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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.195/257/2019-RA

198

Date of Issue:

17.01.2023

ORDER NO. 20/2023-CX (WZ)/ASRA/MUMBAI DATED 16.01.2023  
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. Rishabh Impex

Respondent: Pr. Commissioner of CGST, Thane Rural.

Subject : Revision Application filed under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. PVNS/57/Appeals  
Thane/TR/2019-20 dated 19.06.2019 passed by the Commissioner (Appeals  
Thane), GST & Central Excise, Mumbai.

## ORDER

This Revision Application is filed by the M/s. Rishabh Impex having their office at Behram Mahal 2<sup>nd</sup> Floor, Near Edward Cinema, 534, Kalbadevi Road, Mumbai - 400 002 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. PVNS/57/Appeals Thane/TR/2019-20 dated 19.06.2019 passed by the Commissioner (Appeals Thane), GST & Central Excise, Mumbai.

2.1 Brief facts of the case are that the Applicant, had filed 8 rebate claims totally amounting to Rs. 2,89,112/- under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 40/2001-CE(NT) dated 26.06.2001. The rebate sanctioning authority, vide Order-in-Original No. 55/2007-08 dated 13.11.2007, rejected the rebate claims on the grounds that part consignment had been exported beyond the period of six months; non presentation of the triplicate copy of the ARE1 within 24 hours of the removal of goods from the factory and that the supplier in these exports viz. M/s. Deepa Cotton was put under Alert Circular No. 2/2005 dated 07.10.2005 by the jurisdictional authority and thus the rebate claims were not free from doubt of their genuineness. Aggrieved, the Applicant filed an appeal which was rejected by the Commissioner (Appeals) vide Order-in-Appeal No. BR(101)TH-I/2013 dated 06.02.2013.

2.2 Aggrieved by said Order of Commissioner (Appeals), the applicant filed a revision application under Section 35EE of the Central Excise Act, 1944. Revisionary Authority vide order No.247/2018-CX(WZ)/ASRA/Mumbai dated 03.07.2018 observed that the Order of Commissioner (Appeals) was silent on rejection of first three rebate claims amounting to Rs.1,77,555/- and with regard to the remaining five rebate, observed that there was nothing on record to show that any investigation / issuance of show cause notices and order by Central Excise, Thane-I was done. Therefore Revisionary Authority set aside order dated 06.02.2013 of Commissioner (Appeals) on the ground that same was not based on proper appreciation of

facts and remanded the matter back to Commissioner (Appeals). However, the Commissioner (Appeals) again rejected the appeal vide impugned Order-in-Appeal No. PVNS/57/Appeals Thane/TR/2019-20 dated 19.06.2019.

3. Hence, the Applicant has filed the instant Revision Application mainly on the following grounds:

- a) that the impugned Order-in-Appeal is the replica of earlier Order-in-Appeal passed without going into the findings of the Hon'ble Joint Secretary, GOI. Further the Commissioner (Appeals) has not stated what are the conditions of Notification No.40/2001-CE(NT) dt.02.06.2001 was not fulfilled by the Applicants. There some procedural lapses such as part export after six months of clearance, this was due to delay in getting order from Order from abroad and in respect of one AREI No. 309 dt.7.11.2004 which was submitted after 24 hours to Range Supdt. These are all procedural lapses, which has been condoned in number of cases by the Government of India. The Commissioner (Appeals) also did not take into consideration of the ERIs submitted before the Commissioner (Appeals) of M/s. Deepa Cotton for the period April to June,2004, July to September, 2003,October, 2003, November, 2003, December, 2003, January, 2004, February, 2004, March, 2004, April, 2004, May, 2004, June, 2004, July, 2004 and August, 2004. This is to submit that when the unit was registered with Central Excise and was filing the ER1 returns and paid duty under challan regularly, it is not known, how that unit can be bogus. Further in the Applicant's case in respect of their rebate claims filed earlier to this, the same adjudicating authority vide Order in Original No. 57/2007-08 dated 14.11.2007, all the duty paying documents of M/s. Deepa Cotton were got verified from their Range and the rebate claims were sanctioned. No appeal has been filed against this Order in Original. This attained finality. In the impugned OIO the same adjudicating authority is rejecting the rebate claims of grey purchased from the same M/s. Deepa

Cotton showing this unit is the fictitious and bogus unit. The reason is best known to them. The Commissioner (Appeal) is upholding the same. This is not a good order and needs to be set aside.

