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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

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F.No.195/404/2013-RA / 5490

Date of Issue: 22.11.19

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ORDER NO. 276/2019-CX (WZ)/ASRA/MUMBAI DATED 15.11.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Rivaa Exports Ltd

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

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Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. US/840/RGD/2012 dated 23.11.2012 passed by the Commissioner (Appeals-II), Central Excise Mumbai.

## ORDER

This Revision Application is filed by the M/s Rivaa Exports Ltd., Rivaa House, Udhna Darwaja, Ring Road, Surat - 395 002 (hereinafter referred to as "the Appellant") against the Order-in-Appeal No. US/840/RGD/2012 dated 23.11.2012 passed by the Commissioner (Appeals-II), Central Excise Mumbai.

2. The issue in brief is that the Appellant, a manufacturer/ exporter, had procured excisable goods viz Man Made Fabrics (MMF) from their own manufacturing unit and also from M/s Rivaa Textile Industries Ltd. who is having Central Excise Registration for export. The Appellant had exported the goods and filed the 07 rebate claims amounting to Rs. 3,77,126/- (Rupees Three Lakh Seventy Seven Thousand One Hundred and Twenty Six Only). They were issued Deficiency Memo Cum Show Cause Notice vide letter F.No. V(15)Reb/Reeva/RGD/06/1148 dated 03.02.2012. The Deputy Commissioner, Central Excise (Rebate) Raigad vide Order-in-Original No 2270/11-12/DC (Rebate)/Raigad dated 27.02.2012 rejected 07 rebate claims amounting to Rs. 3,77,126 /- on the ground that :

- (i) the exported goods were fully exempt under Notification No.30/2004-CE dated 9.7.2004 and in view of sub-section (1) of Section 5A of the Act read with CBEC Circular No.937/27/2010-CX dated 26.11.2011, the appellants could not have paid duty and did not have the option to pay the duty;
- (ii) the procedure required for self sealing and supervision certificate given in paragraph 6 of the Chapter 8 of CBEC Manual have not been followed;
- (iii) the Bank Realization Certificates are not submitted;
- (iv) Chapter sub heading Number of the Central Excise Tariff declared in the excise invoice and in the corresponding shipping bills do not tally;
- (v) the manufacturer had declared in the relevant ARE-1 that the goods have been manufactured by them by availing facility

under Notification No. 41/2001-CE(NT) dated 26.06.2001 issued under Rule 18 of Central Excise Rules,2002 and the goods shall be exported on the application in form ARE-2;

- (vi) the signature of master of vessel not appearing on shipping bill;
- (vii) the Photostat copies of shipping bill/mate receipt/bill of lading etc. not bearing the necessary certificate as "certified true copy";
- (viii) the sailing date particulars are not mentioned on the ARE-1 and EP copy of the Shipping Bill and difference in mentioning of sailing date in Bill of Lading and Mate receipt;
- (ix) no declaration is made at Sr. No. 3 (a) in the form ARE-1 and thus conditions for grant of rebate under Notification No. 19/2004-CE (NT) were not fulfilled.

Further, the adjudicating authority also observed that since the Appellant is appearing in the Alert list issued by the Raigad Commissionerate and Surat- 1 Commissionerate, the Appellant was requested to furnish the documentary evidence to prove the genuineness of the availment of Cenvat credit and subsequent utilization by the processors for payment of duty which they failed to submit. Aggrieved, the Appellant then filed appeal with the Commissioner (Appeals-II), Central Excise Mumbai who vide his Order-in-Appeal No. US/840/RGD/2012 dated 23.11.2012 rejected their appeal and upheld the Order-in-Original dated 27.02.2012.

3. ~~Being aggrieved,~~ the Appellant then filed the ~~current~~ Revision Application on the following grounds :

- 3.1 that the grounds in the EA-1 filed by the applicants before the respondent be treated as part and parcel of this revision application.
- 3.2 that the findings in the impugned OIA to the effect that self-sealing certificate is mandatory is contrary to the precedent in 2012 (284) E.L.T. 473 (Commr. Appl.)-IN RE SRF POLYMERS LTD.

