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F.No.195/473/2012-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue 29/1/16

ORDER NO. 16/2016-CX Dated 27.01.2016 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, 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. US/82/RGD/2012 dated 10.02.2012 passed by Commissioner of Central Excise (Appeals-I) ,Mumbai-II
APPLICANT	:	M/s Anvil Cables Pvt. Ltd.
RESPONDENT	:	Commissioner of Central Excise, Raigad.

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ORDER

This revision application is filed by M/s. Anvil Cables Pvt. Ltd. against the Order-in-Appeal No. US/82/RGD/2012 dated 10.02.2012 passed by the Commissioner of Central Excise (Appeals-I), Mumbai-II with respect to Order-in-Original No.1529/10-11/DC(Rebate)/Raigad dated 31.12.2010 passed by the Deputy Commissioner of Central Excise, (Rebate), Raigad.

2. Brief facts of the case are that the adjudicating authority had rejected the rebate claim on the ground that the conditions stipulated in Notification No. 19/2004 CE(NT) dated 06.09.2004 read with Rule 18 of the Central Excise Rules, 2002 were not fulfilled. The following deficiencies were recorded in the findings of the adjudicating authority:-

(i) The authority with whom the rebate claim will be filed is shown in the ARE-1s as Maritime Commissioner, Kolkata, instead of Maritime Commissioner, Raigad.

(ii) The copy of Bill of lading given is not legible and self attested.

(iii) The shipping Bill copy is not proper. The prefix of the container number is not appearing.

(iv) The tariff classification of the product given on the invoices is not tallying with that given in the Shipping Bill.

(v) The assessable value is more than FOB value.

(vi) Voyage number of the vessel in Shipping Bill and Mate Receipt is '018' whereas in the Bill of Lading it is '017'.

(vii) The declaration at 3(a), 3(b), 3(c), of the ARE-1 not properly scored.

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 Deputy Commissioner(Rebate), Central Excise Raigad has violated the principle of natural justice in this case, since he has not granted at least three (3) chances of personal hearing to the applicant before issuing the final order rejecting the rebate claim.

4.2 Necessary application for correction of the authority on the ARE-1 with whom the rebate claim will be filed was submitted to the Deputy Commissioner (Rebate), Central Excise Raigad. Hence this mistake on the ARE-1, has been resolved at the level of the said Deputy Commissioner.

4.3 The defects in the Bills of lading and Shipping Bill per the show cause Notice are curable in nature and hence the same may please be condoned in view of judgments referred to in the appeal filed before appellate authority.

4.4 As regards assessable value shown in the Central Excise invoice it is stated that Rebate sanctioning authority cannot examine correctness of assessment. Full rebate is eligible if Central Excise Duty is paid on CIF value also.

In CCE vs. Maini precision products (2010) 252 ELT 409 (CESTAT, SMB), it has been held that rebate is payable even if duty is paid on CIF value. Rebate sanctioning authority is not to examine correctness of assessment.

Relying on the above judgment, and also relying on CBEC circular No. 510/06/2000 CX date 03.02.2000, the applicant is eligible for rebate as per assessable value shown in the Central Excise invoice and A.R.E.I.s

4.5 Department has not been able to establish that the items covered by the relevant ARE1s/ Shipping Bills/Bills of lading, have not been exported by the applicant.

4.6 The applicant has observed all the formalities as per rule and the goods were cleared for export under supervision and sealing by Central Excise officers. Hence there cannot be any violation on the part of the applicant.

4.7 The applicant is entitled for rebate of Rs. 6,09,032/- along with interest, as applicable, since the adjudicating authority has rejected the rebate claim arbitrarily without giving three (3) chances of personal hearing to the applicant after issuing the show cause notice in this respect, violating the principles of natural justice.

5. The personal hearing scheduled in this case on 13.07.2015, which was attended by Shri Prashant Arya of M/s. R.K. Sharma and Associates Pvt. Ltd., who reiterated grounds of Revision Application. They also relied upon GOI order in case of Ginni Filament Ltd. 2014(0311) ELT 887 (GOI). Nobody attended hearing on behalf of department.

6. Government has gone through the relevant case records/ available in case files, oral & written submission and perused the impugned Order-in-Original and Order-in-Appeal.

7. Upon perusal of records Government observes that the original authority rejected the rebate claim on the ground that conditions stipulated in Notification No. 19/2004-C.E.(N.T.) dated 06.09.2004 read with the provisions of Rule 18 of the Central Excise Rules, 2002 were not fulfilled and that Maritime Commissioner, Central excise, has no jurisdiction to deal with rebate claim. Commissioner (Appeals) upheld impugned Order-in-Original. Now, the applicant has filed this Revision Application on grounds mentioned in para (4) above.

8. Government observes that the original authority held the rebate claim is admissible on following grounds:-

(i) The authority with whom the rebate claim will be filed is shown in the ARE-1s as Maritime Commissioner, Kolkata, instead of Maritime Commissioner, Raigad.

(ii) The copy of Bill of lading given is not legible and self attested.

(iii) The shipping Bill copy is not proper. The prefix of the container number is not appearing.

(iv) The tariff classification of the product given on the invoices is not tallying with that given in the Shipping Bill.

(v) The assessable value is more than FOB value.

(vi) Voyage number of the vessel in Shipping Bill and Mate Receipt is '018' whereas in the Bill of Lading it is '017'.