- b) that all the Grey Fabrics Excise Invoice shown in the Order in Original dated 13.11.2007 against which the impugned Order in appeal under Revision Application has been filed are in the Order in Original referred above dated 14.11.2007 (passed only a day after by the same adjudicating authority) of the Applicants. It is not understood how the 2007 report of the Range Supdt. is not applicable in the impugned case which refers the alert circular of 2/2005 which is also referred in the OIO of 13.11.2007 and 14.11.2007. The Order-in-Appeal simply refers that the 2007 OIO has been dealt by the OIO dated 13.11.2007 which is impugned in this case. Perhaps this OIO has been passed one day prior to the favourable order of 14.11.2007, the Adjudicating authority might not have received the report from the Range Supdt. hence passed the impugned Order on presumption assumption. However, the Hon'ble Commissioner (Appeals) should have seen this since the Applicants have mentioned both the OIOs of 13.11.2007 and 14.11.2007 and copy of the OIO of 14.11.2007 was submitted along with the appeal as well as the same was also referred at the time of P.H. (out of the both one is negative order which is impugned in this case dt.13.11.2007 and other is favourable order which dated 14.11.2007). This is nothing but not applying the mind and harassing the genuine exporter for none of his fault.
- c) that in respect of M/s. Foram Textiles, Bhiwandi, M/s. Sanghvi Enterprise, Bhiwandi and M/s. Tanvi Cotton Mills, Bhiwandi it is no where referred that they are bogus/fake firm. Hence these purchases are needed to be treated as proper and correct.
- d) that no order should be passed against a claimant of rebate on presumption and assumption without verifying the facts as is done in the impugned case. This is the harassment to the genuine exporter. The Applicants state and submit that the

exports made Vide ARE1 No. 05 dt.14.07.2005, 14 dated 15.07.2005, 6 dated 3.8.2005, 7 dated 18.8.2005 and 8 dated 1.3.2006, grey fabrics purchased from M/s. Deepa Cotton upto the month of filing return i.e. July,2005 are proper and correct and has got verified from the jurisdictional Range. There is no allegation in respect of other Units except M/s. Mahavir which is also got verified and found proper and correct.

- e) that the impugned rejection of rebate claim of fabrics exported is also during the same period of these claims and of same manufacturer M/s. Deepa Cotton & few others and in respect of all these rejected claims also the main supplier of Grey Fabrics is M/s. Deepa Cotton only. The Applicants submitted all the relevant duty paying documents such as Central Excise Invoice, R.G.23A Part-II and Certificate from the concerned Jurisdictional Range Supdt. of M/s. Deepa Cotton. It is proved that M/s. Deepa Cotton is the registered unit with Central Excise and were paying proper duty and filing regular returns from time to time. Further there is no one to one correlation is required in debiting the credit under CENVAT Credit Rules.
- f) that the Order in original and Order in Appeal are passed in a routine and casual manner without verifying the correctness and facts. In spite of the fact that the duty payment on grey fabrics has been got verified from the Jurisdictional Range Supdt. of input supplier. This is not correct. The facts of each case should have been verified and necessary orders should have been given. This is not a proper and correct order.
- g) that the duty on the exported goods has been appropriately paid by the manufacturer and the Merchant Exporter i.e. applicant reimbursed the said amount to the manufacturer. Hence the rebate claims filed by the Applicants are proper and correct as proper duty has been paid by the manufacturer. It is also the policy of the Government that no duty should be exported alongwith the goods. Further as the manufacturer is registered with central excise and if the manufacturer does anything wrong the jurisdictional officers should take appropriate action to

recover the duty from the manufacturer as the Applicants have received the goods under proper central excise duty paid invoice from the registered manufacturer. For any fault of manufacturer merchant exporter is not responsible. The Applicant seeks to place reliance on the following decisions of the Tribunal/Government of India in a catena of orders including GOI Order No. 140/12-CX dated 17.02.2012 in respect of Commissioner of Central Excise, Mumbai-I vs. Krishna Exports, Surat, Gujarat ELT 497 (Trib.), Commissioner of C. Ex. & Customs vs. D.P. Singh-2011 (270) E.L.T.321 (Guj).

