

**REGISTERED
SPEED POST**



**F.No. 195/1205/11-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.....4/1/13

Order No. 1292/13-cx dated 01.10.13 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,
1944 against the Order-in-Appeal No.
TH-I/RKS/12/2011 dated 12-9-2011
passed by Commissioner of Central
Excise, (Appeals), Mumbai-I.

Applicant : M/s Alok Industries Ltd.,
Peninsula Towers, Peninsula Corporate Park,
G.K. Marg, Lower Parel, Mumbai-13.

Respondent : The Commissioner of Central Excise,
Commissionerate, Mumbai-I.

ORDER

This revision application is filed by M/s Alok Industries Ltd., Peninsula Towers, Peninsula Corporate Park, G.K. Marg, Lower Parel, Mumbai-13 against the Order-in-Appeal No. TH-I/RKS/12/2011 dated 12-9-2011 passed by Commissioner of Central Excise (Appeals), Mumbai Zone-I with respect to Order-in Original passed by The Assistant Commissioner of Central Excise, Kalyan-I.

2. Brief facts of the case are that M/s Alok Industries Ltd.; had filed four rebate claims totally amounting to Rs. 13,25,370/- under rule 18 of the Central Excise Rules, 2002 read with notification No. 19/04-CE (NT) dt. 06-09-2004, as amended. The goods were cleared on payment of duty for export vide following ARE-1s and Shipping Bills.

Sl. No:	Order-in-Original No./dt.	ARE-1 No./dt	Shipping Bill No./dt	Amount of rebate sanctioned (Rs.)	Duty paid vide RG-23A Part-II (at the time of clearance of goods for export)
1	2	3	4	5	6
1	R-356/08-09/08-08-2008	66/02-01-2008	5906262/02-01-2008	3,57,724/-	1,78,862/-
2	R-357/08-09/08-08-2008	67/02-01-2008	5906514/02-01-2008	1,82,090/-	91,045/-
3	R-358/08-09/08-08-2008	68/02-01-2008	5906517/02-01-2008	4,32,546/-	2,16,273/-
4	R-359/08-09/08-08-2008	69/02-01-2008	5906213/02-01-2008	3,53,010/-	1,76,505/-
			Total	13,25,370/-	6,62,685/-

2.1 The rebate claim was filed in respect of the duty paid on the goods exported which were manufactured by M/s. Sainath Enterprises, situated at A/2,A/3 Building, First Floor, Prithavi Complex, Old Mumbai-Nasik Road, Kalher, Bhiwandi, holder of Central Excise Registration No. AA EHD8620HXM002 and engaged in the manufacture of excisable goods falling under chapter 63 of Central Excise Tariff Act, 1985.

2.2 The Assistant Commissioner, Central Excise, Kalyan-I Division, Thane-I Commissionerate, vide Order-in-Original Nos. R-356/08-09, R-357/08-09, R-358/08-09 and R-359/08-09 all dated 8.8.08, has sanctioned all four rebate claims, totally amounting to Rs. 13,25,370/- The said four Order-in-Original, all dated 8.8.08, were reviewed by the Commissioner, Central Excise, Thane-I Commissionerate, in exercise of powers vested under Section 35-E(2) of Central Excise Act, 1944 and vide order dated 7.11.08, the Deputy Commissioner, Central Excise, Kalyan-I Division, Thane-I Commissionerate, was directed to file an appeal against the said impugned Order-in-Original, all dated 8.8.08.

