

REGISTERED SPEED POST



**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. 195/550/13-RA/5859 Date of Issue: 12/12/19

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ORDER NO. 278 /2019-CX (WZ) /ASRA/MUMBAI DATED 03.12.2019 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 CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Lata Impex, Mumbai.

Respondent : Commissioner, Central Excise, Raigad.

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Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. BC/493/RGD(R)/2012-13 dated 31.12.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III.

**ORDER**

This Revision Application has been filed by M/s Lata Impex, Mumbai (hereinafter referred to as "the applicant") against Order-in-Appeal No. BC/493/RGD(R)/2012-13 dated 31.12.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III.

2. The issue in brief is that the applicant, a merchant exporter had filed two rebate claims amounting to Rs.6,57,598/- (Rupees Six Lakh Fifty Seven Thousand Five Hundred and Ninety Eight only) which were rejected by the Deputy Commissioner, Central Excise (Rebate), Raigad vide Order-in-original No.1171/12-13/DC (Rebate)/Raigad dated 26.07.2012. Being aggrieved by the said Order in Original, the applicant filed appeal against the same. Vide impugned Order-in-Appeal No. BC/493/RGD(R)/2012-13 dated 31.12.2012, the Commissioner (Appeals) rejected the appeal filed by the applicant and upheld the Order-in-original No.1171/12-13/DC (Rebate)/Raigad dated 26.07.2012.

3. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government on the grounds mentioned therein. In their written submissions dated 05.10.2018 the applicant contended as under :-

- The Rejection of Rebate claim was on the ground the Applicant availed the benefit of Notification No. 30/2004-CE granting full exemption but instead paid duty under Notification No. 29/2004-CE dated 2004.
- The Applicant had submitted bank Realization Certificate, duty payment Certificate had been called for by department directly from the respective ranges.
- When they have fulfilled the requirement of physical export and duty payment, the procedural requirement needs to be condoned in respect of export.
- They have availed Notification No. 29/2004-CE dated 09.07,2004. It is the option given to exporter either to export under bond or on payment of duty and claim Rebate. The Applicant have followed 29/2004-CE dated 09.07.2004.
- They have submitted all the documents in original for claiming the Rebate claim. There is no allegation in this aspect.

- Their name is not in the alert list. Their claim is in order and may be sanctioned.
- They rely on the following order/ Judgments. They are already attached to Revision Application.
  - i) Commissioner Vs Suncity Aloys Pvt. Ltd.-2007(218) ELT 174 (Raj).
  - ii) Tafe Limited Vs Commissioner of C.Ex. Chennai-2008(227) ELT 80
  - iii) GTC Export Ltd. 1994 (74) ELT 468 (G.O.I.)
  - iv) CBEC Circular No. 81/81/94-CX dated 25.11.1994.
  - v) Circular: 937/27/2010 CX dated 26-Nov-2010.

In view of the above, the applicant prayed that the Revision Applications filed by the Applicants may please be allowed.

4. A personal hearing in the case was held on 18.09.2019. Shri R.V. Shetty, Advocate duly authorized by the applicant appeared for hearing. He reiterated written submissions and grounds of Revision Application.

5. 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.

6. Government observes that the main reasons for rejection of the instant case by the Original authority were that :

(i) the applicant availed the benefit of Notification No. 30/2004-CE granting full exemption but instead paid duty under Notification No. 29/2004-CE dated 09.07. 2004;

(ii) non submissions of Bank realization certificate in terms of Standing Order No. 02/2010 dated 23.06.2010 issued by the Commissioner, Central Excise, Raigad which required submission of BRC with the rebate claims or at lease an undertaking that the same shall be submitted within three months from the date of sanction.

(iii) there was no endorsement on the ARE-1 that the export goods were removed under self sealing procedure, therefore, the goods were not sealed as required under procedure prescribed under Notification No.19/2004 CE(NT) dated 06.09.2004.

(iv) there were many alerts issued based on DGCEI investigations regarding bogus Cenvat Credit being passed by bogus firms. In order to verify the authenticity of the Cenvat credit availed by the processor of the goods exported by the applicant, an opportunity was given to the applicant for submission of documents / records the genuineness of the availment of Cenvat Credit on inputs used in the manufacture of export goods covered under the subject ARE-1. However, the applicant did not submit any such documents proving the genuineness of the Cenvat Credit availed on inputs and subsequently utilized for payment of duty on the above exports.

