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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. 195/516-517/12-RA /1069 Date of Issue: 06-2-2018

ORDER NO. 20-21/2018/CX(WZ)/ASRA/MUMBAI DATED 31-01-2018, 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 CENTRAL EXCISE ACT,1944.

Applicant : M/s. Jaysynth Dyestuff (I) Ltd,301, Sumer Kendra Pandurang Budhakar Marg Worli, Mumbai-400018.

Respondent : Commissioner, Central Excise, Raigad

Subject : Revision Applications filed, / under Section 35EE of Central Excise Act, 1944 against the Orders-in-Appeal No. US/65 & 66/RGD/2012 dated 24.01.2012 passed by the Commissioner, Central Excise, (Appeals) -II, Mumbai-400051.

ORDER

These Revision applications are filed by M/s. Jaysynth Dyestuff (I) Ltd., Mumbai (hereinafter referred to as 'applicant') against the Orders-in-Appeal as detailed in Table below, passed by the by the Commissioner, Central Excise, (Appeals) –II, Mumbai.

TABLE-1

Sl. No	*Revision Application No.*	*Order-in-appeal No. & Date*	*Order-in-original No. & Date*	*Amount of rebate (Rs.)*
1	2	3	4	5
1	195/516-517/ 12-RA	US/65&66/RGD/2012 dt. 24.1.2012	196/10-11/ AC (R)/ Raigad dt. 29.4.2011	Rs. 3,82,693.00
2	-do-	-do-	1420/10-11 dt 30.11. 2010	Rs. 13,75,326.00

2. Brief facts of the case are that the applicant is merchant exporter. The applicant exported the goods manufactured by various manufactures and filed rebate claims under Rule 18 read with the Notification No.19/2004-CE (NT) dated 6.9.2004. They filed 8 rebate claims with regard to case pertaining at Sr.No. (1) and filed 12 rebate claims with regard to case pertaining at Sr.No.(2) of the table above.

2.1 In respect 8 rebate claims filed as mentioned above, a Show Cause Notice was issued to the applicant proposing rejection of rebate claims on the ground that in most of the cases duty payment certificates/shipping bill verification were not received; that declarations given in para 3(a), 3(b) and 3(c) of AREs-1 were not complete and that in respect of two AREs-1, FOB value was lower than assessable value. The original authority vide impugned order-in-original No.196/10-11 AC(R) Raigad dated 29.4.2011 rejected the rebate claims on the above grounds.

2.2 In respect 12 rebate claims filed as mentioned above, a Show Cause Notice was issued to the applicant proposing rejection of rebate claims on the ground that the goods were not exported directly from factory/registered werehouse in accordance with the condition 2(a) of the Notification No.19/2004-CE (NT) dated 6.9.2004; that the declaration at Sr.No.3(a), 3(b) and 3(c) were incomplete and that in some cases FOB value was lower than assessable value. The original authority vide impugned order-in-original No.1420/10-11 AC (Raigad) dated 30.11.2010 rejected the rebate claims on the above said grounds.

3. Being aggrieved by the impugned Orders-in-Original, applicant filed appeal before Commissioner (Appeals). The Commissioner (Appeals) rejected the applicant's appeal. The Commissioner (Appeals) in impugned orders-in-appeal only discussed aspect of failure to export the goods directly from factory or warehouse in accordance with the condition 2(a) of the Notification No.19/2004-CE (NT) dated 6.9.2004.

4. Being aggrieved by the impugned Orders-in-Appeal, the applicant has filed these revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 that Commissioner (Appeals) erred in holding that the warehouse of the applicant is not registered as per the provisions of the Central Excise Rules, 2002. It is submitted that the said warehouse as mentioned earlier is registered as per the provisions of the Central Excise Rules, 2002 and that the goods can be exported as per the provisions of Notification No.19 of 2004 dated 6 September 2004; that Circular No.294/10/97 dated 30 January 1997 relaxed the requirement of export directly from the factory/warehouse; that it is not in dispute that the goods have actually been exported by the Applicants and that the goods are cleared on payment of the relevant duty; that it is not in dispute that

the goods cleared on payment of duty from the factory and the goods cleared from the warehouse are co-relatable and that as stated above the goods bear distinct batch numbers and the same are clearly identifiable as required by the said Circular No. 294/10/97 dated 30 January 1997.

