REGISTERED
SPEED POST

F.No. 198/501/11-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...23/8/13

ORDER NO. 1276 /13-Cx DATED 20.09.2013 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. YDB/300/RGD/11 dated 7.4.11 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II
Applicant	:	Deputy Commissioner of Central Excise, Raigad
Respondent	:	M/s Andritz Technologies Pvt. Ltd., Chennai

****

ORDER

This revision application is filed by Deputy Commissioner of Central Excise, Raigad, against the order-in-appeal No. YDB/300/RGD/11 dated 7.4.11 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II with respect to order-in-original No.504/10-11/AC (Rebate) Raigarh dated 25.6.10 passed by the Assistant Commissioner of Central Excise Raigad.

2. Brief facts of the case are that M/s. Andritz Technologies Pvt. Ltd. situated at Archana Towers, 21, Sripuram Colony, St. Thomas Mount, Chennai-600016, has furnished a bond in Form B-1 (Specific/General) for Rs.10,00,000/- (Rupees Ten lakhs) which has been accepted by the Assistant Commissioner of Central Excise vide F.No.V/15-99/BOND/Andritz/99 (Bond No.305/MVR/2009) on 03.08.2009. The exporter has submitted documents for acceptance of proof of export in respect of the following ARE:-

No.	ARE1 No. & date	Shipping Bill No. & date	Duty amount	CT-I No. date	Date of Shipment	Date of submission	Name of Manufacturer
1	99/09-10 25.8.09	7003 25.8.09	1,64,800	1/09-10 3.8.09	3.9.09	27.11.09	Tranter (I) Pvt. Ltd.

On scrutiny of the documents submitted by the claimant, it was observed that the claimant had taken CT-1 No.1/09-10 dated 03.08.2009 for export from J.N.P.T. only, but they have exported the goods from ICD Dighi, Pune which was not falling within the jurisdiction of the office of the Assistant Commissioner (Rebate), Central Excise, Raigad. Since the exporter had exported the consignment from ICD Dighi, Pune in spite of specific CT-1 issued for the exports through JNPT only, the Deficiency Memo cum Show Cause Notice was issued to the exporter under F.No V/15-30/POE/Andritz/RGD/2010 dated 19.05.2010, as

they had contravened the conditions of the CT-1 issued to procure the goods without payment of duty for export through JNPT. The adjudicating authority in his order No.504/10-11/A.C.(R)/Raigad dated 25.06.2010 has observed that the exporter has procured the goods for export of goods through J.N.P.T. on the basis of CT-1 No.1/09-10 dated 03.08.2009 amounting to Rs.1,64,800/- issued by Assistant Commissioner (Rebate), Central Excise, Raigad and that the consignment was exported from ICD Dighi, Pune. Vide Notification No.80/2003(NT) dated 29.10.2003 has amended Notification 42/2001 (NT) dated 26.06.2001 wherein it has been explained that "the Maritime Commissioner means the Commissioner of Central Excise under whose jurisdiction one or more of the port, airport, land customs stations or post office of exportation is located. Vide Circular No.770/3/2004-CX dated 09.01.2004, Board has clarified that the jurisdiction of Maritime Commissioner is in relation to the port, airport, land customs station or post office under the jurisdiction of the said Commissioner of Central Excise from which export has taken place. The said circular states, 'it is evident that jurisdiction of the Maritime Commissioner is directly related and restricted to the port of the exportation of the export goods under consideration. Hence, the adjudicating authority therefore rejected the proof of export and confirmed the demand of Rs.1,64,800/- along with interest and appropriated the amount paid of Rs.1,83,840/- by the exporter on 26.05.2011. The Commissioner (Appeals) while allowing the appeal filed by the exporter observed that there is no dispute about export of the goods. The only irregularity was that instead of JNPT, the export was made through ICD, Dighi, Pune. Therefore, Commissioner (Appeals) set aside the impugned order.