In the light of the above submissions, the applicant prayed to set aside the impugned order-in-appeal and allow the application with consequential relief and pass any other order as may be deemed necessary in the circumstances of the case.

4. Personal hearing in the case was fixed for 10.11.2022. Shri Sreepal Jain, Partner and Shri R.V.Shetty, Advocate, attended the online hearing and submitted that duty payment by input suppliers was verified, hence rebate should be allowed.

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

6. Government observes that that the main issue involved is whether due to an Alert notice issued in the name of one of the input suppliers and due to few exports being not carried out within six months of clearance from the factory, the impugned rebate claims can be rejected.

7.1 Government gathers from the impugned Order-in-original that in the backdrop of an intelligence in respect of non-existent/bogus firms supplying grey fabrics or processed grey fabrics, an Alert Circular No. 2/2005 dated 7.10.2005 was issued by Assistant Commissioner, Central Excise, Kalyan-I

Dn. under F. No. V/KI/PI/Regn-81/2005. One of the suppliers of grey fabric to the applicant, M/s. Deepa Cotton, Bhiwandi, appeared at Sr. No.89 of said Alert Circular. Para 4 of this Circular read as follows:

*"Any Central Excise invoice bearing the above names, addresses and registration numbers issued during the period they have not filed the returns should be treated as bogus and any Cenvat Credit availed/rebate Claimed by anybody on the strength of such invoices be intimated to this office"*

Further, para 5 of the Circular read as follows:

*"Also the credit availed/rebate claimed on any invoices issued by the registered persons mentioned in the Annexure A from the address and bearing the registration number shown against their name even during the period they have filed the returns should be referred to this office for verification"*

7.2 Government observes that in the light of above Alert Circular, the adjudicating authority had concluded at para 8 of impugned OIO that:

*'..... Even though the input invoices pertaining to M/s. Deepa Cotton pertains to the month of their filing last return i.e., July-2005, since one to one correlation of input to output (grey fabric to specific ARE-1) is not forthcoming on records to come to a definite conclusion that majority of the exports effected by the claimant were the goods manufactured out of the grey fabrics supplied by M/s Deepa Cotton under above grey invoices as detailed in Table-II. As the exports took place even after the period July-2005 as evident from Col. No.2 of the Table-I and further as nothing is forthcoming on the records to ascertain as to whether M/s. Deepa Cotton issued invoices even after the period July-2005 in the name of the consignee i.e., M/s Rishab Impex and whether these input invoices were used for manufacture of goods exported after July-2005.*

*Thus the department is not in a position to arrive at a definite conclusion that the goods exported in July-2005 and after July-2005 were not the one manufactured out of the inputs supplied by M/s Deepa Cotton after July-2005.....'*

7.3 Government observes that the impugned grey supplier to the applicant, M/s. Deepa Cotton held Central Excise registration No. TI/KI/B-1504 since 05.05.2003 and had filed ER-1 Return till July-2005. As per para 4 of said Alert Circular, an invoice issued during the period returns had not been filed was to be treated as bogus. Thus, in the instant case, invoices issued by M/s. Deepa Cotton after July-2005 were to be treated as bogus. However, Government observes that all the input invoices of this supplier submitted by the applicant before the rebate sanctioning authority were issued between the period June-04 to Sep-04. Thus, Government finds no violation on this count. Further, the applicant has submitted ER-1 Returns of M/s. Deepa Cotton alongwith TR-6 Challans for the relevant period. Government observes that the Returns are duly acknowledged by the jurisdictional Range Inspector. The applicable duties have been paid in cash through TR-6 Challans. Government observes that the applicant had submitted self-attested copies of input invoices in respect of purchase of grey fabric with the rebate sanctioning authority. The details of these invoices are appearing at para 4 of the impugned OIO. In this regard, on verification with details of 'invoice numbers issued during the month' given at the column '7. Self assessment memorandum' in the ER-1 Return, Government observes that the invoice numbers appearing in impugned OIO in respect of M/s. Deepa Cotton are authentic. Therefore, Government concludes that all these factors should have been considered by the rebate



sanctioning authority instead of rejecting the rebate claims on inconclusive grounds.