4.2 that the Commissioner (A) erred in holding that the batch numbers cannot be equated with distinct engine numbers, chassis numbers, etc. of vehicles; that the use of the term distinct engine numbers, chassis numbers, etc. are merely illustrative and the provisions of the said Circular No. 294/10/97 dated 30 January 1997 cannot be restricted to the above; that as per the procedure lad down in Notification No. 19 of 2004 dated 6 September 2004 before sealing the goods for export the excise authority having jurisdiction over the warehouse verified the identity of the goods and the particulars of the duty payable and found the same in order. Therefore it is not open for the Commissioner (A) to now hold that the exported goods are not clearly identifiable.

4.3 that the said Circular No. 294/10/97 dated 30 January 1997 was issued in relation to rebate of duty on exports of goods as provided for in Notification No. 41 of 1994 CE (NT) dated 12 September 1994; that the said Notification No. 41 of 1994 CE (NT) dated 12 September 1994 provides for rebate of duty paid on all goods that are exported except for mineral oil products exported as stores for consumption on board an aircraft on foreign run and goods exported as ships stores for consumption on board a vessel bound for any foreign port; hence it is not open to the Commissioner (A) to hold that the said Circular No. 294/10/97 dated 30 January 1997 will not be applicable to the goods exported by the applicants.

4.4 that the Commissioner (A) erred in relying upon the decision of High Court of Himachal Pradesh in the decision of CCE Vs. Indian

Overseas Corporation reported in 2009 (234) ELT 45, in as much as the decision of Chandra Laxmi cited in the said judgement is factually different from the present case.

4.5 The Commissioner (A) erred in holding that the declaration at serial no, 3(a) (b) (c) are not submitted. It is submitted that the ARE-1's were verified by the duty excise authority having jurisdiction over the factory or warehouse before sealing the goods for export and the same was found in order that the Applicants are availing the facility of Cenvat and rebate claim under Sr. No. 3(a) and (b) and are not availing the facility under Sr. No.3(c).

4.6 In certain cases shipments are executed on the basis of no profit and no loss considering export benefit to compete the international market which has resulted in value addition gaining in overall shipment, hence the FOB value is on the lower side when compared with the assessable value shown on the invoice.

4.7 that duty payment confirmation and shipping bill verifications are not specified in the said Notification No.19 of 2004 dated 6 September 2004 and is not a mandatory condition for grant of rebate; that the above condition, if at all, can only be considered to be procedural which can be corrected even today and the rebate claim cannot be denied on that ground. The above verifications were carried out by the excise authority having jurisdiction over the said factory or warehouse and the same were found in order.

5. Personal Hearing was held on 27.12.2017 and Shri Arun Jain, Advocate and Shri A.P. Jadhav, Manager (Excise) appeared for hearing on behalf of the Applicant and reiterated the submission filed through Revision Application and written submission dated 11.08.2015 and pleaded that R.A. 195/516/12-RA be allowed and Order-in-Appeal be set aside. As regard R.A. 195/517/12-A

they pleaded that Commissioner (Appeals) has not touched upon the issues in rem-such as non-furnishing of duty paid documents, discrepancy in ARE-1. They reiterated the written submission and produced copy of documents showing duty paid character of goods and requested that procedural lapse be condoned. They relied upon citations and pleaded that instant RA be allowed and Order-in-Appeal be set aside in entirety for both Review Applications.

6. 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.