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

3.1 The procedure for export under bond is provided under Notification No.42/2001-CE (NT) dated 26.06.2001 as amended issued under Rule 19 of the Central Excises Rule, 2002. As per the procedure stipulated under the sold notification the merchant exporter after furnishing bond is required to obtain certificates in Form CT-1 specified in Annexure-III issued by the Superintendent of Central Excise having jurisdiction over the factory or warehouse or approved premises or Maritime Commissioner or such officer as may be authorized by the Board in this behalf and on this basis he may procure goods without payment of duty for export by indicating the quantity, value and duty involved therein.

3.2 As per Board's Circular No.770/3/2004-CX dated 09.01.2004 the jurisdiction of the Maritime Commissioner is in relation to the port airport, land customs station or post office under the jurisdiction of the said Commissioner of Central Excise from which the export has taken place. The said Circular states "It is evident that jurisdiction of the Maritime Commissioner is directly related and restricted to the port of the exportation of the export goods under consideration."

3.3 Thus from the above fact, it is clear that the jurisdiction of Assistant Commissioner (Rebate), Central Excise, Raigad is restricted only to the exports taking place from the port in the jurisdiction of Raigad Commissionerate. Therefore the Assistant Commissioner (Rebate), Central Excise, Raigad was not authorized by the Board for issuing the Certificates in Form CT-1 as envisaged in Notification No. 42/2001-CE(NT)dated 26.06.2001 as amended for exports effected from ICD Dighi, Pune.

3.4 The Assistant Commissioner (Rebate), Central Excise, Raigad not being authorized by the Board for issuing the CT-1 certificate for export from ICD Dighi, Pune the conditions stipulated under the said notifications have not been

fulfilled by the merchant exporter. Since the notification has been issued under Rule 19 of the Central Excise Rules, 2004, the export has taken place without fulfilling the conditions and procedures specified by the Board in Notification No.42/2001- CE(NT) dated 26.06.2001 as amended as is necessary under Rule 19(3) of the Central Excise Rules, 2002.

3.5 Notification No.80/2003(NT) dated 29.10.2003 has emended the Notification No.42/2001 (NT) dated 26.06.2001 wherein it has been explained that "the Maritime Commissioner means the Commissioner of Central Excise under whose jurisdiction one or more of the port, airport, land customs station or post office of exportation, is located."

3.6 In the case of Hotel Leela Venture Ltd. v/s Commissioner of Cus. (Gen), Mumbai 2009 (234) ELT 389 (SC) it has been held that the appellant has to prove that the terms and conditions of a notification has been fulfilled. In the instant case the basic conditions stipulated in the notification has not been fulfilled since the CT-1 was not issued by the officer authorized by the Board. Further in the case of M/s Golden Dew factory Vs Commissioner of Central Excise, Coimbatore 2007 (219) ELT 362 (Tri-Chennai) it has been held that the conditions of a notification are mandatory and not mere procedural and hence it was mandatory for the assessee to fulfill the conditions of the said notification and non-fulfillment could not be termed as mere technical lapse. Further in the case of Commissioner of Central Excise v/s Vishakapatnam v/s Anandlaxmi Mallebles Pvt. Ltd., 2008(222) ELT 439 (Tr-Bang) it was held that the notification has to be strictly interpreted and that violations of the specific condition of the notification is not a minor procedural lapse.

4. A Show cause notice was issued to the respondent under Section 35EE of the Central Excise Act, 1944 to file their counter reply. The respondent filed

cross objection vide their written reply dated 12.11.11 and made following submissions:

4.1 It is true that the respondents had initially obtained the CT1 certificates from the Maritime Commissioner, Central Excise & Customs, Raigad Mumbai. However these documents were processed at ICD Dighi Pune. The bone of contention in the department's revision application is that the Maritime Commissioner of Raigad does not have any jurisdiction to issue, the CT 1 certificates for the goods, which have been exported after processing of documents at ICD Dighi. The respondents had contended that except for this deviation, they have complied with all other requirements to claim the benefit. The Commissioner (Appeals) has set aside the order since the procedural deviations cannot deny the substantive benefit. In the case of Tablets India Ltd., Vs Jt. Secy., Ministry of Finance, Deptt. of Revenue reported in 2010 (259) E.L.T.191 (Mad.) it was held that there was no willful omission of lapse committed in making a claim. Non-following of procedure cannot take away the substantial benefit when the factum of export is not disputed.

