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SPEED POST

F.No. 195/1012-1013/11-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..... 28/11/13

Order No.1390-1391/13-cx dated 26-11-2013 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, 1944 against the Order-in-Appeal No. IND/CEX/000/APP/285 & 286/11 dated 08-07-2011 passed by Commissioner of Central Excise, (Appeals), Indore
Applicant	:	M/s. Ambika Solvex Ltd., 304, Satyageeta Apartments, 90/47, Sneh Nagar, Main Road, Indore (MP).
Respondent	:	The Commissioner of Customs, Central Excise & Service Tax, P.B. No. 10, Manikbagh Palace, Indore (MP) 452001.

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ORDER

These revision applications are filed by the applicant M/s. Ambika Solvex Ltd., 304, Satyageeta Apartments, 90/47, Sneh Nagar, Main Road, Indore (MP) against the Order-in-Appeal No. IND/CEX/000/APP/285 & 286/11 dated 08-07-2011 passed by the Commissioner of Central Excise (Appeals), Indore with respect to Orders-in Original No. 431/10-11 & 432/10-11 both dated 23-02-2011 passed by the Assistant Commissioner of Central Excise, Division, Ujjain.

2. Brief facts of the case are that the applicant M/s. Ambika Solvex Ltd. are engaged in the manufacture and export of Soyabean Meal Extraction (D.O Cake) falling under chapter No. 15 of the schedule to the Central Excise Tariff Act, 1985. The applicant had filed 2 rebate claims before the adjudicating authority for the basic excise duty paid on P.P.Bags used in packing and Hexane used in manufacture of Soyabean Meal which was exported under rebate claim in terms of Rule 18 of Central Excise Rules, 2002. The above said rebate claims were scrutinized and it was found that applicant not fulfilled conditions prescribed under Notification No. 21/2004-CE (NT) dt. 06-09-2004 issued under Rule 18 of Central Excise Rules, 2002 in as much as they failed to cleared the goods under cover of ARE-2 and file input output declaration. Therefore, Show Cause Notices were issued to the applicant. The adjudicating authority vide the impugned orders-in-original rejected the said rebate claims. The original authorities also rejected the rebate claims as time barred having filed after stipulated 1 year period and hence, failed to produce ARE-2 in original as proof of export.

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

4. Being aggrieved by the impugned Orders-in-Appeal, the applicant has filed these revision applications under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 It is settled law that the rules and the notification has to be read at its own, no word can be added or substituted in the language of Rule and Notification. Thus, the demand of declaration of Input Output Norms for granting rebate claim is illegal and bad in law. As they are already published in Exim Policy at Entry No. E 42 by the Government. The applicant is regularly procuring hexane without payment of duty and obtain annexure 45 from the department. There while by obtaining annexure 45 applicants have declared input output ratio. Therefore it is wrong to say that applicants have not used input output ratio.

4.2 The adjudicating authority has passed the order after getting the verification report from the Range Superintendent who has certified that the applicants have composed of all the conditions of getting the refund against this certification there is nothing admitted by the department therefore the contention of the department is baseless.

4.3 The applicant has submitted that original documents for verification with the department and the range office have verified claim. Thus, from he above it is clear that the applicants are entitled for the refund and the same is not liable to be rejected.

5. Personal hearing was scheduled in this case on 21-02-2013 and 14-10-2013. Hearing held on 14-10-2013 was attended by Shri Ajay Gupta and Shri Mahesh Neemani on behalf of the applicant who reiterated the grounds of Revision Application.

5.1 The applicant vide written submission dated 09-10-2013 and 17-102-013 apart from reiterating the contents of revision application mainly stated as under:-

5.1.1 De-Oiled cakes packed in PP bags are exported through Merchant Exporters M/s. Narayan Trading Company & M/s Ruchi Soya Industries Ltd without payment of duty. De-Oiled cakes cleared under ARE-1 directly from the manufacturing premises i.e. applicants factory to the port of export, the actual

export of goods were duly endorsed by the customs officers on respective ARE-1 after export of goods M/s. Narayan Trading Company & M/s Ruchi Soya Industries Merchant Exporters issued "H" form and given to applicant. Copies of such "H" form are submitted herewith for ready reference. There is no dispute by the department about actual export of De-Oiled cakes. As per the provisions under rule 18 of Central Excise Rules after export of De-Oiled cakes so manufactured by the applicant. The applicant filed two rebate claims pertaining to the amount of duty paid hexane used in manufacture of De-Oiled cakes and duty paid PP bags used for packing of export goods.

5.2 During processing of the rebate claim in both the cases the main objection by the department was that the export goods are cleared under ARE-1 instead of ARE-2 as well as non-filing of declaration about the ratio of consumption with finished products as required under Notification No. 21/2004-CE (NT) dt. 06-09-2004. The applicant produced all the documentary evidences related to purchase of duty paid hexane and PP bags and its use in export goods as well as consumption ratio of inputs with export goods before the adjudicating officers. However the adjudicating officer rejected the claim simply by stating that applicant has not fulfilled the condition under Notification No. 21/2004-CE (NT) dt. 06-09-2004. In the decision of the appeal the learned Commissioner (Appeals) has also without considering any of the submission made by the applicant and without findings on the cited decisions relied by the applicant upheld the order of the adjudicating officer and rejected both the appeals.

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

7. Government observes that the original authority rejected the rebate claim on the grounds that they failed to clear the goods under cover of ARE-2 as stipulated in Notification No. 21/2004-CE (NT) dt. 06-09-2004 and as such failed to produce original copy of ARE-2 as proof of export. The original authority also rejected the claims as time barred having filed under stipulated one year period.