7. Government observes that the applicant, a merchant exporter, had filed 8 rebate claims and 12 rebate claims covered vide cases mentioned at Sr.No. (1) and (2) of the Table (1) respectively, above. The rebate claims were rejected on the grounds that the applicant failed to export the goods directly from factory or warehouse in terms of para 2(a) of the Notification No.19/2004-CE(NT) dated 6.9.2004; that in some cases at Sr.No. 3(a), 3(b) and 3(c) of AREs-1 were not correct; that in some cases FOB value is lesser than assessable value; that duty payment certificate/shipping bills verification was not done in some cases. Commissioner (Appeals) vide impugned orders-in-appeal mainly held that the applicant failed to export goods directly from factory or warehouse in terms of para 2(a) of Notification No.19/2004-CE(NT) dated 6.9.2004 and that the warehouse registered under Rule 20 of the Central Excise Rules 2002 will only be treated as "warehouse" in terms of the said Notification No.19/2004-CE(NT) dated 6.9.2004 and not warehouse registered under Rule (9) as in the case of the applicant.

8. Government observes that appellate authority has stressed upon the point that the applicant is registered as "warehouse" under Rule (9) of the Central Excise Rules, whereas in order to qualify for meaning of direct export from factory, the warehouse should be registered under Rule 20 of said Central

Excise Rules, 2002. Government observes that applicant in their additional written submission during the course of Personal Hearing relied upon GOI Order No.522/2012-Cx dated 30.4.12 in case of M/s Jubilant Organosys Ltd. reported as 2012(286) ELT 455 (GOI). Government notes that in the case of M/s Jubilant Organosys Ltd., the applicant warehouse was also not registered under Rule 20 of the Central Excise Rules, 2002.

9. On perusal of case records, Government observes that in the impugned Orders-in-Appeal it has been held that rebate claims were not admissible as the goods were not exported direct from factory or warehouse as laid down in condition 2(a) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 and the original authority found that relaxed procedure laid down in C.B.E. & C. Circular No. 294/10/97-CX, dated 30-1-1997 relaxing the above said condition is not applicable to the said goods as the said circular is applicable only to distinctly identifiable goods like motor vehicles which bear distinct engine number, chasis number etc. and from the records of the case he did not find any evidence to indicate that claimant have followed the procedure prescribed by the CBEC vide Circular No. 294/10/97-CX, dated 30-1-1997.

10. The department has contended that the applicant has not exported the goods directly from factory or warehouse and as such, violated the condition 2(a) of the Notification No. 19/2004-C.E. (N.T.). The applicant has stated that the goods can be exported from factory or warehouse or any other place permitted by the C.B.E. & C. by a general or special order. The C.B.E. & C. vide Circular No. 294/10/97-CX, dated 30-1-1997 has prescribed the procedure for export of goods from place other than factory or warehouse. Applicants have stated that they have complied with requirement of the said Circular dated 30-1-1997.

11. Government observes that the admissibility of these rebate claims mainly depend on the compliance of provisions and procedure laid down in C.B.E.& C. Circular dated 30-1-1997. The relevant paras of said Circular are as under :

"8.1 An exporter; (including a manufacturer-exporter) desiring to export duty paid excisable goods (capable of being clearly identified) which are in original factory packed condition/not processed in any manner after being cleared from the factory stored outside the place of manufacturer should make an application in writing to the Superintendent of Central Excise incharge of the Range under whose jurisdiction such goods are stored. This application should be accompanied with form AR4 duly completed in sixtuplicate, the invoice on which they have purchased the goods from the manufacturer or his dealer and furnish the following information :

(a) Name of Exporter

(b) Full description of excisable goods along with marks and/or numbers

(c) Name of manufacturer of excisable goods

(d) Number and date of the duty paying document prescribed under Rule 52A under which the excisable goods are cleared from the factory and the quantity cleared.

(e) The rate of duty and the amount of duty paid on excisable goods.

8.2 The AR-4 form should have a progressive number commencing with Sl. No. 1 for each financial year in respect of each exporter with a distinguishing mark. Separate form should be made use of for export of packages/consignments cleared from the same factory/warehouse under different invoices or from the different factories/warehouses. On each such form it should be indicated prominently that the goods are for export under claim of rebate of duty.

8.3 On receipt of the above application and particulars, the particulars of the packages/goods lying stored should be verified with the particulars given in the application and the AR-4 form, in such manner and according to such procedure as may be prescribed by the Commissioner.

8.4 If the Central Excise Officer deputed for verification of the goods for export is satisfied about the identity of the goods, its duty paid character and all other particulars given by the exporter in his application and AR-4, he will endorse such forms and permit the export.

