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

F.No.195/608-609/2013-RA

Date of Issue: 12.04.2021

180-181  
ORDER NO. /2021-CX (WZ)/ASRA/MUMBAI DATED 31.03.2021 OF THE  
GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL  
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE  
GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE  
ACT, 1944

Applicant : M/s Centennial Fabrics Ltd.

Respondent : Commissioner of Central Excise & Customs (Appeals), Vapi.

Subject : Revision Application filed, under Section 35EE of the Central Excise  
Act, 1944 against the Orders-in-Appeal Nos. SRP/267 & 268/2012-  
13 dated 21.02.2012 passed by the Commissioner of Central Excise  
& Customs (Appeals), Vapi.



## ORDER

These two Revision Application are filed by M/s Centennial Fabrics Ltd., Sr.No. 258/2/1, Next to Nagreeka Foils, Near Ramkrishna Filaments, Dadra, Check Post Vapi, Vapi - Silvassa Road, Dadra - 396 193 (UT of D & NH) (hereinafter referred to as "the Applicant") against the Orders-in-Appeal Nos. SRP/267 & 268/2012-13 dated 21.02.2012 passed by the Commissioner of Central Excise & Customs (Appeals), Vapi.

2. The issue in brief is that the Applicant, manufacturer had filed two rebate claims dated 11.03.2010 and 25.06.2010 seeking refund of duty of Rs. 1,31,868/- and 1,90,526/- respectively paid on the export consignment of their finished goods. The Applicant claimed export of the goods vide ARE-1 No. SLV-II/69/09-10 dated 18.08.2009 and ARE-1 No. SLV-II/170/09-10 dated 29.03.2010 on payment of duty. Scrutiny of the said claims, it was noticed that the description of the goods exported was different from that given in the ARE-1s. The Applicant was issued Show Cause Notices dated 25.03.2011 and after due process of law, the Deputy Commissioner of Central Excise & Customs, Division-1, Silvassa (D & NH) vide Orders-in-Original Nos. 145/DC/Rebate/SLV-1/12-13 dated 16.08.2012 and 144/DC/Rebate/SLV-1/12-13 dated 16.08.2012 rejected the rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No.19/2004-CE(NT) dated 6.9.2004 as amended and Section 11B of the Central Excise Act, 1944. Being aggrieved, the Applicant filed appeal with the Commissioner of Central Excise & Customs (Appeals), Vapi. The Commissioner(Appeals) vide Orders-in-Appeal Nos. SRP/267 & 268/2012-13 dated 21.02.2012 held that the Applicant had not adduced any evidence to conclusively show that the goods cleared from the factory under the cover of ARE-1s and corresponding invoices, were the same goods that were ultimately exported and upheld the two Order-in-Original both dated 16.08.2012.

3. Being aggrieved, the Applicant then filed the current two Revision Applications on the following grounds :

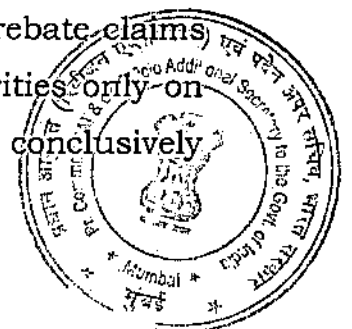


- (i) Throughout the Show Cause Notices, Orders-in-Original and Orders-in-Appeal, it was nowhere alleged and established that the goods have not been exported. The goods were cleared on payment of duty and duty exported making them eligible for getting the rebate of duty paid.
- (ii) The only ground for rejection of rebate claims was because the description of the Excise invoice and ARE-1 differ with description given in Shipping Bill. The difference in description is that Tarpaulin Synthetic is generic terms while PVC coated fabrics is specific term which is a part of generic terms and therefore no scope to consider the description as different for disallowing rebate.
- (iii) The mistake of showing the description with heading 39204900 went unnoticed before export of the goods, else the same would have been rectified. Further, there are number of judgments that for procedural and technical lapses, export benefit cannot be denied. They relied on the few case laws.
- (iv) The Applicant prayed that the Orders-in-Appeal be set aside and their revision application be allowed.

