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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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.195/1445/2012-RA /4939 Date of Issue: 2/11/19

ORDER NO. 127/2019-CX (WZ)/ASRA/MUMBAI DATED 14.10. 2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Rohit Enterprises

Respondent : Deputy Commissioner(Rebate), Central Excise, Raigad.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. US/548/RGD/2012 dated 06.09.2012 passed by the Commissioner (Appeals-II), Central Excise Mumbai.

ORDER

This Revision Application along with Stay Application are filed by the M/s Rohit Enterprises, E-204, Jal Vayu Vihar, Sector A, Near Hiranandani Garden, Powai, Mumbai 400 076. (hereinafter referred to as "the Appellant") against the Order-in-Appeal No. US/548/RGD/2012 dated 06.09.2012 passed by the Commissioner (Appeals-II), Central Excise Mumbai.

2. The issue in brief is that the Appellants are merchant exporter had filed two rebate claims amounting to Rs. 3,50,303/- (Three Lakhs Fifty Thousand, Three Hundred and Three Only). On verification of the records, the Deputy Commissioner(Rebate), Central Excise, Raigad vide his Order-in-Original No. 1740/11-12/DC(Rebate)/Raigad dated 11.01.2012 sanctioned rebate claims of Rs. 3,50,303/- under the provisions of Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002. The department then filed appeal with the Commissioner (Appeals-II), Central Excise Mumbai on the grounds that the rebate claim was wrongly sanction as the Appellant had not followed the procedure of self sealing as required vide para 3(a)(xi) of Notification No. 19/2004-CE(NT) dated 06.09.2004 (herein after as "Notfn 19/2004") and the reliance was placed on the decision of Hon'ble Tribunal in the case of M/s Kirloskar Brothers Ltd.[1997)94) ELT 176 (Tri). Commissioner (Appeals-II), vide his Order-in-Appeal No. US/548/RGD/2012 dated 06.09.2012 set aside the Order-in-Orginal and the department appeal was allowed.

3. Being aggrieved, the Appellant then filed the current Revision Application on the following grounds :

3.1 that the action taken by the Commissioner (Appeals-II) allowing the appeal of the Revenue and setting side the Order-in-Original, without going into merits of the case needs to be set aside.

3.2 that Notfn 19/2004 has two parts, one part is "Conditions and limitations" and second part is "Procedures".

3.3 that Conditions and limitations broadly is the following conditions :

(a) Goods exported after payment of duty and directly exported from the factory of manufacture.

(b) The excisable goods should be exported within six months or within extended period.

(c) The market price of the excisable goods at the time of exportation is not less than the amount of rebate of duty claimed.

(e) The amount of rebate of duty is not less than five hundred rupees.

(f) Exported goods are not prohibited under any law for the time being in force.

(g) Rebate claim should be filed within one year of export as laid down in Section 11B of Central Excise Act,1944.

These are mandatory conditions and are not condonable.

3.4 that other than the above mandatory conditions, the remaining conditions are all procedures and they can be condoned.

3.5 that whereas the Procedures are condonable. In this connection Appellant submitted that they had started export during that time only and were taking the guidance of the departmental officers how to export accordingly there were preparing the ARE-1. In the process they were not aware that they have to make the endorsement of self sealing on the ARE-1. After export within 24 hrs they had submitted the ARE-1 Triplicate and Quadruplicate copies of ARE-1 to the jurisdictional Range Superindentent and he had certified on the back of the Triplicate copy and handed over the same in the sealed cover to submit to the Rebate authority. No objection of 'Self Sealing" was also raised by the Range Supdt. This procedure was going on and objection of 'sealing' was not raised at any time by the Supdt. of Central Excise. The Rebate authority also called for the duty payment certificate from the jurisdictional Range Supdt., and the same was also received by him. Rebate was sanctioned and paid to them without raising any objection of 'Self Sealing' in the normal course by the Deputy Commissioner(Rebate), Central Excise, Raigad. In view of the same, both department as well as the Appellant were unaware of the procedure and in the interest of justice this need to be condoned when the physical export

and proper duty payment are not in dispute. The BRC from the Bank was also received this case.

3.6 that the Appellant is a lay man and had not intention to suppress anything from the department. Goods cleared had been physically exported and remittances were also received from abroad. Hence the Order-in-Original needs to be upheld.

3.7 that the order of M/s Kirloskar Brothers Ltd. Vs Collector of Central Excise, Pune [1997)94) ELT 176 (Tri) is for not following the Chapter X procedure which is a mandatory condition. Whereas in the Appellant's case, it is only a procedural one. All the Mandatory conditions had been fulfilled by them. Hence this Order is not applicable in their case.

