F NO. 195/667/11-RA

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
8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005

F NO. 195/667/11-RA Date of Issue:

ORDER NO. 289 /2020-CX (WZ) /ASRA/MUMBAI DATED 02.03.2020 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 Sanket Food Products Pvt. Ltd., Jalana.

Respondent : Commissioner of Central Excise, Aurangabad.

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against Order-in-Appeal No. AGS (101) 11/2011 dated 27.05.2011 passed by Commissioner (Appeals), Central Excise & Customs, Aurangabad.

ORDER

This revision application is filed by the M/s Sanket Food Products Pvt. Ltd., Jalana (hereinafter referred to as 'the applicant') against the Order-in-Appeal No. AGS (101) 11/2011 dated 27.05.2011 passed by Commissioner (Appeals) Central Excise & Customs, Aurangabad.

2. The applicant is engaged in the manufacture of Pan Masala/Gutkha falling under Chapter Heading no. 24039990 of the schedule to Central Excise Tariff Act, 1985. The applicant was working under Compounded levy scheme and following the Pan Masala Packing Machines (Capacity Determination and Collection of duty) Rules, 2008 as Notified under Notification no. 30/2008-CE(NT) dated 01.07.2008 and was paying duty as prescribed under Rule 7 of the said Rules read with Notification no. 42/2008-CE dated 01.07.2008 on the number of operating packing machines in the factory during the relevant month. The applicant filed eight Rebate claims for claiming rebate totally amounting to Rs. 3,02,96,200/- (Rupees Three Crore Two Lakh Ninty Six Thousand Two Hundred only) which was sanctioned by the Assistant Commissioner, Central Excise and Customs, Nanded vide the Order-in-Original No.3/Rebate/CEX/AC/2010 dated 04.11.2010 and appropriated the full amount so sanctioned against the duty defaulted by the applicant for the month of Feburary-2010.

3. Being aggrieved by the said Order-in-Original, dated 04.11.2010 the department filed the appeal before Commissioner (Appeals) mainly on the grounds that :

(i) the exporter in the present case was M/s. Sanket Industries, Jalna and as per ARE-1 the Respondent was manufacturer. The goods were cleared for export without sealing as there was no certification on ARE-1 to this effect. The triplicate and quadruplicate copies of ARE-1 appeared to have not been given to the jurisdictional authorities within 24 hours of export. The triplicate copies of ARE-1 were not certified the payment particulars of the Central Excise duty paid/ payable by the jurisdictional Superintendent.

(ii) the CBEC Circular no. 736/52/2003-CX dated 11.08.2003 and no. 741/57/2003-CX dated 02.09.2003 were not followed scrupulously by the manufacturer and as well

as by the exporter as co- relation between the goods claimed to have been exported and the relevant documents was not established.

(iii) the respondent had contravened the condition no. (iii) and (ix) of the Notification no. 32/2008-CE(NT) dated 28.08.2008 as (iii) the excisable goods were not exported directly from the factory or warehouse and (ix) the procedure as laid down in Notification no. 19/2004-CE(NT) dated 06.09.2004 were not followed.

The Commissioner (Appeals) vide Order-in-Appeal No. AGS (101) 11/2011 dated 27.05.2011, while allowing the appeal filed by the department against Order in Original dated 04.11.2020 passed by Assistant Commissioner, Central Excise and Customs, Nanded, observed that

> *"core requirement for sanction of rebate claim, as held in number of decisions that the goods should be manufactured, they should suffer duty and the same should be exported has to be fulfilled. In the present appeal these requirements have not been fully satisfied. It is seen from Para (VII) of the findings of the impugned OIO that the respondent had not submitted triplicate copy of the ARE-1 to the Range Superintendent. Thus it is seen that the duty paid nature of the goods exported was not ascertained at the time of sanction of rebate. Further, the impugned OIO has appropriated the rebate sanctioned towards duty defaulted for the month of February 2010 on 04.11.2020. It means that till 04.11.2010 duty for the month of February 2010 was defaulted. Therefore, it can be held that at the time of filing of rebate claim duty in respect of goods removed through ARE-1 No. 11/09-10 dated 01.02.2010, 15/09-10 dated 01.02.2010, 16/09-10 dated 01.02.2010, 17/09-10 dated 01.02.2010 and 18/09-10 dated 01.02.2010 was not paid. One of the conditions stipulates in Notification No. 19/2004-CE(NT) dated 06.09.2004 is that goods shall be exported after payment of duty. Rebate can be granted only if the conditions stipulated in Notification No. 19/2004-CE(NT) are satisfied. Here, I find that the said condition is not satisfied".*