8.5 The exporter will have to pay the supervision charges at the prescribed rates for the services of the Central Excise Officer deputed for the purpose.

8.6 The disposal of different copies of AR4 forms should be in the following manner :

(i) the original and duplicate copies are to be returned to the exporter for being presented by him along with his shipping bill, other documents and export consignment at the point of export.

(ii) triplicate and quadruplicate copies to be sent to the Superintendent In-charge of the Range in whose jurisdiction the factory from which the excisable goods had been originally cleared on payment of duty is situated. That Superintendent will requisition the relevant invoice duty paying document which the manufacturer shall handover to the Superintendent promptly under proper receipt and the Superintendent will carry out necessary verification, and certify the correctness of duty payment on both triplicate and quadruplicate copies of AR4. He will also endorse on the reverse of manufacturers' invoice "goods exported - AR-4 VERIFIED", (and return it to the manufacturer under proper receipt). He

will forward the triplicate copy to the Maritime Commissioner of the Port from where the goods were/are exported. The quadruplicate copy will be forwarded to his Chief Accounts Officer. The Range Superintendent will also maintain a register indicating name of the exporter. Range Division/Commissionerate indicating name of the exporter's godown 'warehouse etc.' are located and where AR-4 is prepared, AR-4 No. and date, description of item corresponding invoice No. of the manufacturer; remarks regarding verification, date of dispatch of triplicate and quadruplicate copy.

(iii) the quintuplicate copy is to be retained by the Superintendent In-charge of the Range from where the goods have been exported for his record.

(iv) the sixtuplicate copy will be given to the exporter for his own record.

8.7 The goods, other than ship stores, should be exported within a period of six months from the date on which the goods were first cleared from the producing factory or the warehouse or within such extended period (not exceeding two years after the date of removal from the producing factory) as the Commissioner may in any particular case allow, and the claim for rebate, together with the proof of due exportation is filed with the Assistant Commissioner of Central Excise before the expiry of period specified in Section 11B of the Central Excise Act, 1944 (1 of 1944).

8.8 The rebate will be sanctioned, if admissible otherwise after following the usual procedure."

12. Government observes that in this case the applicants cleared the goods from factory at Vapi, Ankleshwar to depot premises of M/s Jaysynth Dyestuff (I) Ltd. at Turbhe. From the Central Excise Registration Certificate (Exhibit A)

enclosed to the revision application, Government observes that M/s Jasynth Dyestuff India Ltd. is registered for OPERATING A MANUFACTURER'S DEPOT unit with Central Excise Department vide Registration No. AAACJ1253FXD004. However, the above said Circular dated 30-1-1997 provides for & permits the export of goods from a place other than factory or registered warehouse subject to compliance of procedure laid down therein. Hence, rebate claims cannot be rejected merely on the grounds that the goods have not been exported directly from the factory or warehouse. The whole case is required to be seen in context of compliance of the said Circular dated 30-1-1997. Government observes that the department has not brought out any violation of Circular dated 30-1-1997 by the applicant. Moreover, the applicant kept the department informed that they are routing their goods through aforementioned depot. The applicant got their goods stuffed in presence of excise authorities. As such, the applicant cannot be alleged to have violated the provisions contained in the above said circular.

13. Government on perusal of copies of the Excise documents and export documents further observes that the details regarding quantity, net weight, gross weight, description, etc. are exactly tallying impugned ARE-1s and shipping bills. Further, the Part-B on reverse of ARE-1 contains the Customs Certification about export of goods vide relevant Shipping Bills. Customs has certified that goods mentioned on ARE-1 have been exported vide relevant Shipping Bill. At the same time Part-A on reverse side of ARE-1 has been endorsed by the Central Excise Officers, which denotes that identity of goods and its duty paid character is established. The Central Excise Officers are required to verify the particulars of packages/goods lying/stored with the particulars given in ARE-1 Form and if the Central Excise Officer is satisfied about identity of goods, its duty paid character and all the particulars given by the exporter in his application, he will endorse the ARE-1 Form and permit export. In this case no contrary observation is found to have been made by

Central Excise Officers and therefore they have made endorsement in ARE-1 after doing the requisite verification and allowed exports. In view of this position, Government finds no force in the contention of department that from the records of the case it did not find any evidence to indicate that claimant have followed the procedure prescribed by the CBEC vide Circular No. 294/10/97-CX, dated 30-1-1997. Moreover, the facts of GOI Order No.522/2012-Cx dated 30.4.12 in case of M/s Jubilant Organosys Ltd. reported as 2012(286) ELT 455 (GOI) (relied upon by the applicant) are akin to the applicant's case.

