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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, Cuffe Parade,  
Mumbai- 400 005

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F.No.196/12/ST/17-RA / 7453

Date of Issue: ~~12.2021~~  
03.01.2022

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ORDER NO. 25/2021-ST (WZ) /ASRA/MUMBAI DATED 30.12.2021  
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 Shah Paperplast Industries Ltd,  
C-3/3,3/4, G.I.D.C Estate, Mill Road,  
Nadiad

Respondent: The Pr. Commissioner, CGST, Vadodara I

Subject : Revision Applications filed, under Section 35EE of Central  
Excise Act, 1944 against the Order-in-Appeal No. VAD-EXCUS-  
ANAND-APP-69/2015-16 dated 13.05.2015 passed by the  
Commissioner (Appeals-I), Central Excise, Customs and Service  
Tax, Vadodara

**ORDER**

This Revision Applications has been filed by M/s Shah Paperplast Industries Ltd, C-3/3,3/4, G.I.D.C Estate, Mill Road, Nadiad, (hereinafter referred to as the 'applicant') against the Order-in-Appeal No. VAD-EXCUS-ANAND-APP-69/2015-16 dated 13.05.2015 passed by the Commissioner (Appeals-I), Central Excise, Customs and Service Tax, Vadodara.

2. The facts briefly stated are that the applicants are engaged in manufacturing and export of Tissue Gift wrap/Disposable Plastic and holding Central Excise Registration No.AALCS-9306-DXM-001 and Service Tax Registration No. AALCS-9306-DST-001. The applicant filed a refund claim for Rs. 49,796/- for the quarter of January 2014 to March-2014 under the provisions of Notification No. 52/2011-ST dated 30.12.2011 as amended. The said refund claim was returned back to the applicant for resubmission under Notification No.41/2012 dated 29.06.2012 on the ground that Notification No. 52/2011-ST dated 30.12.2011 as amended was superseded by Notification No.41/2012 dated 29.06.2012. The applicant again re-submitted the said refund claim on 11.08.2014 under the provisions of Notification No.41/2012 dated 29.06.2012

3. The adjudicating authority sanctioned the rebate claim of Rs. 49,796/- as per the procedure specified in the paragraph 3 of the Notification No. 41/2012-ST dated 29.06.2012. for rebate of service tax paid on specified services received by the respondent and used for the export of their goods made during the period January,2014 to March 2014.

4. Being aggrieved with the impugned order, the department filed an appeal before Commissioner (Appeals), Customs, Central Excise and Service Tax, Vadodara. The Appellate authority vide Order-in-Appeal No. VAD-EXCUS-Anand-APP-69/2015-16 dated 13.05.2015 set aside the impugned order and allowed the appeal. The Appellate Authority has made the following observations

4.1 The benefits of rebate on service tax paid on taxable services which are received by an exporter of goods and used for export of goods is available to applicant only when all the above conditions of para 1 of Notification No 41/2012-ST dated 29.06.2012 are fulfilled.

4.2 The applicant has not complied with the condition 1(c) of the said notification, as the difference between the amount of rebate under procedure specified in paragraph 2 & 3 is less than 20% of the rebate available under the procedure specified in paragraph 2 of above notification.

4.3 The adjudicating authority erred in calculating difference between amount of rebate under procedure specified in paragraph 2 and 3.

4.4 The adjudicating authority has not passed the order within jurisdiction and was required to be filed before the Customs authorities

4.5 There is no force in the argument of applicant that refund cannot be denied basis of procedural infraction as the applicant is involved in manufacture of excisable goods since long and as they are obviously well established with due knowledge of Central Excise procedures and had gone through the provisions of notification No.41/2012-ST, dated 29.06.2012, before filling of claim.

5. Aggrieved by the impugned Order in Appeal, the applicant filed an appeal before CESTAT, Mumbai. CESTAT vide order No A/10610-10611/2017 dated 10.03.2017 dismissed the appeals as being non maintainable.

6. Aggrieved by the Order in Appeal, the applicant has filed this Revision Application with the Central Government against the impugned order on the following grounds:

6.1 The Appellate Authority had not taken any cognizance of the applicants cross objection filed on the appeal by the department. The appellate authority has narrowly interpreted provision of notification number 41/2012-S.T. dated 29.06.2012.

6.2 Para (c) of the proviso to the Notification No. 41/2012-S.T. dated 29.06.2012 is a procedural condition and rebate claim can not be denied on the basis of procedural infraction. Para 2 and 3 are mutually exclusive, meaning thereby that the exporter can claim rebate of the Service tax by following any of the procedure prescribed under the above paras. It is also well settled that if two options are available to an exporter, the one which is more beneficial can be adopted by the claimant and there should not be any reason for the department to deny the rebate.

6.3 In the present case F.O.B value of goods exported is Rs. 5,10,20,404.12 and the refund amount at the rate of 0.12% of F.O.B value comes to Rs. 61,224.48 whereas jurisdictional Assistant Commissioner has sanctioned refund claim of Rs. 49,796.00 as per para 3 of notification no.41/2012-ST dated 29.06.2012.

6.4 If JAC was not proper authority to sanction refund claim then either they he could have rejected the refund claim or could have forwarded the application to custom authority. Further to submit that for the rebate claim sanctioned by the lower authority for the period July-2012 to March-2013 and for the period July-2013 to Dec-2013 department has already accepted order of the refund claim sanction by lower authority.

6.5 If their submission is not acceptable then either the applicant be allowed to file rebate claim before customs without invoking period of limitation as lower authority has already sanctioned our rebate claim or the lower authority may be directed to transfer our original refund claim papers to customs authority.

