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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  
8<sup>th</sup> Floor, World Trade Centre, Cuff Parade,  
Mumbai- 400 005

F NO. 195/1661/12-RA/513

Date of Issue: 18th December, 2017

ORDER NO. 20/2017-CX (WZ) /ASRA/Mumbai DATED 18.12. 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. Rajesh Rivet Industries, 6, Bombay talkies Comp.  
Malad (West), Mumbai-400064.

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

Subject : Revision Applications filed, under section 35EE of the Central  
Excise ACT, 1944 against the Orders-in-Appeal No.  
BC/229/RGD/2012-13 dated 28.08.2012 passed by the  
Commissioner of Central Excise (Appeals), Mumbai-III.



## ORDER

This revision application has been filed by M/s. Rajesh Rivet Industries, 6, Bombay talkies Comp. Malad (West), Mumbai-400064 against the Order-in-Appeal No. BC/229/RGD/2012-13 dated 28.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai- III, upholding the Order-in-Original No.2650/11-12/DC (Rebate) / Raigad dated 31.03.2012 passed by the Deputy Commissioner of Central Excise (Rebate), Raigad, thereby four (4) rebate claims amounting to Rs. 1,37,347/- were rejected on the ground that the "Self sealing certificate" was not mentioned on ARE-1.

2. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:-

2.1 The Order-in-Appeal was passed on the extraneous grounds which were not even discussed in Order-in-Original i.e. Triplicate and Quadruplicate copy of ARE-1s were not furnished by the Applicant within 48 hours of clearances of the goods; there was no verification of duty paid nature of goods; and rebate claim was time barred;

2.2 Though they have not submitted the SRP certification on the body of ARE-1s, the certificate furnished by them separately can be considered as the purpose of certificate is fulfilled and provisions of law and procedure is complied with;

2.3 Substantial benefit of rebate was not liable to be denied to the Applicants on technical and procedure ground of furnishing of certificate separately instead of on ARE-1s itself, when there was no dispute regarding the payment of Central Excise duty and export of goods. The applicant relied upon various cases of Government of India, CESTAT. The Tribunals and Government of India have taken a consistent view that when the export of



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goods is established the substantial right of the refund should not be denied. The applicant has furnished / produced copies of the ARE-1 duly certified by the Customs Authority that the goods have been exported along with all other necessary documents. The payment of Central Excise duty also established from the original Central Excise invoices submitted along with rebate claims.

2.4 The rebate claims are also not hit by time bar as there was no dispute that the applicant has not filed the rebate claim within the stipulated time limit of one year from the date of export.

3. A Personal hearing was held in this case on 12.12.2017 and Shri M.A.Nair, Authorized representative and Shri Vijay Duggal, Partner of the of the Revision Applicant appeared for hearing and reiterated the submission filed with Revisionary Authority and also filed further written submission. They submitted photocopies of ARE-1s duly signed by the Customs Authority along with the copy SRP certificate submitted on letter head at the time of hearing and copies of series of various case laws and prayed that in view of the above, the Order-in-Appeal be set aside and Revision Application be allowed.

4. 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. 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 rejected on the ground that the applicant had not furnished the self-sealing certificate on the body of ARE-1s.

5. Government observes that a similar issue has been decided by the Government of India vide Order No. 10/2016-CX dated 15.01.2016. In this case the rebate claim of Rs.7,12,225/- was rejected on the ground that the



applicant failed to follow procedure of self-sealing as provided in para 3 (a)(xi) of the Notification No. 19/2004-CE(NT) dated 06.09.2004.

