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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F NO. 195/212/13-RA / 27

Date of Issue: 28/05/2018

ORDER NO. 159/2018-CX (WZ) /ASRA/Mumbai DATED 21.05.18 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Jai Corp Limited. Mumbai.

Respondent : Commissioner of Central Excise (Appeals), Mumbai-III.

Subject : Revision Applications filed, under section 35EE of the Central Excise ACT, 1944 against the Order -in-Appeal No. BC/ 335 /RGD/12-13 dtd. 22.10.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III.

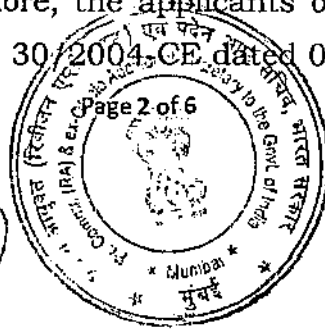


ORDER

This revision application has been filed by M/s. Jai Corp Limited. Mumbai (hereinafter referred to as "applicant") against the Order -in-Appeal No.BC/ 335 / RGD/12-13 dtd. 22.10.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III which had upheld the Order-in-Original No. 121/11-12 /DC(Rebate)/RGD dated 19.04.2012 passed by the Deputy Commissioner (Rebate) of Central Excise, Raigad.

2. Brief facts of the case are that the applicant is, inter alia, engaged in the manufacture and export of polyester yarns and such yarns are classifiable under the sub-heading 5509 of the Central Excise Tariff Act. The applicant clears the goods for export on payment of excise duty in terms of Notification No. 29/2004-CE dated 9.7.2004 and claim rebate of the duty paid under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 6.9.2004. The applicant also clears the said goods for home consumption on payment of duty under Notification No. 29/2004-CE dated 9.7.2004 or without payment of duty in terms of Notification No. 30/2004-CE.dated 09.07.2004. However, in respect of exports, the goods are cleared on payment of duty at the rates prescribed in Notification No. 29/2004-CE dated 9.7.2004.

3. The applicant imports or procures locally the inputs on payment of applicable duty which are to be used in the manufacture of exported goods. The applicant also avails the Cenvat credit on the duty paid inputs. In respect of the exports made during March 2010 to July 2010, the applicant filed rebate claims amounting to Rs.13,01,542/- (Rupees Thirteen Lakh One Thousand Five Hundred and Forty two only). The Deputy Commissioner(Rebate), Raigad vide Order-in-Original No. 121/11-12 /DC(Rebate)/RGD dated 19.04.2012 rejected the rebate claim filed by the applicant on the ground that the exported goods were fully exempt from payment of Central Excise duty in terms of the Notification No. 30/2004-2E dated 09.07.2004 and therefore, the applicants ought to have claimed the benefit of the Notification No. 30/2004-CE dated 09.07.2004 and should not



have cleared the goods on payment of duty in terms of Notification No. 29/04-CE dated 09.07.2004.

4. Aggrieved by the impugned order, the applicant filed appeal before the Commissioner of Central Excise (Appeals), Mumbai-III. Commissioner of Central Excise (Appeals), Mumbai-III vide Order-in-Appeal dated 22.10.2012 upheld the order-in-original and rejected the appeal filed by the applicants.

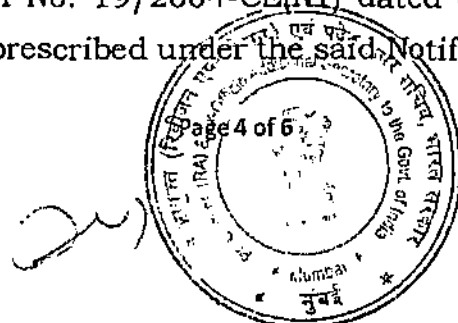
5. Aggrieved by the above Order-in-Appeal dated 22.10.2012 passed by the Commissioner (Appeals), the applicant have filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following main grounds :-

- 5.1 The impugned order passed by the Commissioner (Appeals) is perverse and is liable to be set aside. The applicant submit that the finding of the Commissioner (Appeals) that the applicants have filed an illegible copy of the order along with the appeal is incorrect. The applicants submit that they had filed a legible copy of the order passed by the Deputy Commissioner (Rebate).
- 5.2 Further, at the time of hearing, the Commissioner (Appeals) had directed the applicants to file another legible copy of the order and the same had been filed by the applicants. A copy of the order filed by the applicants pursuant to the hearing held is enclosed
- 5.3 The Commissioner (Appeals) has given a finding that the said copy of the order is also not legible, is not attested and is scribbled with pencil. The applicant submit that the aforesaid finding is also completely incorrect and the same is clear from the perusal of the order copy.
- 5.4 In the present case, the Commissioner (Appeals) has rejected the appeal filed by the applicant on the sole ground that the copy of the order of the Deputy Commissioner (Rebate) is not legible.



view of the aforesaid submissions, the applicant submits that the aforesaid ground for rejecting the appeal is perverse and grossly incorrect. The applicant submits that it appears that this is nothing but tactics employed by the Ld. Commissioner (Appeals) to not sanction the rebate claim of the applicants. Thus, the impugned order is liable to be set aside.

