

REGISTERED SPEED POST



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
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 195/510/13-RA / 4096

Date of Issue:- 10/10/19

ORDER NO. 16 /2019-CX(SZ)/ASRA/MUMBAI DATED 27.08.2019
OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Sl.No.	Revision Application No.	Applicant	Respondent
1	195/510 /13-RA	M/s Nirmala Matches, Virudhunagar	Commissioner, Central Excise, Madurai.

Subject: Revision applications filed under Section 35EE of the Central Excise Act, 1944, against the Order in Appeal No. MAD-CEX-000-APP-011-13 dated 15.02.2013 passed by the Commissioner of Central Excise (Appeals), Madurai.

ORDER

This Revision application is filed by M/s Nirmala Matches, Virudhunagar (hereinafter referred to as the 'applicant') against the Orders-In-Appeal No. MAD-CEX-000-APP-011-13 dated 15.02.2013 passed by the Commissioner of Central Excise, Madurai.

2. The Brief facts of the case are that the applicants have exported safety matches on application in ARE-2 without payment of duty under bond by following the procedure under Notification No. 42/2001 dated 26.06.2001 and claimed rebate of duty paid on inputs used in the manufacture of exported matches in terms of Rule 19 of Central Excise Rules, 2002 and Notification No. 21/2004 dated 06.09.2004 issued thereunder. The applicant had filed a claim of rebate for Rs. 3, 21,238/- (Rupees Three Lakh Twenty One Thousand Two Hundred Thirty Eight Only) on 14.02.2011 for claim of rebate of the duty paid on raw materials used in the manufacture of the finished goods viz. safety matches, which were exported under ARE-2 No. 21/2010-11 dated 14.09.2010 and 24/2010-11 to 36/2010-11 dated between 01.10.2011 and 17.01.2012.

3. The applicant is using duty paid excisable materials in the manufacture of matches, clearing the finished goods without payment of duty under bond under Notification No. 42/2001-CE (NT) dated 26.06.2001 and claiming input-stage rebate under Notification No. 21/2004-CE(NT) dated 06.09.2004. Since the applicant, instead of claiming rebate under Notification No. 19/2004, had claimed rebate under Notification No. 21/2004 and thereby misused the relief given by the Government and availed Notifications 42/2001 and 21/2004 wrongly and simultaneously, the said rebate claim of Rs. 3, 21,238/- was rejected by the adjudicating authority vide Order In Original No. 07/2012 date 14.02.2012.

4. Aggrieved by the said order, the applicant filed an appeal with Commissioner (Appeals), Madurai. The Appellate Authority vide Order in Appeal No. MAD-CEX-000-APP-011-13 dated 15.02.2013 upheld the order in

original, on the grounds that by claiming rebate of duty paid on materials used in the manufacture of exported matches under Notification No. 21/2004 instead of claiming rebate of duty paid on exported dutiable matches under Notification No. 19/2004, the applicant misused the relief by availing Notification Nos. 42/2001 and 21/2004 wrongly and simultaneously.

5. Being aggrieved, applicant has filed the instant revision application before Central Government under Section 35EE of Central Excise Act, 1944, on the grounds that:-

i) The cardinal statutory conditions for claiming rebate of duty paid on raw materials used in the manufacture of export goods are fulfilled in the instant case.

ii) Permission obtained from the Assistant Commissioner for availing Notification No. 21/2004.

iii) Export procedure in ARE-2 is in order.

iv) Contention that ARE2 should be used only for non-dutiable goods is not correct.

v) Export of goods under Notification No. 42/2001 is in order.

6. A Personal Hearing was held in matter on 22.08.2019, Shri B. Ganesan, Consultant appeared on behalf of the applicant. No one appeared on behalf of the Revenue. The consultant reiterated the submission filed through Revision applications and written brief along with the case laws filed. It was pleaded that in view of the submissions, Revision Application be allowed and Order in Appeal be set aside.

7. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal. On perusal of records, Government

observes that the main issues that requires decision, in the instant case, are that

- Whether Notification 21/2004-CE dated 06.09.2004 and Notification No.42/2001-CE (NT) dated 26.06.2001 are mutually exclusive or exporting goods under bond vide Notification No.42/2001 and seeking rebate under Notification No.21/2004 amounts to simultaneous benefit.
- Whether Notification No. 21/2004 dated 06.09.2004, issued under Rule 18 of the Central Excise Rules, 2002, only covers the export of the goods exempted from excise duty or non-dutiable goods and all dutiable goods to be cleared for export shall have to avail Notification No.19/2004 dated 06.09.2004, so as to be eligible for rebate of duty.

8. The goods exported in the subject case are manufactured out of duty paid inputs and the applicants have sought to clear the final product for export without payment of central excise duty by executing Bond and Undertaking under Rule 19 of Central Excise Rules, 2002. Notification 42/2001 issued under the said Rule delineates the procedure to be followed in this regard. In the instant case the applicants apart from following the procedure laid down Notification No.42/2001, they have claimed rebate under Notification No. 21/2004-CE (NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002. The respective Notifications prescribe procedure to be followed in case of export of excisable manufactured goods without payment of duty. It is not the case of the department that the applicant has failed to fulfil the conditions prescribed under Notification 42/2001 and by claiming rebate of exported goods under Notification 21/2004, the applicants have availed any dual benefits. The government notes that goods exported under bond shall have to necessarily follow the procedures prescribed under the Notification No.42/2001 and in all such cases, rebate has to be claimed either under

Notification 19/2004 or 21/2004 and Notification No.42/2001 and 21/2004 are not mutually exclusive and therefore, no dual benefits appears to have accrued to the applicant. Such an argument makes the Rule 19 of central excise Rules, 2002 redundant. Hence, the availment of Notification No. 21/2004 and 42/2001 simultaneously, by the applicant is not improper and does not violates any provisions, which makes them ineligible for claiming rebate of duty paid on inputs used in the manufacture of exported product.

