

REGISTERED  
SPEED POST



F.NO. 198/247/11-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... 31.12.12

ORDER NO. 1636 /2012-CX DATED 30-11-2012 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. SKSS/242/Surat-II/2010 dated 23.12.10 passed by the Commissioner of Central Excise & Customs (Appeals), Surat-II

APPLICANT : The Commissioner of Central Excise & Customs, Surat-II

RESPONDENT : M/s Rajesh Chemical Industries, Ankleshwar

\*\*\*\*\*

ORDER

This revision application is filed by the applicant Commissioner of Central Excise & Customs, Surat-II Commissionerate, against the order-in-appeal No.SKSS/242/Surat-II/2010 dated 23.12.10 passed by the Commissioner of Central Excise & Customs (Appeals), Surat-II with respect to order-in-original No.ANK-I/DPM/1756/R/2009-10 dated 31.3.10 passed by Assistant Commissioner, Central Excise & Customs Division-I, Ankleshwar.

2. Brief facts of the cases are that the respondents M/s Rajesh Chemical Industries, GIDC, Ankleshwar have filed rebate claim for Rs.88,909/- for export under ARE-1 No.7/2009-10 dated 29.6.2009 with Jurisdictional Assistant Commissioner (JAC), division-I, Ankleshwar on 8.10.2009. On scrutiny of claim it was noticed that as per Central Excise invoice and Lorry receipt issued by M/s A.B.Transport, the delivery place of export goods viz. 3.3 Dimethy Benzidine was shown as Bhiwandi which clearly indicated that the goods were no directly dispatched to the port of shipment i.e. in this case JNPT. As per Notification No.19/204-CE(NT) dated 6.9.2004 read with para 1(i) & (ii) of Part-I of Chapter 8 of CBEC Excise manual of Supplementary Instructions 2005, the excisable goods shall be exported after payment of duty directly from a factory or warehouse except as otherwise permitted by the Central Board of Excise & Customs by a general or special order. Further, procedure for export from warehouse, after its removal from factory of manufacture, as prescribed in terms of CBEC Circular No.579/16/2001-CX dated 26.6.2001 interalia requires the intervention of officers of Central Excise having jurisdiction over the said warehouse for purpose of proper control/check over the goods initially cleared from the factory of manufacture. None of such condition was fulfilled by the appellant. Therefore a SCN was issued proposing rejection of refund claim and JAC after due process of law rejected the refund claim vide impugned O.I.A. dated 31.3.2010.

3. Being aggrieved by the said order order-in-original, respondents filed appeal before Commissioner (Appeals) who set aside the impugned O.I.A. and allowed the appeal.

4. Being aggrieved by the impugned order-in-appeal, the applicant department has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 The judgment and order of the Commissioner (Appeals) is contrary to the law, proven facts & evidence on record & thus improper, invalid, bad in law, erroneous and contrary to the statutory provisions and legislative intent contained in the statutory provisions of the Act and the Rules framed there under therefore, the same deserves to be quashed and set aside.

4.2 Commissioner (Appeals) failed to take note that goods were not directly dispatched to the port of export as required under Notification No. 19/2004-CE/(NT) dated 06.09.2004 read with procedure prescribed under Chapter 8 part-I sub Para (i) & (ii) of para 1 of CBEC Excise Manual of Supplementary Instructions 2005. The exporter in the present case was the merchant exporter and merchant exporter has the characteristic of procuring the goods from different part of the country (some time it may be obtained from manufacturer as also from open market) and consolidating them and exporting them. These are the numbers of factors which have a bearing to prove that goods are not one which is cleared from the factory. Commissioner (Appeal) erred in observing that there is no allegation, much less evidences either in the SCN or in the impugned Order-in-Original which may allege/prove that the goods which were originally removed from the appellant factory under related ARE-1 has not been exported and/or the goods exported under the related ARE-1s are other than those cleared under the related ARE-1.

4.3 The Commissioner (Appeals) erred in holding that the goods which were removed from the factory premises, the same goods in a same packing, have been exported as it is quite evident from the ARE-1 and Shipping Bills, there is no dispute that the same goods have been exported and duty was paid on the said goods. Further

he erred in holding that even if the ARE-1s were neither prepared at the end of exporter nor the goods were examined by Range Superintendent in whose jurisdiction the godown/warehouse of the exporter is situated, the substantial requirements of the law have been fulfilled for export of goods under rebate in as much as such irregularity and diversion of goods were noticed by the department in general and issued circular No. 294/10/94-Cx dated 30.01.97, wherein Board has granted on time immunity in case of identified goods and have prescribed the procedure in case the goods is exported from private premises of exporter. The circular prescribes the procedure to be followed, according to which ARE-1/AR-4 is to be prepared and submitted to the Range officer in whose jurisdiction the godown/warehouse of the exporter is situated and goods has to be examined by the jurisdictional range superintendent. Though this circular is for the period prior to Notification No. 19/2004-CE/(NT) dated 06.09.2004 and CBEC's Excise Manual of Supplementary Instructions 2005, the same is squarely applicable for the current period and in present case in view of transitional provisions (Rule 33 of Central Excise Rules, 2002). The ARE-1 in the present case is neither prepared at the end of exporter nor the goods is examined by Range Superintendent in whose jurisdiction the godown/warehouse of the exporter is situated.

