said Rule. In view of

the above discussions, Government finds that the applicant failed to fulfill the above mandatory condition of the said provisions and the condition being mandatory the same is required to be followed by the applicant particularly when the applicant is the beneficiary in the claim of rebate.

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

14. The revision application is therefore rejected being devoid of merit.

15. So, ordered.

(RIMJHIM PRASAD)
Joint Secretary to the Government of India

M/s Themis Medicare Ltd.,
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11 E SIDCUL, Haridwar,
Uttarkhand-249403.

ATTESTED

Order No.12/2016-CX dated 25.01.2016

Copy to:-

1. The Commissioner of Central Excise , Meerut-I.
2. The Commissioner (Appeals), Central Excise Meerut-I, Mangal Pandey Nagar, Opposite C.C.S..University , Meerut.
3. The Assistant Commissioner of Central Excise, Dehradun
4. PA to JS (Revision Application)
5. Guard File
6. Spare Copy.

ATTESTED

(SHAUKAT ALI)
UNDER SECRETARY
GOVT. OF INDIA