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 (Appeals) has seriously erred in holding that the goods in respect of which ARE-I was filed on 01.02.2010 were non duty paid goods. These goods were manufacture and cleared for export from the unit of the applicant in the month of Jan 2010 only and the excise invoices were issued on 31.01.2010 only. In fact this ground was not even taken by the department in its appeal before Commissioner

(Appeals) that the duty had not been paid in respect of these goods. A copy of the applicant's ER-1 return for Jan 2010 is enclosed which shows the clearance of these goods against excise invoices. These can be co-related with the respective ARE-1 from the rebate claims filed by the applicant. Copies of chart containing the details of the relevant excise invoice with date vis-à-vis the corresponding ARE-1 with date which clearly shows that the export goods were manufactured and cleared in January, 2010 and not in February 2010. Admittedly there has been no default in payment of duty for January 2010. Hence the rebate claim of the applicant cannot be denied on the ground that duty was not paid on the export goods.

4.2 The Commissioner (Appeals) failed to appreciate that the Asst. Commissioner has categorically recorded that the rebate claims were scrutinized by the Range superintendent who has confirmed that the rebate claim is proper and correct and that duty has been paid on the export goods. In its rebate claims, the applicant has claimed at Serial. No. 15 that the duty has been deposited. Thus the duty paid nature of the export goods stands established beyond an iota of doubt.

4.3 As is mentioned in para (vii) of the findings portion of the Order-in-Original, the triplicate copy of the ARE-1s was sent by mistake by the applicant to Customs along with the original and duplicate copy of ARE-1s. This is borne out by the endorsement made by the Customs Officers on the triplicate copy of ARE-1s. The Asst. Commissioner condoned the delay in presenting the triplicate copy of ARE-1s and the Range Supdt. has also confirmed the duty paid character of the goods.

4.4 The Commissioner (Appeals) failed to appreciate that the applicant has followed the procedure for export of goods under claim for rebate of duty. If at all there has been any violation, then it is only procedural in nature and there has been substantial compliance with the provisions of Notification No. 19/2004- CE(N.T.). It has been held in various cases that substantive benefit cannot be denied on technicalities.

5. In their counter reply to the present Revision Application, submitted vide letter F.No. RC/CEX/Misc/2013 dated 10.03.2014, the department contended as under :-

5.1 In Para (10) of the Revision Order No. 198/2011-CX dated 24.02.2011, the Revisionary Authority had also held that 'the rebate sanctioning authority has to compare the original copy of the ARE-1 with duplicate oopy of the ARE-1 received from the concerned Range Superintendent to satisfy himself about the export of the duty paid goods prescribed under Notification No.19/2004-CE (NT) dated 06.09.2004. The purpose of the endorsement on the triplicate copy of the ARE-1 by the Superintendent

Range is to ensure that the proper duty has been paid by the manufacturer at the time of clearance of goods from the factory / warehouse. The Revisionary Authority further in the same para noted that the applicant had then submitted a certificate issued by the Superintendent, Jalna Range certifying the details of duty payment. Therefore, the importance of the complicance of the conditions prescribed under Notification No 32/2008-CE(NT), dated 28.08.2008 have also been acknowledged by the Revisionary Authority. But while allowing the rebate vide Revision Order No. 198/2011-CX dated 24.02.2011, the Revisionary Authority had relied upon the certificate issued subsequent to the clearance of goods, by the Superintendent, Jalna Range. In the instant case, no such certificate is forthcoming, which can co-relate that the same goods which were claimed to have been exported, suffered the duty incidence. Moreover, the grant of one time relaxation in following the procedure by the Revisionary Authority does not grant blanket permission for further claims that the assessee can bypass the statutory procedure.

