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F.No.195/1551/12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 29/1/16

ORDER NO. 23/2016-CX DATED 28.01.2016 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision application filed under Section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No.206/2012 dated 31.08.2012 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapally.

Applicant : M/s Xomox Sanmar Ltd., Viralimalai.

Respondent : Commissioner of Customs & Central Excise, Tiruchirapally.

ORDER

This Revision Application is filed by M/s Xomox Sanmar Ltd., Viralimalalai against the Order-in-Appeal No.206/2012 dated 31.08.2012 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapally with respect to Order-in-Original passed by the Deputy Commissioner of Central Excise & Service Tax, Division-II, Tiruchirapally.

2. The brief facts of the case are that the applicants are holders of Central Excise Registration No.AAACX0247KXM001 for the manufacture of Industrial Valves & Spares falling under Chapter 84818030 and 84819090 of the First Schedule to the Central Excise Tariff Act, 1985. The applicants are availing Cenvat credit facility in respect of duties/taxes paid on the inputs, capital and input services. They are clearing their finished goods both for home consumption and for export on payment of duties under PLA or by way of debit in their Cenvat Credit Account. Removal of goods meant for export are from their factory by adopting self sealing and self certification and Central Excise sealing procedures. The applicants filed a rebate claim on 23.08.2011 for Rs.4,35,086/- under Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 in respect of the duties paid on the goods exported under 6 numbers of ARE-1s during the month of December 2010. The lower authority vide impugned order sanctioned an amount of Rs.2,18,756/- as rebate in cash under Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002, ordered for refund of the balance and excess paid duty of Rs.2,075/- under Section 11B of the Central Excise Act, 1944 and allowed it to be taken in the Cenvat Credit Account against the respective head, rejected rebate claim of Rs.2,14,255/- as inadmissible claim in respect of 3nos of ARE-1s.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same.

4. 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:

4.1 The Commissioner of Central Excise (Appeals) erred in disallowing the rebate claim in respect of ARE-1 N.1736 dated 30.12.2010 on the ground the applicant has not given any explanation for non-filing of Bill of Lading. The Commissioner of Central Excise (Appeals) erred in disallowing the rebate claim on the ground the applicants failed to file adequate explanation for the discrepancies without appreciating the nature of discrepancies pointed out by the adjudication authority.

- 4.2 The Commissioner of Central Excise (Appeals) failed to appreciate that the mentioned Bill of lading had duly submitted at the time of filing rebate claim. The Applicant had filed all details along with self attested copy of relevant Bill of Lading for the respective ARE-1 on 23.08.2011 itself and the same was received and acknowledged by the Department on 23.08.2011. The covering letter and copy of the Bill of lading for the same is also enclosed herewith for your perusal.
- 4.3 The Commissioner of Central Excise (Appeals) failed to appreciate that in the instant case there is no error from the applicant's end on production of Bill of lading and even assuming if so, it is in the nature of procedural lapses and rebate claim cannot be denied simply on the ground of procedural lapses and rebate cannot be denied since substantive compliance is sufficient where factum of export is not in doubt.
- 4.4 The Commissioner of Central Excise (Appeals) failed to appreciate that substantial benefits cannot be denied on the ground of mere procedural lapses.
5. Personal hearing scheduled in this case on 20.3.2014 & 6.7.2015. Hearing held on 6.7.2015 was attended by Smt. Radhika Chandra Shekhar, Advocate on behalf of the applicant who reiterated the grounds of revision application. Nobody attended hearing on behalf of the department.
6. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.
7. Government observes that the part rebate claims of Rs.261381/- was rejected on ground that there is huge variation of weight between AREs-1 and Air Way Bills and as such, it cannot be proved beyond doubt that the goods under the said AREs-1 have been exported. Commissioner (Appeals) upheld impugned Order-in-Original. Now, the applicant has filed this Revision Application on grounds mentioned in para (4) above.
8. Government notes that the original authority rejected rebate claim in respect of 3 AREs-1 for the reasons of non-submission of EP copies/Bill of Lading or due to submission of non-legible copy of Bill of Lading. The appellate authority has discussed in details this aspects and held as under:-

"I have carefully gone through the appeal, oral and written submissions made by the appellants and the provisions of law in the subject matter. Rebate claims in respect of following ARE 1s have been rejected by the lower authority for reasons mentioned against each.