8.1 As regards the second issue, Government observes that the relevant condition mentioned at para 2 of the Notification No. 40/2001 –CE (NT), dated 02.06.2001 reads as under:

*In exercise of the powers conferred by rule 18 of the Central Excise (No.2) Rules, 2001, the Central Government hereby directs that there shall be granted subject to conditions and limitations specified in paragraph 2 and procedures specified in paragraphs 3 and 4 –*

1. *rebate of whole of the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), except mineral oil products falling under Chapter 27 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) exported as stores for consumption on board an aircraft on foreign run, on their exportation to any country except Nepal and Bhutan;*

**2. Conditions and limitations**

2. *the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow.*

Thus, Government observes that rebate under said Notification can be granted subject to compliance of specified conditions and limitations.

8.2 In this context, Government observes that the rebate sanctioning authority has rightly pointed out that part consignment under ARE-1 No. 376/10.01.2004 shipped on 24.07.2004 and ARE-1 No. 310/07.11.2004 shipped on 09.08.2005 has been exported beyond six months from the date of clearance from the factory and this has resulted in violation of aforesaid specified condition. Government finds that a specified condition being statutory in nature is required to be mandatorily complied with and its non-adherence cannot be condoned. Therefore, rebate claims pertaining to the portion of export under said two ARE-1s have been rightly rejected.

8.3 Government observes that the rebate claim for export under ARE-1 No.309/7.11.04 was rejected on the ground that triplicate copy of the ARE-1 was not presented with the jurisdictional range office within 24 hours of removal of the goods from the factory as required under para 3 of Notification No. 40/2001 -CE (NT), dated 02.06.2001. Government finds paragraph 3 of said Notification specifies procedure to be followed for exporting the goods. In this context, Government has already clarified in many of its orders that a liberal view is to be taken regarding procedural lapses if the export is not challenged. One such order was in the case of M/s. Modern Process printers [2006 (204) E.L.T. 632 (G.O.I.)]. The relevant para from this order is reproduced hereunder:

*In this regard, it cannot be gainsaid that rebate/drawback and other such export promotion schemes of the Govt., are incentive-oriented beneficial schemes intended to boost export in order to promote exports by exporters to earn more foreign exchange for the country and in case the substantive fact of export having been made is not in doubt, liberal interpretation is to be accorded in case of technical lapses if any, in order not to defeat the very purpose of such scheme. In Suksha International v. Union of India, 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 Union of India v. A.V. Narasimhalu, 1983 (13) E.L.T. 1534 (SC), 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 observations was made by the Apex Court in the Formika India v. Collector of Central Excise, 1995 (77) E.L.T. 511 (SC), 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 (SC)*. In fact, as regards rebate specifically, it is now a trite law 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.

9. In view of the findings recorded above, Government sets aside the impugned Order-in-Appeal No. PVNS/57/Appeals Thane/TR/2019-20 dated 19.06.2019 passed by the Commissioner (Appeals Thane), GST & Central Excise, Mumbai and allows the impugned Revision Application except rebate claims pertaining to the portion of export under ARE-1 No. 376/10.01.2004 shipped on 24.07.2004 and ARE-1 No. 310/07.11.2004 shipped on 09.08.2005.

  
(SHRAWAN KUMAR)

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

ORDER No.

20 /2023-CX (WZ)/ASRA/Mumbai DATED 16.01.2023

To,  
M/s. Rishabh Impex,  
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Mumbai - 400 002.

Copy to:

- 1.The Pr. Commissioner of CGST,  
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Plot No. 24-C, Sector – E,  
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Mumbai – 400 051.
2. Adv. R.V.Shetty,  
10, Chandra Niwas,  
Marol CHS Ltd.,  
At junction of Church Road,  
Andheri-Kurla Road,  
Mumbai – 400 059.
3. Sr. P.S. to AS (RA), Mumbai
- ~~4. Guard file~~
5. Notice Board.