- 5.5 The Notification No. 30/2004-CE dated 9.7.2004, issued under Section 5(1A) of the Act, is not mandatory and the applicants have correctly paid duty in terms of Notification No. 29/2004-CE dated 9.7.2004 since the Notification No. 30/2004-CE dated 9.7.2004 is not an unconditional exemption notification.
- 5.6 The applicants submit that the Notification No. 30/2004-CE dated 9.7.2004, issued under Section 5A(1) of the Act, is not mandatory.
- 5.7 The applicants submit that the aforesaid notifications are not mutually exclusive and co-exist in the books of law. Therefore, the applicants have the option to choose between them. The applicants have opted for Notification No. 29/2004-CE and have correctly cleared the said goods on payment of duty.
- 5.8 In view of the aforesaid submissions, the applicants submit that they have correctly paid duty in terms of Notification No. 29/2004-CE dated 9.7.2004 and thus, the impugned order is liable to be set aside.
- 5.9 When two Notifications which are not mutually exclusive — co-exist in the books of law, the assessee has option to choose any one of them.
- 5.10 Conditions and procedures to claim rebate are prescribed under Notification No. 19/2004-CE(NT) dated 6.9.2004. The essential condition prescribed under the said Notification is that the goods



shall be exported after payment of duty. e. 1.3 The fact that the applicants have made the export is not at all in dispute. The fact that the goods which have been exported have suffered excise duty is also not in dispute. Moreover, there has been no procedural lapse on the part of the applicants and no finding in respect of the same has been given in the Order-in-Original/Order-in-Appeal. Therefore, the applicants are eligible for the entire claim of rebate.

In view of the above, the impugned order is liable to be set aside.

6. A Personal hearing was held in this case on 08.02.2018 and Ms. Nisha Dubey, Advocate duly authorized by the applicant, appeared for hearing and reiterated the submission filed in the Revision Application and pleaded that the impugned Order in Appeal be set aside and Revision Application be allowed.

7. 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. Government in the instant case observes that Commissioner (Appeals) has rejected the appeal on the grounds that the applicant had not filed legible copy of the Order in Original. The another copy of the said order filed/submitted by the representative of the applicant was found by the Commissioner (Appeals) to be not an attested copy, fully scribbled with pencil and illegible. The Commissioner (Appeals) observed that in spite of bringing it to their notice, their shortcomings, the applicant resorted to casual approach and hence no decision can be given on illegible copies. In view of the above the appeal filed by the applicants was rejected by the Commissioner (Appeals).

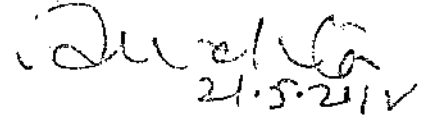
8. Government observes that the applicant in his present application has enclosed a copy of impugned Order in Original (Annexure 7) which is legible enough to proceed further to decide the matter in hand.



9. In view of above, Government sets aside impugned order-in-appeal and remands the case back to appellate authority who will decide this appeal on merits and also in accordance with law within 8 weeks from the date of receipt of this order. A reasonable opportunity of hearing will be afforded to the applicant

10. Revision application is disposed off in above terms.

11. So, ordered.



(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-Officio  
Additional Secretary to Government of India

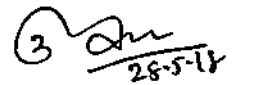
ORDER No. 159/2018-CX (WZ) /ASRA/Mumbai DATED 21.05.2018.

To,  
M/s Jai Corp Ltd.,  
1<sup>st</sup> Floor, Mittal Tower, B Wing, Free Press Journal,  
Nariman Point, Mumbai 400 021.

Copy to:

1. The Commissioner of GST & CX, (Appeals) Raigad, 5<sup>th</sup> Floor, CGO Complex, Belapur, Navi Mumbai, Thane.
2. The Commissioner of GST & CX, Belapur Commissionerate.
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Belapur Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

**True Copy Attested**

  
28-5-18  
एस. आर. हिरुलकर  
S. R. HIRULKAR  
(AC)

