GOVERNMENT OF INDIA
MINISTRY OF FINANACE
DEPARTMENT OF REVENUE

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

F NO. 195/786/12-RA/411 Date of Issue: December 2017

ORDER NO. 16/2017 CX (WZ) /ASRA/Mumbai DATED 05.12.2017 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 Sapna International, 402/403, Twin Arcade "C", Military Road, Marol, Andheri (East) Mumbai-400 059.

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

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 filed by M/s Sapna Intl. 402/403, Twin Arcade "C", Military Road, Marol, Andheri (East) Mumbai-400 059 against the Order-in-Appeal No. US/378/RGD/2012 dated 11.06.2012 passed by The Commissioner (Appeals) Central Excise, Mumbai Zone– II.

ORDER

This Revision Application has been filed by Sapna International, 402/403, Twin Arcade "C", Military Road, Marol, Andheri (East) Mumbai-400 059 (hereinafter referred to as the "Applicant") against the Order-in-Appeal No. US/ 378/ RGD/ 2012 dated 16th June 2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai. The facts, in brief, giving rise to filing of the present revision are as below.

2. The Applicant is merchant exporter, interalia, exporting various types chemicals falling under Chapter 28/29 of Central Excise Tariff. The applicants had exported 4700 kgs of the Chemicals viz. Diphenyl Amine and Meta Phenelylene Diamine manufactured by M/s. Hiren Enterprises, GIDC, Vapi. The manufacturer had cleared the said goods under claim for rebate of duty amounting Rs.66,018/- paid at the time of clearance of the goods under cover of the Central Excise invoice No. 62 and ARE-1 No. 87/2010-11 both dated 17.03.2011.

3. The goods were duly exported and the Applicant claimed rebate of duty paid on the goods, duly supported by proof of exports. The rebate was sanctioned and paid by the Deputy Commissioner (Rebate), Central Excise, Raigad, vide Order-In-Original No.1105/11-12 dated 02.11.2011.

4. Subsequently, the said Order-In-Original dated 02.11.2011, was reviewed by the Commissioner, Central Excise. Raigad, and the Deputy Commissioner (Rebate) was directed to file an appeal, and in compliance, an appeal was filed before the Commissioner (Appeals) on the ground that the manufacturer had cleared the goods for export by availing benefit under notification No. 21/2004-CE (NT) dated 06.09.2004, as mentioned in the ARE-I. If the exporter is availing benefit under the said notification, then it is mandatory on the part of the exporter to clear the goods for export under Form ARE-2 and to claim the rebate from the jurisdictional Asstt./Dy.Commissioner of Central Excise. Therefore, sanction of rebate under the subject ARE-1 is not correct. Further, that the ARE-1 is a statutory form prescribed under Notification No.19/2004

dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002. The declarations given in the ARE-1's are required to be filled in so as to ascertain whether specified Notifications have been availed by the exporter or not. This is a statutory requirement which have not been complied with by the appellants.

5. The Commissioner (Appeals) agreed with the contentions above and further elaborated that the ARE-1 is a statutory form prescribed under Notification No.19/2004 dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002. The declarations given in the ARE-1's are required to be filled in so as to ascertain whether specified Notifications have been availed by the exporter or not. This is a statutory requirement which have not been complied with by the appellants. Accordingly, Commissioner (Appeals) set aside the order of the Deputy Commissioner (Rebate)'s Order-In-Original No.1105/11-12/DC (rebate) dated 02-11-2011 and allowed department's appeal.

6. Aggrieved with the above order of the Commissioner (Appeals) the Applicants have filed the present Revision application on the following grounds;

- that they had exported the finished goods cleared on payment of Central Excise duty and had claimed rebate of such duty paid on finished goods, and not claimed rebate of duty paid on inputs used in the manufacture of final products. This position has not been disputed in the impugned order and the learned Commissioner has accepted the fact that the correct notification applicable was notification No.19/2004-CE (NT) and not notification No.21/2004-CE. However, he has set aside the Order-In-Original passed by the Deputy Commissioner only on the grounds that the particulars of the notification was not correctly filled by the manufacturer; that ARE-1 is an assessment document and once the goods have been assessed by an assessee, it is not open to the assessee to re-assess the same, which can be made only by the jurisdictional Asstt./Dy.

Commissioner. They submit that the learned Commissioner has erred in holding that ARE-1 is an assessment document, it is only an Application for Removal of goods for Export. Under the Central Excise law, as per the self-assessment scheme, the goods are self-assessed by an assessee by making declaration in the Central Excise invoice and making payment of duty as per his self-assessment. In the present case, there is no dispute that the assessment of the goods by issue of Central Excise invoice has been made correctly by the manufacturer. As a matter of fact, the Applicant did not seek to make corrections in any of the particulars, including the assessable value, duty paid, etc. as declared in the Central Excise invoice issued by the manufacturer. Therefore, the ground on which the impugned order has been passed is legally untenable, factually incorrect and the impugned order deserves to be set aside and quashed in toto.