4.4 Commissioner (Appeals) failed to appreciate that goods under export were commodity prone to evasion and is not easily identifiable in nature and the procedure prescribed as stated above is at all not followed by the exporter/claimant. When a substantive procedure prescribed is not followed, the burden of proof always stands shifted on the exporter/claimant to prove beyond doubt that goods were ones which were duty paid and as cleared from the factory of manufacture.

5. A Show Cause Notice was issued to the respondent under Section 35EE of Central Excise Act, 1944 to file their counter reply. No such reply was received from them so far.

6. Personal hearing scheduled in this case on 11.10.2012. Nobody appeared for personal hearing on given date. The applicant department vide their letter dated

10.10.2012 requested to decide the case on merit. However, the respondents requested to grant them a fresh personal hearing.

7. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

8. On perusal of records, Government observes that rebate claims in question were initially rejected by original authority i.e. Assistant Commissioner of Central Excise & Customs. The respondents being aggrieved of the said-order-in-original filed appeal before Commissioner (Appeal) who after due process of law set aside the order-of-original and allowed the appeal of the respondents. Now department has filed these revision applications on the grounds stated in para 4 above. Department has mainly contended that goods were not directly dispatched to the port of export as required under Notification No. 19/04-CE(NT) dated 6.09.04 read with procedure prescribed under Chapter 8 Part-I, Para (1)(i) and (ii) of CBEC Excise Manual of Supplementary Instruction 2005. They further submitted that in the present case the goods were exported by the merchant exporter and the merchant exporter has the characteristic of procuring the goods from different part of the country/from open market and consolidating them and exporting them. These are the numbers of factors which have a bearing to prove that goods are not one which is cleared from the factory. Further the ARE-1 is neither prepared at the end of exporter nor the goods is examined by Range Superintendent in whose Jurisdiction the godown/warehouse of exporter is situated.

8.1 Government observes that in the instant case there is no allegation that goods cleared from factory have been diverted to elsewhere. The same goods claimed to be in same packing condition have been exported. The description of goods, gross weight, net weight, quantity mentioned in the ARE-1 and Shipping Bill are tallying. This is not the case of the department that the merchant exporter has changed the packing of the goods and the same goods in a same packing condition have not been exported. The

applicant department did not put forth any evidence of diversion of goods for home consumption. Commissioner (Appeals) has come to conclusion that the goods cleared from factory on payment of duty vide ARE-1 were exported vide relevant Shipping Bills.

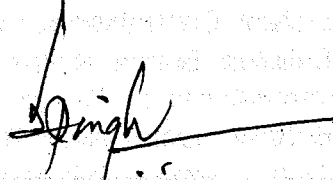
8.2 It is also observed that goods were cleared from factory under the said ARE-1 duly signed by manufacturer and exporter and duty payment was duly verified by Range Superintendent. The export was routed through merchant exporter. The description, weight, No. of packages, quantity and value of goods as given in ARE-1 and the particulars given in relevant shipping bill is tallying and not questioned by the department. Customs officers have certified the ARE-1 to the effect that said goods were exported as per the corresponding shipping bill number mentioned on the ARE-1. The substantial compliance of provision of law has been established since the ARE-1 form prepared at the factory on which goods are cleared for export contains the customs endorsement regarding of export of goods. In view of this position, the correlation of the goods cleared from factory with the goods exported gets established.

9. Government has decided similar case vide Government order No. 419- 428 / 11-CX dated 28.4.11 in the case of M/s. Neal Pigments Limited, Ankleshwar upholding the impugned orders-in-appeal where under rebate claims were held admissible under similar circumstances. In the said case revision application filed by department against orders-in-appeal No.KS/185-194/SRT-II/2008 dated 10.9.09 passed by Commissioner Central Excise (Appeal) Surat-II was rejected and orders-in-appeal were upheld. The ratio of said GOI of order is squarely applicable to this case since facts of the case are exactly identical. However Government is of the opinion that such procedural lapses committed on the part of exporter/claimant cannot be allowed to be repeated time and again. In case of further re-occurrence of non-compliance of prescribed procedure are noticed the department would be justified in viewing such matter as substantial non-compliance of prescribed procedure which may result in rejection of related rebate claim.

10. In view of above discussions, Government finds no infirmity in the impugned order-in-appeal and therefore upholds the same.

11. Revision application is therefore rejected being devoid of merit.

12 So, ordered.



(D P SINGH)

Joint Secretary (Revision Application)

The Commissioner of Central Excise & Customs,  
Surat-II, Old Central Excise Building,  
Opp Gandhi Baug, Chowk Bazar,  
Surat- 395001.



G.O.I. Order No. 1636 /12-Cx dated 30-11.2012

Copy to:

1. The Assistant Commissioner of Central Excise, Division-II, Ankleshwar, Central Excise Building, Behind Roshan Cinema, Ankleshwar.
2. The Commissioner of Central Excise & Customs (Appeals), Surat-II, Old Central Excise Building, Opp Gandhi Baug, Chowk Bazar, Surat- 395001.
3. M/s Rajesh Chemical Industries, Plot No.1818-19, Near Crystal Chowkdi, GIDC Estate, Ankleshwar-393002
- ✓ 4. PS to JS(RA)
5. Guard File.
6. Spare Copy

ATTESTED



(P.K. Rameshwaram)  
OSD (Revision Application)