

**REGISTERED  
SPEED POST**



**F.No. 195/94/11-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)**

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

Date of Issue.....22/2/13

Order No. 141 /13-cx dated 22.02.2013 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. M-I/RKS/02/2010 dated 22-11-2010 passed by Commissioner of Central Excise, (Appeals), Mumbai-I.

Applicant : M/s Biyani Impex Pvt. Ltd.,  
Surat.

Respondent : Commissioner of Central Excise,  
Mumbai-I.

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**ORDER**

This revision application is filed by the applicant M/s Biyani Impex Pvt. Ltd., Surat against the Orders-in-Appeal No. M-I/RKS/02/2010 dated 22-11-2010 passed by Commissioner of Central Excise (Appeal), Mumbai-I, with respect to Order-in-Original passed by the jurisdictional Assistant Commissioner (Rebate), Central Excise, Mumbai-I.

2. The brief facts of the case are that M/s. Biyani Impex Pvt. Ltd., has filed a rebate claim with this office in respect of duty paid on the goods manufactured by M/s. Kirtida Silk Mills, Surat. On scrutiny of the said claim it was observed that Duty Payment Certificates were not been submitted in this case. Hence, Deficiency Memo Cum Show Cause Notice cum Call for Personal Hearing was issued and applicant was Duty Payment Certificate requested to submit in tamper proof sealed cover. A copy of the same was also endorsed to the jurisdictional Range Superintendent requesting him to issue of Duty Paying Certificate in the sealed cover after verifying the Cenvat Credit availed by the manufacturers in the wake of recent frauds committed by the manufacturers/exporters. The adjudicating authority rejected the rebate claim on the grounds that the applicant failed to submit a duty payment certificate in tamper proof sealed cover.

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

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 applicant submits that it is the finding of the Commissioner (Appeals) in para 10 of his order to the effect that - "In this case, there is no dispute regarding export of goods in question" Thus, primary first condition have been complied with and there was no reason to reject rebate claims and therefore the order of the

Commissioner (Appeals) is patently bad in law and required to set aside in the interest of justice.

4.2 It is the finding of the Commissioner (Appeals) in para 10 that - "However, I find that applicant have failed to produce necessary documents to substantiate their claim for duty paid character of the goods exported" In this connection, the applicant submits that in para 5(b) of his order, the submission of the applicant is that - "The goods were procured from Mis. Kirtida Silk Mills on payment of duty and the same were reflected in returns submitted by the said processors and hence, the adjudicating authority is improper." The Commissioner (Appeals) have not given any finding on this point and without appreciating the evidences on record that the goods exported were duty paid, he came to conclusion on the basis of the finding of the adjudicating authority and rejected the appeal which is absolutely illegal, unjust, improper and against the provisions of the guidelines for sanctioning rebate claims. In view of this, the order of the Commissioner (Appeals) is unjust, unfair and illegal and therefore the said order is required to set aside in the interest of justice.

4.3. The Commissioner (Appeals) have failed to appreciate that as per the guidelines for rebate claims, the range superintendent is required to submit/forward duty payment certificate after verifying the monthly returns of the processors to the rebate sanctioning authority which the said authority failed to do, but, the same cannot result into adverse order for rejection of rebate claims as the said act is beyond the control of the applicant. Thus, the finding of the adjudicating authority for rejection of rebate claims was absolutely incorrect and therefore also the said order is required to set aside in the interest of justice.

4.4 The Commissioner (Appeals) in para 11 have referred to the judgment of Gujarat High Court in the case of Sheela Dyeing is not applicable to the exporter and is applicable only to the manufacturer/processor for reasonable steps under Rule 7(2) of Cenvat Credit Rules, 2002 and the same is not applicable to merchant exporter. In view of this, the said finding cannot resulted into rejection of the rebate claims.

4.5 The Commissioner (Appeals) in para 12 & 13 have relied upon the Supreme Court judgment in the case of Afloat Textile India Pvt. Ltd. which is not applicable to the applicant at all as the Commissioner (Appeals) himself have given clear finding in para 10 that - " In this case, there is no dispute regarding export of the goods in question." In view of this, adverse finding of the Commissioner (Appeals) which is not applicable to the applicant, has no place in law.

4.6 The lower authorities have delayed the legitimate rebate claims of the applicant since September/October-2005 for no reason and therefore the applicant may please be granted/awarded interest on completion of three months period from the filing of the said rebate claims as consequential relief which is the mandatory right of the applicant. In view of this, while allowing the appeal with consequential relief, the interest may please be awarded in the interest of justice.

5. Personal hearing scheduled in this case was schedules on 12-10-2012 & 20-12-2012. Hearing was attended by Ms. Deepali Kamble, advocate on behalf of the applicant who reiterated the grounds of Revision Application. Shri P.K. Bohra, Dy. Commissioner attended hearing on behalf of respondent department and stated that Order-in-Appeal being legal and proper may be upheld.

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 three out of four rebate claims filed by the applicant on the grounds that they failed to submit duty payment certificate. Commissioner (Appeals) upheld impugned order-in-original. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government notes that in this case rebate claim is rejected for want of duty payment certificate. Applicant has contended that export of goods is not in dispute

and duty payment certificate was to be supplied by range superintendent and therefore rebate claim may be allowed.

9. In this regard the relevant provision of Notification and instructions regarding filing of rebate claim along with requisite documents may be perused to understand the issue.