- that they also submit that the learned Commissioner has failed to appreciate the factual position that the issue involved in the present application is pertaining to clerical error in filling the ARE-1, which mistake is an apparent from the facts of the case and the assessee is not estopped from correcting such clerical mistake and correction of a clerical error, that too in ARE- 1 , without affecting classification of goods, total assessable value and the amount of duty paid cannot be termed as re-assessment. Under these circumstances, the impugned order deserves to be set aside and quashed as legally unsustainable.

- that without prejudice to the submissions made hereinbefore and without conceding the Applicants also submit that under the Central Excise law, there is no bar against re-assessment of the goods, by correcting any mistake in assessment. Therefore, on this ground also the impugned order is legally unsustainable.

- that without prejudice to the submissions made hereinbefore and without admitting the Applicants submit that as far as the declaration made in ARE-1, the manufacturer M/s Hiren Enterprises, due to clerical error, had wrongly deleted the words "without availing" instead of "availing" in the clause (b) of the declaration, regarding availment of benefit of Notification No. 21/2004-CE (NT() which was purely a clerical and rectifiable error. When the Applicants became aware of the clerical error in filing up th ARE-1 form, they had made enquiries with the manufacturer to ascertain the factual position leading to making error in the declaration on the body of ARE-1. The manufacturer M/s Hiren Enterprises, Vapi vide their letter dated 16.05.2012 have clarified the factual position regarding the mistake occurred at their end. The aforesaid letter of the manufacturer is self-explanatory and in the light of the clarification provided by the manufacturer, the rebate granted to the Applicants was correct and legal and the Order in original was not liable to be set aside on this technical and clerical ground.

- that they had clarified to the Commissioner (Appeals) that they claimed the rebate of duty paid on finished goods and not on the duty paid on materials used in the manufacture of the finished goods is evident from the proof of exports submitted by the Applicants along with the rebate claim. From the proof of export submitted by the Applicants along with rebate claims, it was evident that the export goods were cleared by the manufacturer M/s Hiren Enterprises, GIDC, Vapi, under cover of their Central Excise invoice which clearly evidences payment of total duties of Rs. 66,018/- made by them on the finished goods. Therefore the question of availing benefit of exemption under Notfn 21/2004-CE(NT) dated 06.09.2004 as certified did not arise at all.

- that they had claimed and paid the rebate of the actual duty paid on export goods, the fact of export of the goods and the duty paid

nature of the export goods was duly verified and established prior to sanction of rebate, the order of granting rebate was not liable to be reversed only on the ground of clerical error on the part of thee manufacturer, while filing up ARE-1 form, ignoring and brushing aside the factual position as evidenced from documentary and other evidences.

- that it is a well settled legal position that substantial benefit of rebate admissible under the law, cannot be denied only on the ground of certain technical and clerical error by the manufacturer while filing up ARE-1 form. It is a settled legal position that once it is established that the goods have been duly exported and the same have suffered duties of Central Excise, then rebate of such duties should be granted to the exporter, notwithstanding any clerical or technical errors.

In view of the aforesaid grounds of Appeal the Applicant prayed for setting aside and quashing of Order in Appeal passed by the Commissioner (Appeal) and restoring the Order in Original passed by the Deputy Commissioner holding that the Applicants were rightly eligible for and granted rebate of duty paid on export goods.

7. A personal hearing in the matter was held on 22.11.2017, Shri S. K. Sinha, Proprietor of M/s Sapna International and Shri Narendra Shah, Partner of M/s Hiren Enterprises attended the hearing. They reiterated the submissions made in the revision application and stated that this is a case of clerical mistake. The exported goods are duty paid and have been exported and the Bank Realisation certificates have also been received. In view of the same the Revision Application may be allowed and the Order in Appeal be set aside.

8. 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.

9. On perusal of records, Government observes that the Applicant's rebate claim made under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 – C.E.(NT) dated 06.09.2004 was initially sanctioned by the original authority. Department filed appeal before the Commissioner (Appeals) on the ground that the applicant exported the goods by scoring Sr. No. 3(b) of ARE-1 to the effect that they were availing benefit under the Notification No. 21/2004-CE (NT) dated 06.09.2004 and under the said Notification No.21/2004-CE (NT) dated 06.09.2004 they were required to clear the goods under ARE-2 which they failed to do so. As such, rebate claimed under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 – C.E.(NT) dated 06.09.2004 was not admissible. Now, the applicant has filed this Revision Application on grounds mentioned in para (6) above

10. Government notes that the only contention of the Department before Commissioner (Appeals) was that the Applicant had availed benefit under Notification No. 21/2004-CE (NT) dated 6.09.2004 on the goods exported by them at Sr. No. 3(b) of the ARE-1 and under this Notification it is mandatory to clear the goods for export in form ARE-2 and file the rebate claims with the jurisdictional Assistant/Deputy Commissioner. and hence, they were required to clear the goods under cover of ARE-2, which they failed to do.