Commissioner (Appeals) upheld impugned Orders-in-Original. Now, the applicant has filed these revision applications on grounds mentioned in para (4) above.

8. Government observes in impugned Orders-in-Original the original authority has observed that the applicants did not raise any plea as regard to allegation of time bar of rebate claims in impugned show cause notice and hence, the charge levelled in impugned show cause notice are established and the rebate claims are time barred. The Government finds that admittedly the applicant did not raise this issue either before original authority or appellate authority, however, the claims cannot be treated as time barred only because the applicant did not reply this aspect of show cause notice. In case of non-reply by the applicant, the issue needs to be decided on the basis of facts as available in records of the case. On perusal of copies of some shipping bills submitted along with written submission dated 17-10-2010, Government finds that the shipping bills under which the impugned goods claimed to have been exported, pertains to period January 2010, while the impugned rebate claims were filed on 11-10-10. As such, on perusal of records submitted by the applicant before this authority, it appears that the claims were filed within one year from date of export and hence, appears to have been filed in time. However, this factual positions required to be verified by the original authority to decide the issue of time bar of rebate claims. If the rebate claims found to be filed within stipulated time period of one year the same cannot be treated time barred. In case, if the rebate claims are found to have filed beyond stipulated time, the same ate to be treated as time barred in terms of section 11B and liable to be rejected as held by various judicial forum including this authority in catena of judgments. Hence, the issue of time bar needs to be decided by the original authority on the basis of factual verification of records.

9. Government finds that the original authority also rejected the rebate claims on the grounds that the applicant failed to export the goods under cover of ARE-2 as stipulated in the Notification No. 21/2004-CE (NT) dt. 06-09-2004 and they failed to produce the same as proof of export. The applicant has contended that they cleared the goods under cover of ARE-1 instead of ARE-2 and hence, lapse

pointed by the department for failure to export the goods under ARE-2, is mainly a procedure lapse. The applicant has cleared the goods under cover of ARE-1 instead of ARE-2 and submitted original/duplicate copies of ARE-1 containing endorsement of customs officer to the effect that the goods have been exported.

10. Government observes that rebate claims were also rejected on ground that in some cases, original and duplicate AREs-2 were not submitted or some columns of the said ARE-2 forms were not filled. In this regard Government observes that Hon'ble High Court of Bombay in its judgements dated 24.4.13 in the case of M/s U.M.Cables Vs. UOI (WP No.3102/13 & 3103/13) reported as TIOL 386 HC MUM CX. has held that rebate sanctioning authority shall not reject the rebate claim on the ground of non-submission of original and duplicate copies of ARE-1 forms if it is otherwise satisfied that conditions for grant of rebate have been fulfilled. Government, therefore, in the light of principle laid down by Hon'ble High Court of Bombay in the said case, is of the view that original authority has to consider the input rebate claims on the basis of collateral evidences where original and duplicate ARE-2 form is not submitted. If the use of duty paid inputs in the manufacturing of exported goods is established and rebate claim is otherwise found admissible then rebate claims will not be rejected on grounds of non-submission of ARE-2.

11. Government notes that in this case a few rebate claims were considered as time barred in the show cause notice but adjudicating authority has not given any finding on said time bar aspect of claim. It is a well settled position that rebate claim has to be filed within one year from the date of export of goods as stipulated in Section 11B of Central Excise Act 1944 and claim filed after said period cannot be entertained and is liable to be rejected as time barred. In the revision application, order-in-original and order-in-appeal, no details of such time barred claims are given except the amount involved. The original authority has to work out the exact details of such time barred claims from original case file and disallow them if found time barred.

12. Government notes that fundamental requirement for grant of input rebate claim is that duty paid inputs are used in the manufacture of exported goods. The

claimant is required to submit the duty paid input invoices and satisfy the original authority that duty paid input are used in manufacturing of finished goods and said finished goods are exported out of India. Though there were charges against claimant that duty paying input invoices and other relevant information are not submitted along with rebate claims but there is no discussion on this aspect in the order. The use of duty paid inputs in the manufacturing of exported goods is required to be established beyond doubt for determining admissibility of input rebate claims. So, the original authority has to verify this aspect and then arrive at a proper conclusion on the issue. Applicant has claimed that they have submitted all the requisite documents before original authority but no evidence is produced to verify the authenticity of their claim.

13. Keeping in view the above position, the cases are required to be remanded for reconsideration of matter. Government therefore sets aside the impugned orders and remands the cases back to original authority for denovo consideration in accordance with law taking into account the observations made in above paras. The applicant is directed to submit all the relevant documents before original authority. A reasonable opportunity of hearing will be afforded to both the parties.

14. The revision applications are dispcsed off in terms of above.

15. So, ordered.

(D.P. Singh)
Joint Secretary to the Govt. of India

M/s. Ambika Solvex Ltd.,
304, Satyageeta Apartments, 90/47,
Sneh Nagar, Main Road, Indore (MP).

ATTESTED

(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. 1390-1391/13-Cx dated 26.11.2013

Copy to:

1. The Commissioner of Customs and Central Excise, P.B. No. 10, Manikbagh Palace, Indore (MP) 452001.
2. The Commissioner (Appeals-I), Customs and Central Excise, 4, Inderlok Colony, Kesar Bagh Road, Indore (MP).
3. The Asstt. Commissioner of Central Excise, Division-Ratlam.
4. PS to JS (RA)
5. Guard File.
6. Spare Copy

ATTESTED

27/11

(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)