ARE 1 No and Date	Reasons for rejection
1744/31.12.2012	EP copy not produced
1736/31.12.2012	BL not produced
1734/31.12.2012	BL not legible

Further, in the findings the lower authority referring to above ARE 1s observed that rebate could not be sanctioned for want of documents/aberrations in documents.

Bill of lading is a document, a self attested copy of which is required to be filed with rebate claim in terms of CBEC's supplementary instructions. The document is required to be filed for the rebate sanctioning authority to verify and to satisfy himself that the goods cleared for export under the relevant ARE 1 application is actually exported. The appellants has not given any explanation for non filing of the document which is mandatorily required. In the absence of this mandatory document, it could not be said that factum of export is not in doubt.

Hence, the order of the lower authority rejecting rebate claim in respect of ARE 1 No.1736/30.12.2010 is sustainable in law. As regards the remarks 'EP Copy not produced' in respect of ARE 1 No.1744/31.12.2010, it is not the case that the appellant has not filed any copy of Shipping bill with due endorsement' since it was not recorded so in the findings of the impugned order. 'Substantive compliance is sufficient where factum of export is not in doubt' as held by Hon'ble High Court of Judicature at Madras in the case of Ford India Pvt. Ltd. Vs Assistant Commissioner of C.Ex., Chennai reported in 2011 (272) ELT 353 (Mad). Hence, in respect of the ARE 1 No.1744/31.12.2010 and for ARE 1 No.1734/29.12.2010, (for which rebate claim was rejected with remarks 'BL not legible'), the lower authority is directed to allow rebate claim after satisfying himself about the fact of export of duty paid goods and the appellants are required to produce relevant documents called for by the lower authority as he may deem fit."

8.1 On perusal of above, Government finds that the appellate authority judiciously carried out aspects of physical verification and in respect of two ARE-1s where the rebate claim were rejected for reasons of BL copy being non-legible and EP copy not produced, Commissioner (Appeals) has directed the original authority to satisfy the fact of export of duty paid goods. The appellate authority upheld rejection of rebate claim only in respect of one ARE-1, where BL was not produced. The applicant has not placed on record anything to the contrary. Government finds no infirmity in such detailed finding of Commissioner (Appeals) and hence upholds the impugned Order-in-Appeal.

9. Government also observes that the applicant relied on the various judgments regarding procedural relaxation on technical grounds. 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."

As such, there is no merit in the plea of the applicant that the lapse on their part be considered as procedural lapse of a technical nature which may be condoned.

10. Revision Application is thus rejected being devoid of merits.


11. So, ordered.


(RIMJHIM PRASAD)

Joint Secretary to the Government of India

M/s Xomox Sanmar Ltd.
89/1, Vadugapatti Village
Viralimalai

Attested

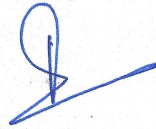

(भारत सरकार के द्वारा)
व्यक्तिगत रूप से
CBEC (Central Board of Excise and Customs)
द्वारा जारी किया गया है।
Ministry of Revenue and Excise
Government of India
New Delhi, India

ORDER NO. 23/2016-CX DATED 28.01.2016

Copy to:-

1. The Commissioner of Customs & Central Excise, No.1, William Road, Cantonment, P.O.Box No.105, Tiruchirapalli-620001
2. The Commissioner of Customs & Central Excise (Appeals), No.1, William Road, Cantonment, Tiruchirapalli-620001
3. The Deputy Commissioner of Central Excise & Service Tax, Division-II, 'A' Wing, 3rde Floor, No.1, Williams Road, Tiruchirapalli-620001
4. M/s K.Vaitheeswaran & Radhika Chandrasekhar; V.S.Manoj, Advocates & Tax Consultant Flat No.3, I Floor No.9, Thanikachalam Road, T.Nagar, Chennai-620001
5. ✓ Guard File.
6. PA to JS (RA)
7. Spare Copy

ATTESTED



(B.P.Sharma)
OSD (Revision Application)

भारत सरकार
राज्य सरकार
ऑफिस ऑफ सेंट्रल एक्साइज (ऑपील)
मिनिस्ट्री ऑफ सेंट्रल एक्साइज (ऑपील)
एंड सेंट्रल एक्साइज ऑफ इंडिया
एंड सेंट्रल एक्साइज ऑफ इंडिया
एंड सेंट्रल एक्साइज ऑफ इंडिया