6. While upholding the order of the Commissioner (Appeals) and rejecting the Revision Application filed by the party the Government observed that from provisions of Notification No.19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 ibid it is clear that if goods are cleared from a factory for export under claim for rebate it has to be under the cover of an ARE-1 duly certified for purpose of identity of goods either by the Superintendent/Inspector or the person from the factory as the case may be. This duly verified/certified ARE-1 is then certified by the Customs after due verification/examination that goods have been exported and the verification on ARE-1 prior to clearance from factory and thereafter by the Customs at the time of export helps to establish that the goods which were cleared from the factory are the same which are exported and without having followed the procedure as described in the Notification it cannot be established that goods which were cleared from factory were the ones actually exported or goods exported cannot be correlated with goods cleared from factory. Government in its order further observed that the nature of above requirement is both a statutory condition and mandatory in substance which also finds support in various judgments of the Apex Court and also noted that Hon'ble Supreme Court in case of Sharif-ud-Din, Abdul Gani-(AIR 1980 SC 3403) has observed that distinction between required forms and other declarations of compulsory nature and/or simple technical nature is to be judiciously done. When non-compliance of said requirement leads to any specific/odd consequences, then it would be difficult to hold that requirement as non-mandatory. It further noted that it is a settled issue that benefit under a conditional notification cannot be extended in case of non-fulfillment of conditions and/or non-compliance of procedure prescribed therein as held by the Apex Court in the case of Government of India Vs. Indian Tobacco Association 2005 (187) ELT 162 (S.C.); Union of



*DM*



India Vs. Dharmendra Textile Processors 2008(231) ELT 3 (S.C.). Also it is settled that a Notification has to be treated as a part of the statute and it should be read along with the Act as held by in the case of Collector of Central Excise Vs. Parle Exports (P) Ltd — 1988(38) ELT 741 (S.C.) and Orient Weaving Mills Pvt. Ltd. Vs. Union of India 1978 (2) ELT J 311 (S.C.) (Constitution Bench).

7. Notably, while refuting the reliance placed by the applicants on the various judgments regarding procedural relaxation on technical grounds, Government in its order observed that

the point which needs to be emphasized is that when the applicant seeks rebate under Notification No.19/2004-CE (NT) dated 06.09.2004, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under Rule 18 ibid, the applicant should have ensured strict compliance of the conditions attached to the said Notification. Government places reliance on the judgment in the case of Mihir Textiles Ltd. Versus Collector of Customs, Bombay, 1997 (92) ELT 9 (S.C.) wherein it is held that:

"concessional relief of duty which is made dependent on the satisfaction of certain conditions cannot be granted without compliance of such conditions. No matter even if the conditions are only directory."

8. Government in the instant case notes that the impugned goods were cleared from the factory without an ARE-1 bearing certification about the goods cleared from the factory either under excise supervision or under self-sealing and self-certification procedure and therefore the conditions and procedure of sealing of goods at the place of dispatch were not followed and therefore the correlation between the goods cleared from the factory and those exported cannot be said to have been established.



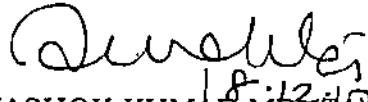
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9. Government, therefore, holds that non observations of the conditions and procedure of self-sealing as provided in the Notification No.19/2004 – CE(NT) dated 06.09.2004 cannot be treated as minor procedural lapse for the purpose of availing benefit of rebate of duty on impugned export goods. Therefore, the various judgments relied on by the applicant regarding procedural relaxation on technical grounds as well as applicant's plea about treating this lapse as procedural one cannot be accepted.

10. The Order in Appeal under revision is therefore upheld and the revision application is thus rejected without going further into any other aspect of merits.

11. So, ordered.

  
 18.12.17  
 (ASHOK KUMAR MEHTA)  
 Principal Commissioner & ex-officio  
 Additional Secretary to Government of India

ORDER No. 20/2017-CX (WZ) /ASRA/Mumbai DATED 18.12.2017

To,  
 M/s. Rajesh Rivet Industries,  
 6, Bombay Talkies Compound,  
 Malad (W), Mumbai-400 064.

**True Copy Attested**

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

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner, Central Excise, (Appeals) –II, 3<sup>rd</sup> Floor, GST Bhavan, BKC, Bandra (E), Mumbai-400051.
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Mumbai Belapur .
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