4. Personal hearing was fixed for 26.03.2018, 03.10.2019 and 03.12.2019, but no one appeared for the hearing. Still in view of a change in the Revisionary Authority, hearing was granted on 10.02.2021, 24.02.2021, 09.03.2021/ 26.03.2021. On 09.03.2021, Shri Jagdish Dokwal, Director appeared on behalf of the Applicant. He reiterated the submissions and submitted that there has been an error in mentioning description of goods, however, there is no difference in rate and value of goods. He requested to allow the rebate.

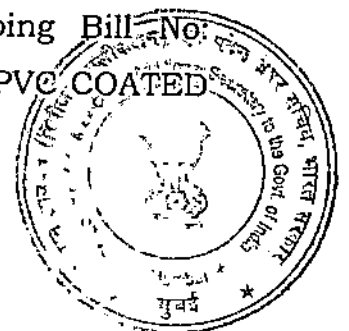
5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal.

6. On perusal of the records, Government observes that the two rebate claims of Rs. 1,31,868/- and 1,90,526/- were rejected by the lower authorities on the grounds that the Applicant had not adduced any evidence to conclusively



show that the goods cleared from the factory under the cover of ARE-1s and corresponding invoices, were the same goods that were ultimately exported.

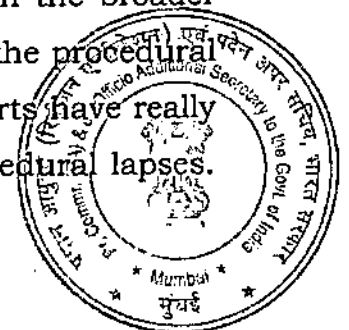
7. Government notes that the Notification No.19/2004-CE(NT) dated 6.9.2004 which grants rebate of duty paid on the goods, laid down the conditions and limitations in paragraph (2) and the procedure to be complied with in paragraph (3). The fact that the Notification has placed the requirement of "presentation of claim for rebate to Central Excise" in para 3(b) under the heading "procedures" itself shows that this is a procedural requirement. Such procedural infractions can be condoned.
8. Government observes that
- (i) the goods cleared from the Applicant's factory under ARE-1 No. SLV-II/69/09-10 dated 18.08.2009 shows the Description of the goods as "TARPAULINE-SYNTHETIC C.H. NO. 63061200", PART A shows "GOODS CLEARED WITHOUT SEALING & SUPERVISION OF CENTRAL EXCISE" duly signed by the Superintendent and Inspector of Central Excise dated 18/08/09. PART B shows Shipping Bill No. "7606225" dated "18.8.09" by S.S./Flight No, "C.C. Okapi" on "29.8.09", MR.No. "28/29.8.09", "S/Bill No. 7606226/18.8.09, Vessel C.C. Okapi, Vessel sailed on 29.8.90, MR No. 29/29.8.09".
  - (ii) the Shipping Bill No. "7606225 /18.8.09" shows Description : "39201099 HDPE TARPAULIN", Invoice No. & Date : "EXPO1A/09-10 12/08/2009", ARE-1 No. "69" date "18/08/2009", Vessel Name: "CMA CGM OKAPI" and LET Export duly signed by Custom Officer with remark "MR No. 28/29.8.09".
  - (iii) the Shipping Bill No. "7606266 /18.8.09" shows Description: "39204099 DOUBLE SIDE PVC COATED POLY FABRICS", Invoice No. & Date : "EXPO1A/09-10 17/08/2009", Vessel Name: "CMA CGM OKAPI" ARE-1 No. "69" date "18/08/2009" and LET Export duly signed by Custom Officer with remark "MR No. 29/29.8.09".
  - (iv) the Mate Receipt No. 28 dated 29.08.2009 shows Shipping Bill No. "7606225" , S/B date: 18.8.09" , Description "DOUBLE SIDED PVC COATED FABRICS"