3.7 that they rely on the Order of Hon. Cestat in the case of Commr. Vs Suncity Alloys Pvt. Ltd. [2007 (218) ELT 174 (Raj.) – *Rebate-Exempted goods cleared for export on payment of duty – Union of India not, in any event, entitled to retain the amount in question – If no duty was leviable and the assessee was not required to pay the duty still if he has paid the duty which has been received by the Commissioner, they cannot retain the same on any ground and must refund the amount received from assessee as on their own showing – Assessee entitled to remove goods on payment of duty in ordinary course and he is entitle to claim rebate thereon because the goods were exported out of country on payment of excise duty – Rule of Central Excise Rules, 2002 [para 4].*

3.8 that as per para 11.1 of CBEC Circular No. 81/81/94-CX dated 25.11.1994, all the conditions except the time limit for filing the Rebate claim as per Section 11B of the Central Excise Act, 1944 can be condoned by the Commissioner. In this they relied on few cases law.

3.9 The ARE-1 No. and Commissionerate of Central Excise is shown on the Shipping Bill along with Mate Receipt Number and date, duly countersigned by Supdt. of Customs. For co-relation on the back of the ARE-1, Shipping Bill No. and date, ship on which goods are sailed, Mate receipt No. and date is shown. This is also countersigned by the same Customs Officer who has signed the Shipping Bill and there is no dispute against this. This itself shows that whatever goods has been cleared for export in fact has been exported. Further, these can been seen from the endorsement of the

Custom's Officer on the Export Invoice after examination. It is the mandatory requirement that whenever any goods are cleared without physical examination of Central Excise Office should be compulsorily required to be examined by the Customs Authorities. Therefore, the allegation in this connection is not proper and correct.

3.10 that they had followed the proper documents and the Rebate claim was sanctioned. Hence there is no question of violation of Rule 18 of the Central Excise Rules, 2002 and Notfn 19/2004. Il the allegation in the appeal is of procedural infraction hence need to be rejected on this ground alone when the physical export of goods was exported and the remittances received for the said export has been realized and there is no dispute in this connection. The Notification itself shows the procedural infraction which can be condones and what is the mandatory infraction that cannot be condoned.

3.11 that the excisable goods were cleared for export from the factor premises of the manufacturer M/s Avdhoot Pigments Pvt Ltd. on payment of Cenvat duty of Rs. 3,50,303/- under a cover of Central Excise invoices bearing No. 22 dated 13.07.2011 and No. 28 dated 23.08.2011 and the said manufacturer has packed and sealed the said goods in their authorized representative presence and they have put their signature and seal of the company on the respective ARE-1. Although, they have not made self sealing certification on the ARE-1 by mistake, the fact remained that the export goods were packed and sealed in their presence and were cleared from the factory on payment of Cenvat duty under the cover of the relevant shipping bills, bill of lading and mate receipt under the supervision of the jurisdictional Customs officers, who have certified that the said goods were exported by duly signing and giving particulars of shipping bill as well as mate receipt on the reverse of the duplicate copies of the relevant ARE-1s. As such, the statement made in the appeal to the effect that *"in absence of self sealing certificate, there was no certainty that the same goods which are mentioned on the ARE-I, on which duty was paid, were cleared from the factory and exported"* is not correct and without any evidence.

3.12 It is settled law that substantial benefit cannot be denied for failure to follow prescribed procedure. Appellant had followed all the conditions of the said notification as well as procedure prescribed therein and failure to mention about self sealing of export goods on the relevant ARE-Is is simple procedural lapse and the same merit condonation. In support of this they relied on few cases law.

3.13 that when the mistake is not intentional, such mistakes should be condones. They should not be punished for innocent mistakes, if any. Further, the Triplicate copy of the ARE1 was submitted to the jurisdictional Supdt within 24 hours. He signs on the back of the Triplicate copy of ARE1 that he has examined the ARE1 and found correct. When there is no endorsement of 'Self Sealing the Range Supdt. should have pointed out the same to the assessee'. This mistake is not only on the part of Assessee but it is also on the part of Department. Hence needs to be condoned in the interest of justice.

3.14 that Rebate is not any kind of incentive. This is only a reimbursement. It is the policy of Government no duty should be exported along with goods. Such type of appeal by the Department is nothing but against the policy of Government. Department should see any issue on larger aspect whether there is any evasion etc. Which is absent in this case. Procedural mistakes if any needs to be condoned in the interest of export.

3.15 that they prayed the said Order-in-Appeal is required to be set aside and their rebate claim be sanctioned vide OIO dated 11.01.2012 may be upheld.

4. A personal hearing in the case was held on 28.11.2017, 16.01.2018, 01.02.2018 and 20.08.2019. However no one attended the hearing.

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

6. On perusal of records, the Appellants are merchant exporter had filed two rebate claims amounting to Rs. 3,50,303/- which was sanctioned under the provisions of

Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 by the Deputy Commissioner(Rebate), Central Excise, Raigad vide his Order-in-Original No. 1740/11-12/DC(Rebate)/Raigad dated 11.01.2012. However, the department then filed appeal with the Commissioner (Appeals-II), Central Excise Mumbai on the grounds that the rebate claim was wrongly sanction as the Appellant had not followed the procedure of self sealing as required vide para 3(a)(xi) of Notification No. 19/2004-CE(NT) dated 06.09.2004 (herein after as "Notfn 19/2004") and the reliance was placed on the decision of Hon'ble Tribunal in the case of M/s Kirloskar Brothers Ltd.[1997)94) ELT 176 (Tri)]. The Appellant submitted that the mistake of not endorsing Self sealing was not intentional and requested to condone the same.

