

**REGISTERED  
SPEED POST**



**F.No.195/699/12-RA**  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

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

Date of Issue...01/02/16

**ORDER NO. 28/2016-CX DATED 29.01.2016** 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 order-in-appeal No. US/266/RGD/12 dated 24.04.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

Applicant : M/s. Govardhan Poly Plast Pvt. Ltd., Surat.

Respondent : Commissioner of Central Excise, Raigad.

\*\*\*\*\*

**ORDER**

This revision application is filed by M/s. Govardhan Poly Plast Pvt. Ltd., against the Order-in-Appeal No. US/266/RGD/12 dated 24.04.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai, with respect to Order-in-Original No. 1081/11-12 dated 31.10.2011 passed by the Deputy Commissioner of Central Excise (Rebate), Raigad.

2. Brief facts of the case are that the applicants have been engaged in the manufacture of PP woven sacks/ fabrics and are having a factory premises situated at Surat, state of Gujarat and are duly registered with the Central Excise. The applicants are also engaged in export of goods manufactured by them directly or through third party, and they also export the goods as manufactures merchant exporter. The applicants have exported four consignments of PP Woven Sacks with/ without liner under cover of invoice. After exportation the applicants filed 4 rebate claims of an amount of Rs. 9,97,014/- with the jurisdictional Deputy Commissioner of Central Excise. The applicants also filed a disclaimer certificate from M/s. Ispa Exim Pvt. Ltd., who were the third party exporter and whose name had appeared in the Shipping Bills and Bills of Lading The Deputy Commissioner of Central Excise, (Rebate), Raigad, rejected rebate claim to the extent of Rs. 9,97,014/- on the ground that the relevant export documents are not matching as far as declaration of name of exporter is concerned which is a contravention of Rule 18 of Central Excise Rules, 2002 read with notification No. 19/2004-CE(NT) dated 06.09.2004.

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 Both the lower authorities have failed to appreciate that the Show Cause Notice specifies the discrepancies in ambiguous terms and thus the SHOW CAUSE NOTICE/Deficiency Memo is totally vague and unspecific and the impugned orders, thus is required to be set aside solely on this ground alone.

4.2 Both the lower authorities have failed to appreciate that the Deficiency Memo points out that the name of M/s Ispa Exim Pvt. Ltd. is mentioned in the B/L and all other documents are showing the name of the Appellants. The deficiency memo does not point out any reasons or grounds on which the rebate claim was not grantable and thus the SHOW CAUSE NOTICE is totally vague and unspecific and the impugned orders passed on the basis of such a SHOW CAUSE NOTICE are required to be set aside.



4.3 Both the lower authorities have failed to appreciate that there is a great fallacy in the objection that the name of the third party exporter M/s. Ispa Exim Pvt. Ltd. is not mentioned in the shipping bill. In fact, no such deficiency was pointed out in the Deficiency Memo and thus the impugned orders travel beyond the scope of the Show Cause Notice and are thus required to be set aside.

4.4 Both the lower authorities have failed to appreciate that in the case of shipping bill no.3331121 dated 21.04.2011 and shipping bills no.3411866 dated 27.04.2011, vide page 4 of the both the shipping bills, the third party exporter detail and name of M/s. Ispa Exim Pvt. Ltd. is clearly mentioned in both the shipping bills and thus the impugned orders are totally erroneous and are thus required to be set aside.

4.5 Both the lower authorities have failed to appreciate that in the shipping bills No.8431081 dated 07.05.2010 vide a certificate of amendment No. S/6-ARSB/256/10/MSWC(X) dated 29.07.2010, the details of third party exporter has been shown as M/s. Ispa Exim Pvt. Ltd. and the said amendment is issued under Section 149 of the Customs Act, 1962 and thus it is erroneous to say that the name of third party exporter was not mentioned in the shipping bills.

4.6 Both the lower authorities have failed to appreciate that in case of shipping bills no.8345584 dated 10.04.2010 vide a Certificate of Amendments No. S/6-ARSB/1203/2011 MSWC/CFS(X) dated 06.09.2011 was issued by the Assistant Commissioner of Customs under Section 149 of the Custom Act, 1962 and the name of M/s. Ispa Exim Pvt. Ltd. was added to the shipping bill and thus it is totally erroneous to say that the name of M/s. Ispa Exim Pvt. Ltd. was not mentioned in the shipping bills.

4.7 Both the lower authorities have failed to appreciate that as per the Order No.160/2003 dated 24.07.2003 of Government of India in the matter of Ikea Trading India Ltd. – 2003 (157) ELT 359 (GOI) it is held that mentioning of name of third party exporter is a procedural requirement and the claim cannot be rejected on the ground.