7. As regards availing benefit of Notification No. 30/2004-CE granting full exemption but instead paid duty under Notification No. 29/2004-CE dated 09.07.2004, Commissioner (Appeals) has observed that the manufacturers have not availed the benefit of Notification No. 30/2004 dt. 9.7.2004; the said notification is a conditional notification and hence, manufacturer is at liberty to avail or not avail the said notification; therefore rejection of rebate on this ground is not valid and legal. Hence, it is clear that the Commissioner (Appeals) has not upheld the Order in Original No.1171/12-13/DC (Rebate)/Raigad dated 26.07.2012 on this ground.

8. Government observes that the procedure for sealing by Central excise Officer or Self-Sealing and Self Certification procedure, discussed supra, has been prescribed to identify and correlate export goods at the place of dispatch. Government notes that in the instant case the impugned goods were cleared from the factory without sealing either by Central Excise officers or without bearing certification about the goods cleared from the factory 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. Government however observes that failure to comply with provision of self-sealing and self-certification as laid down in para 3(a) (xi) of the Notification No.19/2004-CE (NT) dated 06.09.2004 is condonable if exported goods are co-relatable with goods cleared from factory of manufacture or warehouse and sufficient corroborative evidence available to correlate exported goods with goods cleared under Excise documents. Export oriented schemes like rebate/drawback are not deniable by merely on technical interpretation of procedures, etc.

9. The applicant in its revision application has contended that they have enclosed following documents with both their rebate claims:

1. Original copy of ARE-1,
2. Duplicate copy of ARE-1,
3. Triplicate copy of ARE-1
4. Central Excise Invoice
5. Self attested copy to Bill of Lading.
6. Self attested copy of Shipping Bill,
7. A certificate issued by the Central Excise Authorities regarding payment of Central Excise duty,
8. Mates Receipt,
9. Export Invoices and Packing List and
10. BRC.

10. Government observes that though the applicant has erred in not following the procedure, however in this case sufficient documentary evidence has been submitted to allow cross verification that the goods which were cleared from the factory under the two ARE-1s (mentioned in Order in Original No. No.1171/12-13/DC (Rebate)/Raigad dated 26.07.2012) were in fact the same goods which were exported vide corresponding shipping bills. Government, therefore, is of the considered view that such a lapse is condonable if the exported goods could be correlated with the goods cleared from the factory of manufacture. Moreover, the applicant has received the foreign remittances also and have produced BRC in these cases.

11. Moreover, the Order in Original is silent about whether the applicant or its supplier / manufacturer were figuring in the Alert notices issued by Central Excise, Raigad subsequent to DGCEI Investigations. Government further observes that the rebate claims were rejected mainly as the applicant did not produce evidence of the genuineness of the Cenvat Credit availed by the processors and the rebate sanctioning authority was apparently not satisfied about the bona fide / duty-paid' character of the exported goods.

12. Government, in this case notes that there is nothing on record to show that there was any further investigation / issuance of show cause notices, confirmation of demand of irregular Cenvat Credit etc. by the concerned Commissionerate

against the applicant or its manufacturer. This verification from the original authority was also necessary, to establish whether the Cenvat credit availed & subsequently utilized by the processor/manufacturer for payment of duty towards the above exports was genuine or otherwise. Government therefore, is of considered opinion that the Order in Original No. Order-in-original No.1171/12-13/DC (Rebate)/Raigad dated 26.07.2012 passed by the Deputy Commissioner (Rebate), Central Excise, Raigad Commissionerate lacks appreciation of evidence and hence is not legal and proper.

13. In view of above discussion, Government sets aside impugned Order-in-Appeal and remands the case back to the original authority for causing verification as stated in foregoing paras. The applicant is also directed to submit all the export documents with respect to all concerned ARE-1s, BRC, duty paying documents as mandated for verification. The original authority will complete the requisite verification expeditiously and pass a speaking order within four weeks of receipt of said documents from the respondent after following the principles of natural justice.

14. Revision application is disposed off in the above terms.

15. So, ordered.

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

ORDER No 278 /2019-CX (WZ) /ASRA/Mumbai DATED 03.12.2019

To,  
M/s. Lata Impex,  
413, T' Vasant Vadi,  
2<sup>nd</sup> Floor, Kalbadevi Road, Mumbai-400 002.

Copy to:

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