5.2 The core requirement for sanction of any rebate claim, as held in number of decisions that the goods should be manufactured, they should suffer duty and the same should be exported,has to be fulfilled. In the appeal before the Commissioner (Appeals), the aforesaid requirements have not been satisfied and it can be seen from Para VII of the findings of the impugned OIO that the assessee had not submitted the triplicate copy of the ARE-1 to the Range Superintendent. Thus it is established that the duty paid nature of the goods exported was not ascertained at the time of sanction of rebate

5.3 the impugned 0I0 has appropriated the rebate sanctioned towards duty defaulted for the month a February 2010 on 04.11. 2010 It means that till 04. 11. 2010, duty for the month of February 2010 was defaulted. Therefore, it can be held that at the time of filing of rebate claim, duty in respect of goods removed through ARE-1 Nos. 11, 15, 16, 17,18/09-10 all dated 01.02.2010 was not paid. One of the conditions stipulated in Notification No. 19/2004-CE(NT) dtd. 06.09.2004 is that the goods shall be exported after payment of duty. Rebate can be granted only if the conditions stipulated in Notification No. 19/2004-CE(NT) dtd. 06.09.2004 are satisfied whereas in this case, the aforesaid condition is not satisfied.

5.4 In view of the above submission, it appears that the 0IA No AGS(101)11/2011 dated 27.05.2011 passed by the Commissioner (Appeals) is legal and proper and hence, may please be upheld and the Revision Application of the assessee may please be set aside.

6. Personal hearing in this case was scheduled on 03.09.2019, 01.10.2019 and 21.11.2019. However, neither the applicant nor its Advocate on record appeared for the personal hearing. Further, there was no correspondence from the applicant seeking adjournment of hearing. Hence Government proceeds to decide the case on merits on the basis of available records.

7. Government has carefully gone through the relevant case records available in case files, perused the impugned Order-in-Original and Order-in-Appeal and considered written submissions made by the respondent department.

8. Government observes that while allowing the appeal filed by the department against Order in Original dated 04.11.2020 passed by Assistant Commissioner, Central Excise and Customs, Nanded, the Commissioner (Appeals) vide Order-in-Appeal No. AGS (101) 11/2011 dated 27.05.2011, observed that the applicant had contravened the condition no. (iii) and (ix) of the Notification No.32/2008-CE(NT) dated 28.08.2008 in as much as the excisable goods were not exported directly from the factory or warehouse and the procedure laid down in the Notification No. 19/2004 — C.E(N-T) dated 06.09.2004, was not followed.

9. Government finds that grant of rebate of duty on export of goods to any country except Nepal and Bhutan under Pan Masala Packing Machines (Capacity Determination And Collection of Duty) Rules, 2008 is governed by Notification No. 32/2008 C.E. (N.T.), dated 28-08-2008 issued under Rule 18 of the Central Excise Rules, 2002. Government observes that in order to avail benefit of rebate under Rule 18 of the Central Excise Rules, 2002 r/w Notification No. 19/2004 - C.E(N-T) dated 06.09.2004 and Notification No. 32/2008 C.E. (N.T.), dated 28-08-2008, the applicant was required to comply with conditions, limitations and procedures stipulated in these Notifications. Government from the impugned Order observes that the applicant in the instant case had contravened the condition no. (iii) and (ix) of the Notification No.32/2008-CE(NT) dated 28.08.2008 in as much as the excisable goods were not exported directly from the factory or warehouse and the procedure laid down in the Notification No. 19/2004 - C.E(N-T) dated 06.09.2004, was not followed.

10. As regards condition No.(iii) of the Notification No. No.32/2008-CE(NT) dated 28.08.2008 Government observes that in the present case the exported goods were manufactured by the applicant and exported by M/s Sanket Industries Ltd. who is

the Merchant Exporter. From the address of the merchant exporter M/s Sanket Industries Ltd. appearing on the export invoices, which is a different from that of M/s Sanket Food Products Pvt. Ltd., it is apparent that the impugned goods were not cleared directly from the factory/registered warehouse in accordance with the condition 2(a) of the Notification No.19/2004-CE (NT) dated 6.9.2004.

11. Government further observes that Para (3)(a)(xi) Notification No. 19/2004-C.E. (N.T.) dated 6-9-2004 provides, where the exporter desires self-sealing and self-certification for removal of goods from the factory or warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit of the goods or the owner of warehouse or a person duly authorized by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify all the copies of the application that the goods have been sealed in his presence, and shall send original and duplicate copies of the application along with goods at the place of export, and shall send triplicate and quadruplicate copies of application to the Superintendent or Inspector of Central Excise, having jurisdiction over the factory or warehouse, within twenty-four hours of removal of the goods.