11. Government notes that from the proof of export submitted by the Applicants along with rebate claims, it was evident that the export goods were cleared by the manufacturer M/s Hiren Enterprises, GIDC, Vapi, under cover of their Central Excise invoice which clearly indicated payment of total duties of Rs. 66,018/- made by them on the finished goods and therefore the question of availing benefit of exemption under Notfn 21/2004-CE(NT) dated 06.09.2004 as certified did not arise at all. Government has further observed that in impugned Order-in-Original, it has been noted by the original authority that the goods were exported under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 – C.E. (NT) dated 06.09.2004. Government further notes that

the fact of duty payment and export of such duty paid goods was established in Order-in-Original in unambiguous terms.

12. Government observes that the Applicant exported the goods and filed rebate claim under Rule 18 of the Central Excise Rules, 2002 read with the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. The Applicant has contended that as far as the declaration made in ARE-1, the manufacturer M/s Hiren Enterprises, due to clerical error, had wrongly deleted the words "without availing" instead of "availing" in the clause (b) of the declaration, regarding availment of benefit of Notification No. 21/2004-CE (NT() which was purely a clerical and rectifiable error. When the Applicant became aware of the clerical error in filing up th ARE-1 form, they had made enquiries with the manufacturer to ascertain the factual position leading to making error in the declaration on the body of ARE-1. The manufacturer M/s Hiren Enterprises, Vapi vide their letter dated 16.05.2012 have clarified the factual position regarding the mistake occurred at their end. However, they exported the goods under Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 on payment of duty and as such they were not required to export the goods under cover of ARE-2 as they had not claimed input rebate.

13. Government finds that the applicant prepared the ARE-1 under claim of rebate and paid applicable duty at the time of removal of goods. The original authority in rebate sanctioning orders have categorically held that applicants have exported the goods under claim of rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 and also that range Superintendent confirmed the verification of duty payment. As such, the exported goods are duty paid goods. Once, it has been certified that exported goods have suffered duty at the time of removal, it can be logically implied that provisions of Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004 cannot be applied in such cases. There is no independent evidences on record to show that the applicant have exported the goods without payment of duty under ARE-2. Under such circumstances, Government finds force in contention of

applicant that as far as the declaration made in ARE-1, the manufacturer M/s Hiren Enterprises, due to clerical error, had wrongly deleted the words "without availing" instead of "availing" in the clause (b) of the declaration, regarding availment of benefit of Notification No. 21/2004-CE (NT) which was purely a clerical and rectifiable error. In this case, there is no dispute regarding export of duty paid goods. Simply ticking a wrong declaration in ARE-1 form cannot be a basis for rejecting the substantial benefit of rebate claim. Under such circumstances, the rebate claims cannot be rejected for procedural lapses of wrong ticking.

14. Government notes that identical issue of ticking wrong declaration in case of M/s. Socomed Pharma Ltd. decided by GOI in Revision Order No. 154-157/2014-CX dated 21.04.2014 (reported in 2014 (314) ELT 949 (GOI) wherein it has been observed that mere ticking of wrong declaration may not be a reason for rejection of rebate claim especially when substantial condition of export of duty paid goods established. Government finds that rational of aforesaid GOI order is squarely applicable to this case also. Further, it is now a trite law while sanctioning the rebate claim that the procedural infraction of Notification/Circulars etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacturer and subsequent export. As long as this requirement is met, other procedural deviations can be condoned. Such a view has been taken in *Birla VXL* - 1998 (99) E.L.T. 387 (Tri.), *Alfa Garments* - 1996 (86) E.L.T. 600 (Tri), *Alma Tube* - 1998 (103) E.L.T. 270, *Creative Mobous* - 2003 (58) RLT 111 (GOI), *Ikea Trading India Ltd.* - 2003 (157) E.L.T. 359 (GOI), and a host of other decisions on this issue.

15. In view of the discussions above the Government notes that when substantive fact of actual export is not disputed, the denial of export relief in this case on the sole ground of technical lapse is not justified.

16. Government finds that once the merits of rebate claims, found to be in favour of the Applicant, the sanction of same cannot be treated as erroneous and hence, no recovery is warranted. In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. US/378/RGD/2012 dated 11.06.2012 and restores the initial Order-in-Original No.1105/11-12/DC (Rebate)/Raigad dtd 02.11.2011 sanctioning the rebate claims.

17. Revision Application thus succeeds in above terms.

18. So ordered.

05.12.17

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 16/2017-CX (WZ) /ASRA/Mumbai DATED 05.11.2017

M/s Sapna International,
402/403, Twin Arcade "C",
Military Road, Marol,
Andheri (East),
Mumbai-400 059.

True Copy Attested

SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of GST & CX, RaigadCommissionerate.
2. The Commissioner, Central Excise, (Appeals) –II, 3rd Floor, GST Bhavan, BKC, Bandra (E), Mumbai-400051.
3. The Deputy / Assistant Commissioner (Rebate), Central Excise building, Plot no. 1, Sector-17, Khandeshwar, Navi-Mumbai -410206.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.