(vii) The declaration at 3(a), 3(b), 3(c), of the ARE-1 not properly scored.

8.1 Government notes that as regard to discrepancies mentioned at Sr. No. (i), (ii),(iii),(iv) and (vii), the appellate authority has given detailed findings. The appellate authority after going through factual aspects of the case, unambiguously held that the applicant failed to comply with statutory requirements stipulated under Notification No. 19/2004 CE (NT) dated 06.09.2004 and also did not follow the instructions given under chapter 8 of CBEC is Excise Manual of Supplementary instructions and rightly held rebate claims inadmissible. Government also notes that appellate authority allowed contention of applicant as required to deficiencies shown at Sr. No. (ii), (iii), (vi) above in as much as he allowed curative action by applicant with respect to correction made in voyage No. of the vessel and he observed that applicant submitted clear self attested copies of Bill of Lading and Shipping bill. On all other counts of deficiency, the Commissioner (Appeals) has given detailed findings holding rebate inadmissible on those counts. As such, Government finds that the appellate authority judiciously carried out aspect of factual verification and rightly held rebate claim inadmissible on aforesaid grounds.

8.2 In support of the above view Government places reliance on the following decisions of the Apex Court:-

8.2.1 In the case of Sharif-ud-Din, Abdul Gani (AIR 1980 SC 3403) it has been observed that distinction between required forms and other declarations of compulsory nature and on simple technical nature is to be judiciously done.

8.2.2 It is a settled issue that benefit under a conditional notification cannot be extended in case of non-fulfillment of conditions and/or non-compliance of procedure prescribed therein as held by the Apex Court in the case of Government of India Vs. Indian Tobacco Association 2005 (187) ELT 162 (S.C.); Union of India Vs. Dharmendra Textile Processors 2008(231) ELT 3 (S.C.). Also it is settled that a Notification has to be treated as a part of the statute and it should be read along with the Act as held by in the case of Collector of Central Excise Vs. Parle Exports (P) Ltd – 1988(38) ELT 741 (S.C.) and Orient Weaving Mills Pvt. Ltd. Vs. Union of India 1978 (2) ELT J 311 (S.C.) (Constitution Bench).

8.2.3 Government notes that the applicant relied on the various judgments regarding procedural relaxation on technical grounds. The point which needs to be emphasized is that when the Applicant seeks rebate under Notification No.42/2001-CE (NT) dated 26.06.2001, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under Rule 19 ibid, the Applicant should have ensured strict compliance of the conditions attached to the Notification No. 42/2001-CE (NT) dated 26.06.2001. Government place reliance on the Judgment in the case of MIHIR TEXTILES LTD. Versus COLLECTOR OF CUSTOMS, BOMBAY, 1997 (92) ELT 9 (S.C.) wherein it is held that:

> "*concessional relief of duty which is made dependent on the satisfaction of certain conditions cannot be granted without compliance of such conditions. No matter even if the conditions are only directory.*"

8.3 Government notes that with regard to deficiency shown at Sr. No. (V) regarding valuation aspect, the applicant contended before appellate authority that the assessable value was more than FOB value due to currency fluctuation, but the applicant did not furnish any explanation as to how the variation in exchange rates has resulted in difference between assessable value and FOB value. Government observes that in their grounds of Revision Application also the applicant could not substantiate their claim of variation in exchange rate. Rather, they have take a new ground that rebate sanctioning authority cannot examine corrections of assessment and full rebate is eligible if central excise duty in paid on CIF value also. In this respect, they have relied upon judgment in the case of CCE vs. Maini Precisions Products reported as (2010) 252 ELT 409 (CESTAT) and CBEC's which has been set aside by the Hon'ble High Court of Karnataka 2012 (281) ELT711 (Kar.) Since, this ground was not raised before appellate authority and also they could not

substantiate their claim for difference in assessable value and FOB due to fluctuation in exchange rate, government finds no cause to interfere with the findings of appellate authority and concurs with the same.

9. In view of above discussions, Government upholds impugned Order-in-Appeal as just and legal.

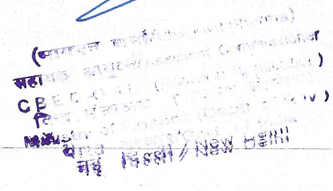
10. Revision Application is thus rejected being deviod of merits.

11. So, ordered.

(RIMJHIM PRASAD)
Joint Secretary to the Government of India

M/s. Anvil cables Pvt. Ltd.
102, Krishna Building,
224 A.J.C. Bose Road,
Kokkata-700017

Attested



ORDER NO. 16/2016-CX Dated 27.01.2016

Copy to:

1. Commissioner of Central Excise, Raigad Commissionerate, Plot No. 1, Sector-17, Khandeshwar, Navi Mumbai-410206.

2. Commissioner of Central Excise (Appeals-II), Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E Bandra - Kurla Complex. Bandra (E), Mumbai-40005

3. The Deputy Commissioner(Rebate) Central Excise, Raigad, Office of the Maritime Commissioner, Central Excise, Raigad, Kendriya Utpad Shulk Bhavan, Plot No. 1 Sector 47, Navi Mumbai-410206

4. PA to JS(RA)

5. Guard File.

6. Spare Copy

Attested

(B.P.Sharma)
OSD (RA)