2.3 Accordingly, the Deputy Commissioner, Central Excise, Kalyani-I Division, Thane-I Commissionerate (hereinafter referred to as 'the appellants'), vide his letter F.No. V/Rebate/Alok/395/K-I/08, dated 24.11.08, has filed this appeal on 26.11.08, inter alia, on the following grounds:-

- (a) On examination of the Order-in-Original Nos. R-356/08-09, R-357/08-09, R-358/08-09 and R-359/08-09 all dated 8.8.08, the rebate claims have been erroneously granted to the respondent-claimant in excess of Rs. 6,62,685/-
- (b) The respondent-claimant have declared the description of the goods export as 100% Cotton processed made ups attracting Central Excise duty @ 4% ad-valorem plus 2% Education Cess + 1% S.H.E. Cess on the Excise Invoice and ARE-1s. However, the respective Shipping Bills, Customs Invoices of the ARE1s have mentioned the goods as 60% cotton + 40% polyester processed Made ups attractive duty @ 8% + plus 2% Education Cess + 1% S.H.E. Cess. At the time of clearance of goods for export, the manufacturer have paid the duty @ 4% + plus 2% Education Cess + 1% S.H.E. Cess. Thereafter, they paid the differential duty and claimed the rebate for whole amount. But, as per the ARE1s and invoices, the total duty payable was Rs. 6,62,685/-.

3. Commissioner (Appeals), after considering all the submissions of both the parties modified the Order-in-Original dt. 08-08-2008 so far as the same relate to erroneous sanction of rebate claim in excess of Rs. 6,62,685/- and accordingly restricted the rebate claims sanctioned vide impugned Order-in-Original to Rs. 6,62,685/- instead of Rs. 13,25,370/-.

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) Mumbai-I has erred by allowing the appeal of the department and thereby upholding the claim of the department regarding alleged erroneous sanction of export rebate claim amounting to Rs. 6,62,685/-.

4.2 The Commissioner (Appeals) illegally observed that the export rebate claim amount can be limited only to the extent of duty paid on goods exported and as certified by Superintendent on ARE-I. In the instant case, there is no dispute that the applicant have paid total duty of Rs. 13,25,370/- including the differential duty of Rs. 6,62,685/- paid in cash through debit entry in PLA and towards subject export consignments. It is submitted that there is no dispute about composition of made-ups articles exported which is 60% cotton+ 40% polyester as certified in shipping bills and attracting 8.24% duty, there is no dispute about payment of duty and also there is no dispute about exportation of goods. Therefore, Commissioner (Appeals) ought to have dismissed the appeal filed by the department by holding that the rebate claim of Rs. 13,25,370/- sanctioned by AC Central Excise is legal and proper.

4.3 The applicant exported made-up articles of 60% cotton+ 40% Polyester attracting 8.24% duty and firmly deny having exported goods of 100% cotton made-ups articles. Accordingly, the applicants of their own paid differential duty of Rs. 6,62,685/- in cash, in PLA. Thus, the applicants paid total duty of Rs. 13,25,370/- on export consignments exported, ie. Payment of Rs. 6,62,685/- at 4.12% by job worker by treating the made-ups as of 100% cotton and thereafter subsequent payment of Rs. 6,62,685/- at remaining 4.12% on noticing the lapse regarding

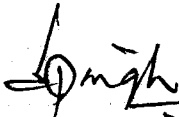
actual blending percentage of made-ups articles as 60% cotton + 40% polyester attracting 8.24% duty. Thus there is no dispute that applicant paid duty total duty of Rs. 13,25,370/- on exportation of goods. It is a settled proposition of law that exporter is entitled to full rebate of duty paid on exportation of goods. In the instant case it is not the case of anybody that goods are not exported or applicants have not paid the duty of Rs. 13,25,370/- on goods exported. It is therefore submitted that under no circumstances the rebate of less amount can be sanctioned. It is also not legally permissible to retain the duty amount by government which is paid on exportation of goods. Therefore, the Commissioner (Appeals) has illegally held that the applicant are entitled only for the part amount of Rs. 6,62,685/- and not entitled for balance amount of Rs. 6,62,685/- paid subsequently in cash.