- 3.3 that when customs has accepted the consignment and granted LEO, rebate sanctioning authority cannot deny rebate only on ground of absence of declaration of self-sealing from the exporter. They seeks to refer and rely upon procedure as laid down in paragraph 3(a) (xi) of the Notification No.19/2004-CE (NT) dated 06.9.2004 and paragraph 6.1 of the Chapter 8 of CBEC Manual in this regard
- 3.4 that had enclosed xerox copies of BRCs and hence rejection of rebate on this ground deserves to be set aside and rebate deserves to be granted.
- 3.5 that denial of rebate on ground of exports having been effected under form ARE-1 instead of form ARE-2 is contrary to settled law vide precedent decision in 2011 (272) E.L.T. 433 (G.O.1.)-1N RE BANARAS BEADS LTD. -*Rebate claim - Procedural and technical lapses - Export under Form ARE-1 instead of ARE-2 - Export and duty paid nature of goods not in dispute - Prior declaration and ration of consumption of input in the final product, submitted - Purchase and receipt of input intimated of Department - No allegation that procedure prescribed under Notification No. 2112004-C.E. (N.T.) not followed - Only lapse, of exporting goods under ARE-1 instead of ARE-2 Forms, a procedural and technical lapse, hence, condonable - Substantial compliance of procedure laid down in said Notification - Rebate claim admissible - Impugned order upheld - Rule 18 of Central Excise Rules, 2002. (para 8).*
- 3.6 that when excise invoices have been submitted with rebate claim and duty paying certificates have been submitted to Dy. Commissioner (Rebate) as borne out by the Order-in-Original, respondent could not have held non declaration at Col. 3(a) of form ARE-1 as a ground for rejecting the rebate claimed after exports.
- 3.7 that when in the Order-in-Original (brief facts of the case) it has been recorded that during the personal hearing, copies of duty Paying certificate issued by Range Superintendent Range-II,

Division-V of Surat I Commissionerate in respect of ARE 1 Nos. 154 dated 01.08.2005, 124 dated 07.07. 2005, 207 dated 12.09.2005, 243 dated 10.10.2005 and 172 dated 17.08.2005 were submitted, Respondent could not have upheld the impugned OIO by relying only on alert circulars or precedents whose factual matrix are completely different from the facts of the Appellants.

3.8 that they prayed that the impugned Order-in-Appeal be set aside and less an order for payment of rebate claimed with interest for the period of delay as per law and with consequential relief.

4. The Applicant delayed filing the Revision Application, details of which is given below:

Sl. No.	OIA No. & dt	Revision Application	Date RA recd and No. of delay	Application for COD date
1	US/840/RGD/2012 dt 23.11.2012 (Recd on 08.12.2012)	195/404/13-RA	15.03.2013 03 days delay	Filed on 15.03.2013

Appellant filed the Revision Application along with the Miscellaneous Application for Condonation of Delay (herein after as 'COD').

5. A personal hearing in the case was held on 22.08.2019 which was attended by Shri S Suriyanarayanan, Advocate on behalf of the Appellant. The Appellant stated that they are merchant exporter and the export was in 2005. It was alleged that BRC was not given (2005) and the Deputy Commissioner issued letter in 2009 asking for verification from the Appellant. The Rules had changed and Rule 12B was abolished in 2004.

6. 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.

7. Government first proceeds to take up the application for COD in filing the current Revision application by the Applicant. After hearing the COD application in detail, Government condones the delay of 03 days and proceeds to examine the case on merits.

8. The Government notes that the issues involved in the present Revision Application are non compliance of Self sealing procedure, non submission of BRC's, clearance of goods under ARE-1 instead of ARE-2 and the Appellant figures in the alert list issued against bogus non-existent grey manufacturers.