4.8 Both the lower authorities have failed to appreciate that there is no dispute about the genuineness of the exports and the duty paid nature of the goods which were exported and thus there is substantive compliance which is sufficient when factum of export is not in doubt and thus the rebate is required to be sanctioned. The applicant in this regard placed reliance in the judgment of the Hon'ble High Court Madras in the matter of Ford India Pvt. Ltd. 2011 (272) ELT 353 (Mad.).

4.9 Both the lower authorities have failed to appreciate that as per the orders of the Government of India in matte of - 2003 (157) ELT 359 (GOI), Ikea Trading (India) Ltd. 2011 (267) ELT 422 (GOI) Leighton Contractors (India) Ltd. 2006 (205)



ELT 1093 (GOI) In Re: Commissioner of Central Excise, Bhopal it is held that even if there is some procedural infraction of Notification/Circulars etc., the same are required to be condoned if the exports have really taken place.

5. Personal hearing was scheduled in this case on 03.08.2015 was attended by Shri Willingdon Cristan, advocate on behalf of the applicant who reiterated the grounds of revision applications. Nobody attended hearing on behalf of department.

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

7. On perusal of records, Government observes that the applicant's rebate claims were rejected on the ground that the relevant export documents are not matching as far as declaration of name of exporter is concerned and therefore, there is contravention of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. Commissioner (Appeals) upheld impugned Order-in-Original. Now, the applicant has filed this Revision Application on grounds mentioned in para (4) above.

8. Government observes that the original authority rejected the rebate claim on the ground that the name of exporter is declared/mentioned as M/s. Govardhan Poly Plast Pvt. Ltd. on each of the ARE-1s and its corresponding shipping bills, mate receipts and commercial invoices, whereas, corresponding Bills of lading indicate the name of M/s. Ispa Exim Pvt. Ltd., as exporter/shipper of the goods. As such, there is mismatch in the name of exporter.

8.1 Government notes that in total there are four shipping bills. The applicant contested that in two shipping bills viz. shipping bill No. 3331121 dated 21.04.2011 and shipping bill No. 3411866 dated 27.04.2011, the third party exporter detail is clearly mentioned. As regards to other two shipping bills viz shipping bill No. 8431081 dated 07.05.2010, 8345584 dated 10.04.2010, certificates of amendment under Section 149 of the Customs Act, dated 27.07.2010 and 06.09.2011 1962 were issued by the Assistant Commissioner to the effect that name of the third party was added as M/s. Ispa Exim Pvt. Ltd. It is further stated by the applicant that name of M/s. Ispa has appeared as per the terms of the letters of credit for the purpose of negotiation of the documents as a third party exporter. Government notes that there is no finding of lower authorities other than above mentioned discrepancies that duty paid goods have not been exported.

8.2 Government further notes that these facts were also placed before the Commissioner (Appeals), but it is not forth coming from the impugned orders whether the same have been considered or not. There is no finding of lower



authorities that the duty paid goods have not been exported. In terms of Board's Circular 120/95-Cus dated 23.11.1995 and 30.12.2005 dated 12.07.2005 as referred to in impugned Order-in-Original the BRC, GR declaration, export order and invoice should also be to the name of the third party exporter. As such, the merits of the rebate claims need to be re-examined after taking into consideration the documents referred to above.

8.3 The applicant has also relied upon decision of the Government in case of M/s. Ikea Trading (India) Ltd., 2003 (157) ELT 359 (GOI), and contended that the lower authorities have failed to consider it. It needs to be examined if the said decision is applicable to the facts and circumstances of the present case.

9. In view of above, Government sets aside impugned Order-in-Appeal and remands the case back to original authority for fresh decision to take a considered view subject to its satisfaction after examining all documents in original including as referred to in para 8 which should be presented by the applicant to the original authority. Sufficient opportunities of hearing be afforded to concerned parties.

10. Revision Application is disposed off in above terms.


11. So, ordered.

  
(RIMJHIM PRASAD)

Joint Secretary to the Government of India

M/s. Govardhan Poly Plast Pvt. Ltd.,  
112, World Trade Centre,  
Ring Road,  
Surat.

ATTESTED

  
(सहायक सचिव/Assistant Commissioner)  
सहायक सचिव/Assistant Commissioner  
C.E. & L. (आपूर्ति/Supply & Distribution)  
विश्व व्यापार केंद्र, (World Trade Centre)  
मंत्रालय (विश्व व्यापार केंद्र/Ministry of World Trade Centre)  
पारस, नई दिल्ली (Pars, New Delhi)  
नई दिल्ली / New Delhi