12. The procedure for sealing by Central excise Officer or Self-Sealing and Self Certification procedure has been prescribed in relation to identify and correlation of export goods at the place of dispatch. Government in the instant case notes that the impugned goods were cleared for export without ARE-1s bearing certification 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 and therefore the correlation between the goods cleared from the factory and those exported cannot be said to have been established. Further there is nothing on record to show that the goods cleared for export were ever opened/checked and verified at Customs end. The applicant has mainly contended that non mentioning of declaration on the face of ARE-1 cannot be a ground for rejecting the benefit available to them. Government further holds that absence of Self sealing, Self Certification on the ARE-1s / not following the basic procedure of export as discussed above, cannot be treated as just a minor or technical procedural lapse for the purpose of availing the benefit of rebate of duty. Moreover, Government observes that the applicant also failed to submit the triplicate copy of the ARE-1 to the Range Superintendent.

13. Government observes that it is a settled issue that benefit under a conditional notification cannot be extended in case of non-fulfillment of conditions and/or non-compliance of procedure prescribed therein as held by the Apex Court in the case of Government of India v. Indian Tobacco Association - 2005 (187) E.L.T. 162 (S.C.); Union of India v. Dharmendra Textile Processors - 2008 (231) E.L.T. 3 (S.C.). Also, it is settled that a notification has to be treated as a part of the statute and it should be read along with the Act as held in the case of Collector of Central Excise v. Parle Exports (P) Ltd. - 1988 (38) E.L.T. 741 (S.C.) and Orient Weaving Mills Pvt. Ltd. v. Union of India - 1978 (2) E.L.T. J311 (S.C.) (Constitution Bench).

14. Government observes that in the proceedings before Commissioner (Appeals), the applicant had relied upon GOI Revision No.198/2011-CX dated 24.02.2011 in their own case. The appellate authority has observed that the Revisionary Authority while deciding the case covered vide Revision Order No.198/2011-CX dtd.24.02.2011, has relied upon duty payment certification issued by Jurisdictional Central Excise authorities which is not forthcoming in this case.

15. Moreover, Government observes that the applicant was operating under Pan Masala Packing Machines (Capacity Determination And Collection of Duty) Rules, 2008 . Rule 9 of the said rules which relates to payment of duty reads as under :

> ***Rule 9. Manner of payment of duty and interest.-***
>
> *The monthly duty payable on notified goods shall be paid by the 5th day of same month and an intimation in Form - 2 shall be filed with the Jurisdictional Superintendent of Central Excise before the 10th day of the same month:*
>
> .....
>
> .....
>
> ***Provided** further that if the manufacturer fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount along with the interest at the rate specified by the Central Government vide notification under section 11AB of the Act on the outstanding amount, for the period starting with the first day after due date till the date of actual payment of the outstanding amount:*

In terms of aforementioned Rule 9 the duty payable on notified goods for the month of January 2010 was required to be paid by the applicant by the 5th January 2010, whereas from the Form-2 filed by the applicant (appended to the Revision

Application) it is revealed that the duty payment for the month of January 2010 has been made by the applicant from 22.01.2010 and thereafter. Therefore, it is apparent that the applicant has failed to discharge the duty liabilities (for the month of January 2010) by the date specified in Rule 9 ibid. Further there is nothing on record evidencing payment of interest by the applicant for the delay in discharging duty liability for the month of January 2010. Therefore, the applicant has also violated the condition of Notification No.19/2004-CE (NT) dated 6.9.2004 that the goods shall be exported after payment of duty and hence the said rebate claim is liable to be rejected on this ground also.

16. In view of above discussion Government upholds the Order-in Appeal No. AGS (101) 11/2011 dated 27.05.2011 passed by Commissioner (Appeals) Central Excise & Customs, Aurangabad.

17. Revision Application is dismissed being devoid of merits.

18. So, ordered.

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

ORDER No. 289 /2020-CX (WZ) /ASRA/Mumbai

To,
M/s. Sanket Food Products Pvt. Ltd.
(Unit No.2), Gut No. 186, Dawalwadi,
Tal. Badnapur, Jalna.

Copy to:

1. Commissioner of CGST & CX, N-5, Town Centre, CIDCO, Aurangabad-431003.
2. The Commissioner CGST & CX (Appeals), Plot No. 155, Sector-34, NH Jaistha-Vaisshakh, CIDCO, Nashik-422 008.
3. The Assistant Commissioner of CGST & CX, Nanded Division, Hingoli Naka, Airport Road, Nanded-431602.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.