9. Government finds that in respect of self-sealing and supervision certificate, the Appellant in their grounds of appeal before the Commissioner(Appeals) stated that –

*“A- As regards no endorsement regarding self-sealing on the ARE-1, the appellants state that on the reverse of the ARE-1s there is endorsement to the effect that the exports were “under self removal procedure” and the jurisdictional Inspector and Superintendent of Central Excise have signed on the reverse of the ARE-1. All the ARE-1s have been signed by the authorized agent of the manufacturer/ processor with seal and countersigned by proprietor of M/s Riva Export Limited, the merchant exporter with seal. Therefore, the export goods were sealed as per procedure prescribed under Notification No. 19/2004-CE(NT)”*

Government notes that that the Notification No.19/2004-CE(NT) dated 6.9.2004 which grants rebate of duty paid on the goods, 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 this is a procedural requirement. Such procedural infractions can be condoned. In this regard the Government finds support from the decision of Hon’ble Supreme Court in the case of Suksha International – 1989 (39) ELT 503 (SC) wherein it was held 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 UOI vs. A.V. Narasimhalu - 1983 (13) ELT 1534 (SC), the Apex Court observed that the administrative authorities should instead of relying on technicalities, act in a manner consisted with the broader concept of justice. In fact, in cases of rebate it is a settled law that the procedural infraction of Notifications, Circulars etc., are to be condoned if exports have really taken place, and that substantive benefit cannot be denied for procedural lapses.

10. Government observes that the manufacturer had declared in the relevant ARE-1 that the goods have been manufactured by them by availing facility under Notification No. 41/2001-CE(NT) dated 26.06.2001 issued under Rule 18 of Central Excise Rules,2002 and there was no declaration at Col.3(a) of Form ARE-1. Government finds that the Appellant had filed ARE-1 form instead of form ARE-2 and there was no declaration at Col.3(a) of Form ARE-1, which are procedural lapses and hence condonable.

11 Government finds the name of the M/s Rivaa Exports was figuring in the Alert notices issued by the Raigad Commissionerate and Surat-1 Commissionerate for fraudulent availment of Cenvat credit on the basis of invoices' issued by bogus/ non-existent grey manufacturers. On account of the same, the Appellate Authority has inferred that the appellant may also be a party in the said fraudulent availment of Cenvat Credit and the bonafide nature of transaction between the merchant exporter and supplier manufacturer is imperative for admissibility of the rebate claim filed by the merchant manufacturer and the Appellant has not submitted any documentary evidence in this regard.

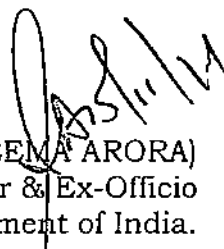
12. The Government notes that there is nothing on record to show that there was any further investigation/issuance of show cause notices and Orders-in-Original in this case by the Central Excise Raigad Commissionerate and Surat-I Commissionerate. The Government further observes from the Order-in-Original dated 23.112012 that opportunity was not given to the applicant for substantiation of the genuineness of the said

rebate claims. Government, therefore, holds that the verification on this aspect from the original authority is necessary to establish the genuineness of the Cenvat credit availed and its subsequent utilisation by the processor for payment of duty towards the above exports. Further Department may also verify the Appellant's claim of having in possession the copies of Bank Realization Certificates (BRCs) relating to the subject exports.

13. In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. US/840/RGD/2012 dated 23.11.2012 passed by the Commissioner (Appeals-II), Central Excise Mumbai and remands the case back to the original authority for adjudication on the basis of observations as stated above. The Appellant is also directed to submit all the requisite documents for verification. The original adjudicating authority will complete the requisite verification expeditiously and pass a speaking order after following the principles of natural justice.

14. Revision application is disposed off in above terms.

15. So, ordered.

  
(SEEMA ARORA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

ORDER No. 276/2019-CX (WZ)/ASRA/Mumbai DATED 15.11.2019.

To,  
M/s Rivaa Exports Ltd.,  
Rivaa House, Udhna Darwaja,  
Ring Road, Surat - 395 002

Copy to:

1. The Commissioner of GST & Central Excise, Belapur Commissionerte.
2. The Deputy / Assistant Commissioner(Rebate), GST & CX , Belapur Commissionerte
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.