4.2 The respondents further submit that the Maritime Commissioner, Raigad and the officers working at ICD Dighi, Pune are part of the Central Excise Commissionerate. They are different branches of the same organizations. The applicants are questioning the Exports which were duly authorized by officers at ICD Dighi, Pune. The applicants ought to have questioned the authorities at Pune instead of finding fault with the respondents. It was the duty incumbent on the officers at ICD Dighi Pune, to question and further refuse to process the documents for export, if it was not as per legal requirement. The officers ought to have returned the documents for processing at Raigad. Instead of adopting this approach, the officers proceeded to process the documents and also allowed the goods to be exported. So the goods were legally exported with the approval

of the Governmental officials. The failure at departmental level cannot result in denial of a legal benefit.

5. Personal hearing was scheduled in this case on 26.6.13 and 7.8.2013 but nobody attended the hearing on said dates on behalf of the applicant department as well as respondent party.

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 notes that exporter procured goods without payment of duty for export under bond under Rule 19 of Central Excise Rules 2002 on the basis of CT-I certificate No.1/09-10 dated 5.8.09 issued by Assistant Commissioner of Central Excise (Rebate), Raigarh for export through JNPT only. The requisite bond in B-I form for Rs.1000000/- was accepted by Assistant Commissioner of Central Excise (Bond), Raigarh on 3.8.09. The exporter was required to export goods through JNPT Nheva Sheva but he has claimed to have exported the goods from ICD Dighi Pune. The proof of export submitted by exporter was not accepted for violation of conditions of Bond, CT-I certificate. However, Commissioner (Appeals) has observed that exporter has complied with all the procedural requirements of Rule 19 and Notification No.42/01-CE (NT) dated 26.6.01 and therefore set aside the impugned order-in-appeal with consequential relief. The applicant department has challenged the said order-in-appeal on the grounds stated above.

8. Government notes that respondent party has not complied with the conditions of bond B-I as well as CT-I certificate which has authorized him to procure said goods without payment of duty. Exporter was under legal obligation to comply with the conditions of bond and CT-I certificate which he failed to comply. Moreover, Assistant Commissioner of Central Excise (Rebate), Raigarh has issued CT-I certificate for export of goods through port falling in his

jurisdiction since in terms of CBEC Circular No.770/3/2004-Cx dated 9.1.04 and Notification No.80/03-CE(NT) dated 29.10.03 he was Maritime Commissioner in the Nheva Sheva Port. Government therefore is of the view that demand was rightly confirmed by original authority for exporter's failure to comply with the conditions of bond, CT-I certificate and Notification No.42/01-CE(NT) dated 26.6.01 as amended vide Notification No.80/03-CE(NT) dated 29.10.03. The Commissioner (Appeals) has not given any finding on the said grounds of confirmation of demand by Assistant Commissioner of Central Excise. As such Commissioner (Appeals) has erred in setting aside the said order.

9. Government therefore sets aside the impugned orders-in-appeal and restores the order-in-original.

10. The revision application succeeds in terms of above.

11. So, ordered.

(D.P.Singh)
Joint Secretary (Revision Application)

Deputy Commissioner (Rebate) Central Excise,
Raigad Commissionerate, Ground Floor,
Kendriya Utpad Shulk Bhawan,
Sector 17, Plot No.1, Khandeshwar,
New Panvel – 410 206

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt of India
नई दिल्ली/New Delhi

Order No. 1276 /2013-Cx dated 20.09.2013

Copy to:

1. M/s Andritz Technologies Pvt. Ltd., Archana Towers, 21 Sripuram Colony, St. Thomas Mount, Chennai-600016

2. Commissioner of Central Excise (Appeals), Central Excise, Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, Bandra Kurla Complex, Bandra(East), Mumbai-400 051.

3. The Assistant Commissioner of Central Excise (Rebate), Raigad Commissionerate, Ground Floor, Kendriya Utpad Shulk Bhawan, Sector-17, Plot No. 1, Khandeshwar, New Panvel – 410 206.

4. PA to JS (RA)

5. Guard File

6. Spare copy

ATTESTED

23/9

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