4.4 Without prejudice to aforesaid it is submitted that even in the event of it being held that the applicant have exported made-ups articles of 100% cotton attracting 4.12% duty still the refund of balance amount of Rs. 6,62,685/- paid in cash cannot be rejected being there is no dispute about payment of this amount in cash and exportation of goods. It is submitted that applicants are entitled for refund thereof under section 11B of Central Excise Act, 1944 being amount paid in cash and excess payment according to department. Therefore under no circumstances, the rebate claim of Rs. 6,62,685/- can be rejected and Commissioner (Appeals) has illegally passed the impugned order.

4.5 Without prejudice to aforesaid it is submitted that even in the event of it being held that the applicant have exported made-ups articles of 100% cotton attracting 4.12% duty still the refund of balance amount of Rs. 6,62,685/- paid in cash cannot be rejected being there is no dispute about payment of this amount in cash and exportation of goods. It is submitted that applicant are entitled for refund thereof under section 11B of Central Excise Act, 1944 being amount paid in cash and excess payment according to department. Therefore under no circumstances, the rebate claim of Rs. 6,62,685/- can be rejected and Commissioner (Appeals) has illegally passed the impugned order.

5. Personal hearing scheduled in this case on 07-08-2013 at Mumbai was attended by Shri D.H. Mehta and Shri A.R. Sharma, Managers of Company on behalf of the applicant who reiterated the grounds of Revision Application.
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 instant cases, as per ARE-1 the 100% Cotton made up were cleared for export on payment of duty @4% + E. Cess of Rs. 6,62,685/-. The description of goods given in Shipping Bills was 60% Cotton + 40% Polyester blended processed fabrics made ups which attract the duty @ 8% + E. Cess. The manufacture paid the differential duty of Rs. 6,62,685/- through PLA on realising the mistake. The applicant has claimed the rebate of Rs. 13,25,370/- on the grounds that Job worker had committed mistake in declaring the said goods as of 100% Cotton and paying duty @ 4%. Since the duty was paid in PLA/Cash, and goods were claimed to be as declared in the Shipping Bill and commercial invoice. Department has not got the goods tested and the visual examination can not confirm whether goods are 100% Cotton made ups or 60% Cotton + 40% Polyester made ups. As such the differential duty of Rs. 6,62,685/- paid subsequently from PLA cannot be faulted with. There is no reason to deny the rebate of total duty paid on the excisable goods exported since the actual goods exported are claimed to be ~~60%~~ 60% Cotton + 40% Polyester blended processed fabrics made ups. The original authority was right in sanctioning rebate claims of total duty paid, under rule 18 of Central Excise Rule 2002 read with Notification No. 19/04-CE(NT) dated 6.9.04. In view of this position, Government sets aside the impugned order-in-appeal and restores the impugned order-in-original.

8. The revision application succeeds in terms of above.
9. So, ordered.


(D.P. Singh)

Joint Secretary to the Govt. of India

M/s Alok Industries Ltd.,
Peninsula Towers, Peninsula Corporate Park,
G.K. Marg, Lower Parel, Mumbai-13.

ATTESTED

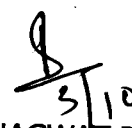

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(भगवत शर्मा/Bhagwat Shama)
सहायक आयुक्त/Assistant Commissioner

Order No. 292/13-Cx dated 01.10.2013

Copy to:

1. The Commissioner of Central Excise,
Thane-I, 4th Floor, Navprabhat Chamber, Ranade Road W), Mumbai-28.
2. The Commissioner of Central Excise (Appeals), Meher Building, D.S. Line.
Opp. Chowppaty, Mumbai-400 007.
3. The Deputy Commissioner, Commissioner Central Excise, Kalyan-I, Thane-II.
4. Shri D.H. Mehta and Sheri A.R. Sharma, Manager, c/o. M/s Alok Industries
Ltd., Peninsula Towers, Peninsula Corporate Park, G.K. Marg, Lower Parel,
Mumbai-13.
- ✓ 5. PS to JS (RA)
6. Guard File.
7. Spare Copy


(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)