6.6 Applicant submits that as issue involved is revenue neutral.

7. Personal hearing was scheduled in this case on 15.07.2021, 22.07.2021, 01.09.2021 and 07.09.2021. However, no one appeared for the personal hearing so fixed on behalf of applicant. Shri Swapnil, Assistant Commissioner, Nadiad appeared on behalf of the department on 07.09.2021 and reiterated the submissions and stated that the order of the Appellate Authority was reasonable and may be maintained. Since sufficient opportunity has been given to the applicant to represent the case but has not availed the opportunity, the case is taken up for decision on the basis of available documents on record.

7. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original and Order-in-Appeal.

7.1 Government has meticulously considered all facets of the case and holds that moot point in the case is whether the conditions of Notification No 41/2012 S.T dated 29.06.2012 has been adhered to by the applicant while filing the rebate claim and whether the refund has been erroneously sanctioned by the sanctioning authority.

7.2 For better appreciation of the dispute, the contents of para 1 of Notification No 41/2012 (S.T) dated 29.06.2012 are central in the instant case

7.3 Government notes that as per para 1(b) of the said Notification specifies that *"(b) the rebate shall be claimed either on the basis of rates specified in the Schedule of rates annexed to this notification (hereinafter referred to as the Schedule), as per the procedure specified in paragraph 2 or on the basis of documents, as per the procedure specified in paragraph 3;"*

7.4 Further as per para 1(c ) of the said Notification specifies a condition that the *"the rebate under the procedure specified in paragraph 3 shall not be claimed wherever the difference between the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 is less than twenty per cent of the rebate available under the procedure specified in paragraph 2;"*

7.5 Government notes that in the instant case the applicant has filed the rebate claim for Rs. 49,796/- on the basis of documents, under paragraph 3 of the said Notification. The applicant has declared a FOB value of export of Rs. 5,10,20,404/- and as per the Schedule of Rates, the rate for the product in question is 0.12% of the FOB value of exports. Thus the value as per paragraph 2 of the Notification works out to Rs 61,224/- and the difference between paragraph 2 and 3 works out to Rs 11,428/-. Thus in the instant case, the difference worked out between paragraph 2 and 3 of the Notification is less than 20% of the rebate available under procedure specified under paragraph 2 of the said Notification.

7.6 On mere reading of the Notification No. 41/2012-S.T., it is evident that an option is given to the claimant either to claim rebate of service tax under Para 2 or Para 3 of the said notification. The rebate claim under Para 2 is required to be filed with the concerned Custom House along with shipping bills as per rates specified for different items in the Schedule to the above notification. Whereas the rebate claim of service tax under Para 3 is to be claimed from the jurisdictional Assistant/Deputy Commissioner of Central Excise on the basis of actual service tax paid on the input services or inputs used in the exported goods and the procedure for the same is entirely different. Thus, claimant is given liberty for choosing the most beneficial option in terms of more amount and convenience. However, option to file claim under Para 3 is not open ended and it can be filed under this Para only if the difference between the amount of rebate admissible under Para 2 and under Para 3 is not lesser than 20% of rebate admissible under Para 2.

7.7 There is no dispute that in the instant case the rebate claims are not maintainable under Para 3 as the difference between the amount of rebate claimed under Para 3 and the amount of rebate which could be admissible under Para 2 is undoubtedly lesser than 20% of the admissible amount under Para 2. As regards the issue whether the rebate of service tax can still be granted under Para 2, it is already discussed above that rebate of service

tax under Para 2 can be claimed only from Customs authorities after complying with the procedure laid down under the above notification and rebate of service tax under Para 2 cannot be granted by the Central Excise authorities as customs authorities have only been entrusted under Notification No. 41/2012-S.T. to disburse rebate of service tax as per rates specified in the Schedule. Since this restriction is specified in the notification itself, it cannot be relaxed even when the rejected amount of rebate of service tax is lesser than the amount admissible under Para 2 of the notification.

8 Government notes that the applicant has violated the condition of Notification which bars the filing of the claim under paragraph 3 if the difference between the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 is less than twenty per cent of the rebate available under the procedure specified in paragraph 2.

8.1 Government also holds that the contention of the applicant that the denial of the claim on the basis of paragraph 1(c) of the said notification is a procedural infraction is flawed as paragraph 1(c) of the said notification is the basic condition on which the manner of filing and the sanctioning authority is to be decided and the applicant has erred on this count.

8.2 As regards the contention of the applicant that the original authority be directed to forward the claim to the customs authorities, Government notes that the applicant on his own volition, has opted to file the claim under para 3 of the Notification without adhering to the condition at para 1(c) of the Notification which has resulted in the instant case. Government notes that having exercised his option, albeit erroneously, the applicant cannot change the option at this stage.

9. In view of the above discussion, Government holds that the sanctioning authority erred in sanctioning the rebate claim without having the mandate to do so and that the appellate authority has justifiably allowed the appeal filed by the department. Thus, Government does not find any

infirmity in the Order-in-Appeal No. VAD-EXCUS-ANAND-APP-69/2015-16 dated 13.05.2015 passed by the Commissioner (Appeals-I), Central Excise, Customs and Service Tax, Vadodara and, therefore, upholds the impugned order in appeal.

10. The Revision Application is dismissed being devoid of merit.

  
30/12/21  
(SHRAWAN KUMAR)

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

ORDER NO. 25/2021-ST (WZ) /ASRA/MUMBAI DATED 30.12.2021

To,

M/s Shah Paperplast Industries Ltd,  
C-3/3,3/4, G.I.D.C Estate, Mill Road,  
Nadiad

Copy to :

1. The Pr. Commissioner of CGST, Vadodara-I, GST Bhavan, Race Course Circle, Vadodara 390 007
2. The Commissioner of CGST, Vadodara Appeals, Central Excise Building, 6<sup>th</sup> Floor, Race Course Circle, Vadodara 390 007Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare copy.