9.1 Para 8.2, 8.3 and 8.4 of part I of Chapter 8 of CBEC Excise Manual of Supplementary Instructions stipulates as under:-

" 8.2 *It shall be essential for the exporter to indicate on the A.R.E. 1 at the time of removal of export goods the office and its complete address with which they intend to file claim of rebate.*

8.3 *The following documents shall be required for filing claim of rebate:*

- (i) *A request on the letterhead of the exporter containing claim of rebate, A.R.E. 1 numbers and dates, corresponding invoice numbers and dates amount of rebate on each A.R.E. 1 and its calculations,*
- (ii) *Original copy of the A.R.E.1,*
- (iii) *Invoice issued under rule 11,*
- (iv) *Self attested copy of shipping bill, and*
- (v) *Self attested copy of Bill of Lading.*
- (vi) *Disclaimer Certificate [ in case where claimant is other than exporter]*

8.4 *After satisfying himself that the goods cleared for export under the relevant A.R.E.1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of A.R.E. 1 duty certified by Customs, and that the goods are of 'duty-paid' character as certified on the triplicate copy of A.R.E.1 received from the jurisdictional Superintendent of Central Excise (Range Office), the rebate sanctioning authority shall sanction the rebate, in part or full. In case of any reduction or rejection of the claim, an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued."*

9.2 Para 3(b) of Notification No. 19/2004-CE/(NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002, envisage as under:-

"3(b) *Presentation of claim for rebate to Central Excise:-*

- (i) *Claim of the rebate of duty paid on all excisable goods shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over*

*the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner;*

- (ii) *The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime Commissioner of Central Excise shall compare the duplicate copy of application received from the officer of customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part."*

9.3 As per these statutory provisions and procedure prescribed under Notification No. 19/2004-CE/(NT) dated 06.09.2004 the goods shall be exported on the application ARE-1, directly from the factory or warehouse. The ARE-1 form, an application for removal of excisable goods for export is presented by the exporter to Superintendent Central excise for goods intended for export who shall verify the identity of goods mentioned in the application and the particulars of duty paid or payable and if found in order shall allow clearance and seal each package or the container in the specified manner and endorse each copy of the application (ARE-1s) in token of having done the examination of goods. The original and duplicate copies of ARE-1 will be handed over to exporter who will present the same before customs. The triplicate copy of application will be sent to the office with whom rebate claim is to be filed. On arrival at place of export, the goods shall be presented to customs together with original duplicate and quadruplicate (optional) copies of the ARE-1 application. The Customs who shall examine the consignments with the particulars as cited in the application and if they find that the same are correct and exportable in accordance with law, shall allow export thereof and certify on the application that the goods have been duly exported citing the Shipping Bill number and date & other particulars of export. The Customs officers shall return the original copy of the ARE-1 to the exporter and forward duplicate copy of ARE-1 either by post or by handing over to the exporter in a tamper proof sealed cover to the officer specified in the ARE-1 application. The rebate sanctioning authority shall compare the duplicate copy of ARE-1 received from Customs with original copy of ARE-1 received from exporter and also with Triplicate copy of ARE-1 received from Superintendent of Central Excise and if satisfied that claim is in order, he shall sanction the claim either in whole or in part.

10. In this case the triplicate copy of ARE-1 does not have a duty payment certificate. Rather range superintendent of Central Excise, has remarked as 'duty payable'. So it is clear that duty was not paid. Applicant was specifically asked to submit duty payment certificate but he has failed to submit the same till date. So the duty paid character of exported goods is not proved which is the fundamental requirement for determining admissibility of rebate claim under rule 18 of Central Excise Rules 2002. Therefore lower authorities have rightly rejected the said rebate claims. Government finds no infirmity in the impugned Order-in-Appeal and therefore upholds the same.

11. The revision application is rejected being devoid of merit.

12. So, Ordered.

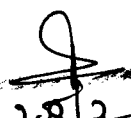


(D.P. Singh)

Joint Secretary to the Govt. of India

M/s Biyani Impex Pvt. Ltd.,  
5101, B Wing, 3<sup>rd</sup> Floor,  
Raghukul Market, Ring Road,  
Surat.

ATTESTED



(मानवत शर्मा/Shri. Shri. Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C.B.E.C.-OSD (Revision Application)  
वित्त विभाग (आयुक्त विभाग)  
Ministry of Finance (Deptt. of Rev.)  
सुरत सरकार/Govt. of India  
सुरत/ Surat

Order No. 141 /13-CX dated 22.02.2013

Copy to:

1. The Commissioner of Central Excise, Mumbai Zone-II, 3<sup>rd</sup> Floor, Utpad Shulk Bhawan, Plot No. C-24, Sector-E, Bandra Kurla Complex, Bandra (East), Mumbai-400 051.
2. The Commissioner of Central Excise (Appeals) Mumbai Zone-II, 3<sup>rd</sup> Floor, Utpad Shulk Bhawan, Plot No. C-24, Sector-E, Bandra, Kurla Complex, Bandra (East), Mumbai-400 051.
3. The Asstt. Commissioner Central Excise(Rebate),Mumbai-1, Mehar Building, Bombay Garg, Chopatty, Mumbai-400007.
4. Ms. Deepali Kamble, advocate, C/o. M/s Biyani Impex Pvt. Ltd., 5101, B Wing, 3<sup>rd</sup> Floor, Raghukul Market, Ring Road, Surat.
- ✓ 5. PS to JS(RA)
6. Guard File.
7. Spare Copy

ATTESTED



(BHAGWAT P. SHARMA)  
OSD (REVISION APPLICATION)