9. The Commissioner (Appeal) rejected the rebate claim of the applicant on the ground that although, the applicants manufactured and exported the dutiable goods, they followed the procedure prescribed under Notification No.21/2004 meant only for exempted goods and therefore made themselves ineligible for rebate of duty paid on the inputs used in the exported product and further opined that the correct notification in the subject case is 19/2004. The above said conclusion is based on the premise that Notification 21/2004 is meant only for exempted and nil rated excisable goods and all dutiable goods shall have to be exported under Notification No.19/2004. In the light of the above findings, government felt it necessary to examine the scope and applicability of the said Notifications.

10. In this context, Government proceeds to examine the statutory position. Rule 18 of Central Excise Rules, 2002 provides for Rebate of duty. — Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification. Notifications issued under the said Rule are 19/2004 and 21/2004. Notification 19/2004 dated 06.09.2004 relates to rebate of the whole of the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985 and Notification 21/2004 dated 06.09.2004 pertains to rebate of the whole off duty paid on excisable goods used in the manufacture or processing of export goods. Therefore it is clear

that the Notification No.21/2004 is meant for excisable goods or inputs used in the manufacture of exported goods.

11. The Government peruses the Notification No.21/2004 as to ascertain the applicability of this notification. Various paragraphs of the notification are reproduced below for easy reference and clear understanding of the provisions of the notification;

(5) Procedure for export. - The goods shall be exported on the application in Form A.R.E. 2 specified in the Annexure to this notification and the procedures specified in Ministry of Finance (Department of Revenue) notification No.19/2004-Central Excise (N.T.), dated the 6th September, 2004 or in notification No. 42/2001-Central Excise (N.T.), dated the 26th June, 2001 shall be followed.

Further, para 3 of ARE-2 categorically states that;

3. *The finished goods being exported are not dutiable.

Or

We intended to claim the rebate of Central Excise Duty paid on clearances of goods for export under notification No.19/2004-Central Excise (N.T.), dated the 6th September, 2004 issued under Rule 18 of Central Excise Rules, 2002.

Or

The export goods are intended to be cleared without payment of Central Excise Duty under notification No.42/2001-Central Excise (N.T.), dated the 26th June, 2001 issued under Rule 19 of Central Excise (No.2) Rules, 2001.

12. The Government observes that from the reading of the aforesaid provisions, it is crystal clear that Notification 21/2004, is meant for rebate of

duty on inputs used in the manufacture or processing of exported goods and to avail the benefit of rebate, the export of goods shall have to follow the procedure laid down either 19/2004 or 42/2001. Therefore, in the instant case the goods are exported under ARE-2 and complied with the procedure laid down under para 5 of the said Notification and are therefore, eligible for rebate under Notification No.21/2004.

13. The governments maintains that it is a settled position of law that substantive benefits cannot be denied on grounds of procedural compliances and draws support from the ration held in the case of In Re: Omsons Cookware Pvt. Ltd. Reported in 2011 (268) E.L.T. 111 (GOI) has held in Para 14..... *restricted and technical interpretation of procedure etc. is to be avoided in order not to defeat the very purpose of such schemes which serve as export incentive to boost export and earn foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical breaches.*

14. Government, further, finds that in case of M/s Suksha International v. UOI, 1989 (39) E.L.T. 503 (S.C.), the Hon'ble Supreme Court has observed that *an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other.* The Government also relies on the judgement of the Apex court, in the case of Mangalore Chemicals and Fertilizers Ltd. v. DCCE - 1991 (55) E.L.T. 437 (S.C.). Hon'ble Supreme Court while drawing a distinction between a procedural condition of technical nature and a substantive condition in interpreting statute observed that *"procedural lapses of technical nature can be condoned so that substantive benefit is not denied for mere procedural infractions.*

15. In view of the above observations and findings of settled position law, Government holds that, the export benefits availed by the applicant in the instant case, are just and proper and hence, the order in Appeal No. MAD-

CEX-000-APP-011-13 dated 15.02.2013 is set aside and the case remanded back to the original adjudicating authority for the limited purpose of verification of the claim with directions that he shall reconsider the claim for rebate on the basis of the aforesaid documents submitted by the applicant and assess the claim after satisfying itself with regard to the authenticity of those documents. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

16. The Revision Application is disposed of in terms of above.

17. So, ordered.


(SEEMA ARORA)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

To

M/s Nirmala Matches,
No. 3, Kadalaikarar Street, Virudhunagar,
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Virudhunagar.

Copy to:

1. The Commissioner of Central Goods & Service Tax, Madurai Commissionerate, Central Revenue Building, Bibikulam, Madurai-625 002.
2. The Commissioner of Central Excise (Appeals), Central Revenue Building, Lal Bahadur Shastri Marg, Madurai- 625 002.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare copy.