8. Government notes that as per Para 11.1 of the CBEC Circular No. 81/81/94-CX dated 25.11.1994 under F.No. 209/18/93-CX.6 (Pt.) –

> *"11.1* ***Relaxation to be granted by the Collector*** *: The Collector is empowered to condone/ relax any condition relating to rebate of excise duty on goods exported for reasons to be recorded in writing, if he is satisfied that the goods have actually been exported. However, the Collector is not empowered to condone delay in filing of the rebate claim filed after the expiration of six months from the date of export, the time limit prescribed under Section 11B of the Central Excise Act. It may be noted that his power has to be exercised by the Collector and not the Assistant Collector who may be acting as Maritime Collector or the Jurisdictional Assistant Collector"*

Government notes that the Notification No.19/2004-CE(NT) dated 6.9.2004 which grants rebate of duty paid on the goods, laid down the conditions and limitations in paragraph (2) and the procedure to be complied with in paragraph (3). The fact that the Notification has placed the requirement of "presentation of claim for rebate to Central Excise" in para 3(b) under the heading "procedures" itself shows that this is a procedural requirement. Such procedural infractions can be condoned.

9. Government notes that the jurisdictional Deputy Commissioner(Rebate) while sanctioning the rebate claim found that

> *"4. The description of the goods and its quantity & weight have been tallied with the ARE-1 vis-à-vis Shipping Bill and Bill of Lading are in order.*

5. The triplicate copy of ARE-1 carried the endorsement of Excise Officer that the export clearance was recorded in Daily Stock Register/duty was paid through PLA/ CENVAT. The physical export of goods covered by the ARE-1 has been certified by Custom Officer in Part B of Original & Duplicate copies of ARE-1 and also supported by Bill of Lading."

Government finds that this itself shows that whatever goods has been cleared for export in fact has been exported and the remittances received for the said export has been realized. Further, the Notification itself shows the procedural infraction which can be condone and what is the mandatory infraction that cannot be condoned. Hence here the mistake of not endorsing Self sealing which was not intentional is only a procedural lapse and the same is condoned.

10. Government observes that the Department in their appeal before the Commissioner(Appeals) had placed reliance on the decision of Hon'ble Tribunal in the case of M/s Kirloskar Brothers Ltd.[1997)94) ELT 176 (Tri)]. Government finds that in the above case of M/s Kirloskar Brothers Ltd., the Tribunal rejected the assessee's appeal for not following the Chapter-X procedure which is a mandatory condition, whereas in the current case, it is only a procedural one as the Appellant had fulfilled all the Mandatory conditions. Hence the mistake of not endorsing Self sealing which was not intentional is condonable if the identity of goods is established.

11. Government finds that the deficiencies observed by the first appellate authority in this case are of procedural or technical nature. In cases of export, the essential fact is to ascertain and verify whether the goods have been exported. If the same can be ascertained from substantive proof in other documents available for scrutiny, the rebate claims cannot be restricted by narrow interpretation of the provisions, thereby denying the scope of beneficial provision. Mere technical interpretation of procedures is to be best avoided if the substantive fact of export is not in doubt. In this regard the Government finds support from the decision of Hon'ble Supreme Court in the case of Suksha International - 1989 (39) ELT 503 (SC) wherein it was held that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In UOI vs. A.V. Narasimhalu - 1983 (13) ELT 1534 (SC), the Apex Court observed that the administrative authorities should instead of relying on technicalities, act in a manner consisted with the broader concept of justice. In fact, in cases of rebate it is a settled law

that the procedural infraction of Notifications, Circulars etc., are to be condoned if exports have really taken place, and that substantive benefit cannot be denied for procedural lapses. Procedures have been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is the manufacture of goods, discharge of duty thereon and subsequent export.

12. In view of the above discussions and findings, Government upholds the Order-in-Original No. 1740/11-12/DC(Rebate)/Raigad dated 11.01.2012 and holds that the rebate claim of Rs. 3,50,303/- (Three Lakhs Fifty Thousand, Three Hundred and Three Only) is admissible to the Appellant in the instant case under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6.9.2004. Government therefore sets aside the impugned Order-in-Appeal No. US/548/RGD/2012 dated 06.09.2012.

13. The Revision Application is allowed in terms of above.

14. So ordered.

14/10/19

(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 127/2019-CX (WZ)/ASRA/Mumbai DATED 14.10.2019.

To,
M/s Rohit Enterprises,
E-204, Jal Vayu Vihar,
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Copy to:

1. The Commissioner of GST& Central Excise , Raigad Commissionerte.
2. The Deputy / Assistant Commissioner(Rebate), GST & CX , Raigad Commissionerte
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.