14. In view of the above circumstances, Government observes that the applicant has submitted various documents including duty payment certificates for establishing co-relation of impugned export goods. As this authority could not cross check the same with respect to the original records, so the actual verification of relevant documents may be done by the adjudicating authority at his level to confirm the genuineness and correctness of such documents.

15. As regards rebate claims in certain ARE-1s held inadmissible on account of FOB value on the lower side when compared with assessable value shown on the Central Excise Invoices, Government is of the considered opinion that by keeping Section 4(1)(a) and 4(3)(c)(i) to (iii) in the back ground and by observing Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the correct "place of removal" which would be as per the actual transactions" made so as to complete the impugned export 'sale' has to be determined. Each place of removal/point of sale would be subject to terms/conditions of contract between exporter and overseas buyer which would in turn decide the proper assessable value for the purpose of the leviability of duty. The exporter would be entitled to rebate of only that much amount of duty payble on assessable value determined under Section 4 of Central Excise Act, 1944 and any excess amount if paid would be liable to be

refunded to payer in the manner it was paid as stands decide by the Honble High court of Punjab & Haryana in CWP No. 2235 & 3348 of 2007 in M/s Nahar Industrial Enterprises Ltd. vs. UOI case reported as 2009 (235) ELT 22 (P&H).

16. Government also observes that in some ARE-1s, rebate claims were held inadmissible for the reasons of incomplete declarations given at Sr. No. 3(a),3(b) and 3(c) of AREs-1. The applicant in this regard has placed reliance upon GOI Revision Order No.154-157/2014-Cx dated 21.4.2014 in case of M/s Secomed Pharma Pvt. Ltd. In this connection Government observes that the Notification No.19/2004. CE(NT) dated 6.9.2004 which grants rebate of duty paid on the goods, has 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 these are procedural requirements. Such procedural infractions can be condoned. Further, it is now a settled 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. It is further observed that rebate/drawback etc. are export-oriented schemes and unduly 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. 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. In *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. In the *Union of India* v. *A.V. Narasimhalu* - 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. Similar observation was made by the Apex Court in the *Formica India* v. *Collector of Central Excise* - 1995 (77) E.L.T. 511 (S.C.) in observing that once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so, had elapsed. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in *Mangalore Chemicals and Fertilizers Ltd.* v. *Dy. Commissioner* - 1991 (55) E.L.T. 437 (S.C.).

17. In view of discussions and findings elaborated above, Government holds that said rebate claims are admissible in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/04-CE(NT) dated 06.09.04 subject to verification by original adjudicating authority of the details given in the photocopies of the said documents pertaining to impugned exports with the original case records and verification of duty payment particulars on triplicate copies of relevant ARE-1 forms by the jurisdictional Central Excise Range officer and determination of value of exported goods in terms of Section 4 of Central Excise Act, 1944 as discussed above.

18. In view of the above, Government sets aside impugned order-in-appeal and remands the cases back to original authority to decide the same afresh in view of above observations for sanctioning of the claimed rebates, after due verifications of documents submitted by the applicant after affording reasonable opportunity and pass well reasoned order within eight weeks from the receipt of this order.

19. Revision applications are disposed of in terms of above.

20. So ordered.

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

ORDER No.20-21/2018-CX (WZ) /ASRA/Mumbai DATED 31.01.2018

To,

M/s. Jaysynth Dyestuff (I) Ltd 301,
Sumer Kendra,
Pandurang Budhakar Marg
Worli, Mumbai-400018

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5th Floor, CGO Complex, Belapur, Navi Mumbai, Thane..
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Belapur Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.