- (v) the Mate Receipt No. "29" dated "29.08.2009" shows Shipping Bill No: "7606266" , S/B date: "18.8.09", Description "DOUBLE SIDED PVC COATED POLYSTER FABRICS"

9. Government observes that the Applicant in the Revision Applications have submitted that *"the mistake of showing the description with heading 39204900 went unnoticed before export of the goods, else the same would have been rectified."* Government notes that the Applicant is the manufacturer of Tarpaulin Synthetic falling under Chapter heading 63061200 of Central Excise Tariff Act, 1985. The difference in description is that Tarpaulin Synthetic is generic terms while PVC Doubled Sided Coated Polyester Fabric is specific term which is a part of generic terms i.e. both the description is same and commonly known as "Tarpaulin" and which is used for waterproofing. Government finds that goods cleared for export in fact has been exported as all the documents are well correlated. Further, the Notification itself shows the procedural infractions which can be condoned. Hence here the mistake of chapter heading made in their Shipping Bills is condonable as it is procedural lapse and the same is condoned.

10. Government finds that the deficiencies observed by the first Appellate authority are of procedural or technical nature. In cases of export, the essential requirement is to ascertain and verify whether the said goods have been exported. In case of errors, if the same can be ascertained from substantive proof in other documents available for scrutiny, the rebate claims cannot be restricted by narrow interpretation of the provisions, thereby denying the scope of beneficial provision. Mere technical interpretation of procedures is to be best avoided if the substantive fact of export is not in doubt. In this regard the Government finds support from the decision of Hon'ble Supreme Court in the case of Suksha International - 1989 (39) ELT 503 (SC) wherein it was held 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. In UOI vs. A.V. Narasimhalu - 1983 (13) ELT 1534 (SC), the Apex Court observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. In fact, in cases of rebate it is a settled law that the procedural infraction of Notifications, Circulars etc., are to be condoned if exports have really taken place, and that substantive benefit cannot be denied for procedural lapses.



Procedures have been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is the manufacture of goods, discharge of duty thereon and subsequent export.

11. In view of the foregoing, the Government holds that detail verification of the rebate by the original adjudicating authority as to the evidence regarding payment of duty i.e relevant Invoices and ARE-1s as produced by the Applicant in their rebate claims, have to be taken into consideration. The Applicant is also directed to submit their relevant records/ documents to the original authority in this regard for verification.

12. In view of the above, Government set aside the impugned Orders-in-Appeal Nos. SRP/267 & 268/2012-13 dated 21.02.2012 passed by the Commissioner of Central Excise & Customs (Appeals), Vapi and remands back the instance case to the original authority which shall consider and pass appropriate orders on the claimed rebate and in accordance with law after giving proper opportunity within eight weeks from receipt of this order.

13. The Revision Application is disposed off in terms of above.

*Shrawan*  
31/03/21  
(SHRAWAN KUMAR)

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

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ORDER No. /2021-CX (WZ)/ASRA/Mumbai DATED 31.03.2021

To,  
M/s Centennial Fabrics Ltd.,  
Sr.No. 258/2/1, Next to Nagreeka Foils,  
Near Ramkrishna Filaments,  
Dadra, Check Post Vapi,  
Vapi - Silvassa Road,  
Dadra - 396 193 (UT of D & NH)

**ATTESTED**

*Deodhan*  
31/3/2021  
अधीक्षक  
Superintendent  
रिवीजन एप्लीकेशन  
Revision Application  
मुंबई इकाई, मुंबई  
Mumbai Unit, Mumbai

Copy to:

1. The Commissioner of GST & Central Excise, Daman Commissionerte, 2<sup>nd</sup> floor, Hani's Landmark, Vapi Daman Road, Chala Vapi - 396 191.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard Copy.
4. Spare Copy.

