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, Cuffe Parade,Mumbai- 400 005

F.No. 195/1578/12-RA/4062 Date of Issue:- 22.08.2020

ORDER NO. 297 /2020-CX(WZ)/ASRA/MUMBAI DATED 04.8.2020 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 Parixit Industries Ltd., Ahmedabad.

Respondent : Commissioner of Central Excise, Ahmedabad – III.

Subject : Revision Application filed, under section 35EE of the Central Excise Act,1944 against the Order in Appeal No.227/2012(Ahd-II)CE/AK/ Commr (A)/Ahd, dated 30.08.2012 passed by Commissioner (Appeals-I), Central Excise, Ahmedabad.

ORDER

This Revision application has been filed by M/s Parixit Industries Ltd. (hereinafter referred to as "the applicant") against the Order in Appeal No. 227/ 2012 (Ahd-II) CE/AK/Commr (A)/Ahd, dated 30.08.2012 passed by Commissioner (Appeals-I), Central Excise, Ahmedabad.

2. The brief facts of the case is that the applicant had manufactured goods for export namely Drip irrigation System and Parts thereof, classifiable under Central Excise Tariff Sub Heading No. 8424 81 00 and chargeable to Nil rate of duty. For manufacture of such exempt export goods the applicant used duty paid inputs, without availing CENVAT Credit on them. After export of said export goods during the month of May-2010, the applicant filed a refund claim for Rs,7,06,869/- (Rupees Seven Lakh Six Thousand Eight Hundred Sixty Nine only) being an amount of excise duty paid on inputs consumed in the manufacture of said export goods under the provisions of Section 11 B of the Central Excise Act,1944. The said Refund claim was filed in Form –R.

3. The jurisdictional Assistant Commissioner of Central Excise (Original authority), issued a show cause notice dated 12.07.2011 to the applicant proposing therein to reject the said refund claim for non fulfillment of condition of Notification No.21/2004-CE (N.T) dtd.06.09.2004 and provisions of Section 11B of the Central Excise Act,1944. After following due process, the Original authority vide Order in Original No.24/REF/2012 dated 28.02.2012 rejected the said refund claim filed by the applicant.

4. Aggrieved by the aforesaid Order in Original, the applicant filed appeal before Commissioner (Appeals-I), Central Excise, Ahmedabad. However, Commissioner (Appeals-I), Central Excise, Ahmedabad, vide Order in appeal No. 227/2012 (Ahd-II) CE/AK/ Commr (A)/Ahd, dated 30.08.2012 upheld the said Order in Original and rejected the appeal filed by the applicant.

5. Being aggrieved and not satisfied with the impugned order mentioned supra, the applicant has filed the present Revision Application mainly on the following grounds :-

They manufactured said export goods in their factory; that by observing the provisions of Rule 6 of Cenvat Credit Rules, 2004 they had not

availed Cenvat credit of the duty paid on inputs consumed in the manufacture of said good; that they removed export goods from their factory under excise invoices issued under Rule 11ibid, covered by ARE-1; that said export goods were removed from factory in stuffed containers, supervised and sealed by Central Excise officer of jurisdictional range; that after removal from the factory the said export goods have been directly exported within stipulated time period of six months, by merchant exporters declared in ARE-1 at the time of removal of goods from the factory; that the merchant exporter has also submitted proof of export with the excise authority where he has executed export bond; the refund claim has been filed within time period of one year specified in Section 11 B of the Central Excise Act,1944; that refund pertains to incidence of excise duty suffered on the quantity of inputs consumed in the quantity of said export goods; that the refund application has been submitted in Form R alongwith specified documents viz. Original & Duplicate copies of ARE-1 duly endorsed by Customs certifying export of goods, Triplicate copy of ARE-1 collected from the range office, Duplicate transporter copies of excise invoice, self certified copies of Shipping Bills, Bills of Lading, disclaimer certificate of exporter, a statement, marked as Annexure-A, showing detailed particulars of inputs consumed in the manufacture of said export goods and duty paid on such quantity of inputs; that they have also submitted copies of BRC to prove that payment received from overseas buyer and foreign exchange has been earned; that all above facts conclude that normal export procedure specified in Notification No.19/2004-CE(NT) dated 06.09.2004 (earlier it was Notification No. 42/2001-CE(NT) dated 26.06.2001) stood complied.

5.2 The procedure specified in Notification 21/2004-C.E.(N.T.) dated 06.09.2004 is that para (1) is for "filing of declaration", Para (2) is for "verification of Input-output ratio-, Para (3) is for "procurement of material, Para (4) is for "removal of materials or partially promised material for processing' (which is not applicable in the present case), Pera (5) is for "procedure for export" and Para (6) is for "presentation of claim of rebate". In terms of Para 5.1 above of grounds of this appeal, they have complied with procedure specified in Para (3), (4), Para (5) (except minor variation that instead of ARE-2, said export goods have been removed under ARE-1), Para (6) of said notification and there cannot be any dispute on this fact. The deviation occurred is only with reference to Para (1), (2) and some part of Para (5).

5.3 It is a well settled legal position that rules and notifications cannot override the provisions of the Act itself. Therefore, rule 18 of Central Excise Rules, 2002 and said notification being subordinate legislation, cannot override or run contrary to the provisions of Section 11 B of Act. There is plethora of judicial decisions, establishing well settled legal position that substantial benefit of such policy decisions cannot be

denied on procedural infractions of notification / circular as long as exports have taken place actually. They have quoted catena of judicial decisions both at adjudication as well as appellate stage, however due cognizance has not been given to such decisions in the spirit of providing fair justice. The ratio of all such decision is squarely applicable in the present case as they deal with similar situation in individual case. They rely on following Orders/Judgments:

- Deesan Agro Tech Ltd. [2011(272) E.L.T.457 (G.O.I.)]
- Murali Agro Products Ltd. Vs CCE, Nagpur [2005(183) E.L.T. 277(Tri.Del)]
- Banaras Beads Ltd., [2011(272) E.L.T. 433 (G.O.I)]

It is a trite law that procedural Infractions of notification / circulars should be condoned if exports have really taken place and the law is settled that substantive benefit cannot be denied for procedural lapse. This legal position is held in ACE Hygiene Products Pvt Ltd. [2012(276) E.L.T.131(G.O.I.), Sanket Industries Ltd. [2011(268)E.L.T.125 (G.O.I.).

Failure to follow export procedure in Central Excise Rules, 2002 cannot be grounds for rejecting refund / reversal of import duty- [2011(268) E.L.T.508 (Tri-Chennai)].

Reasonable interpretation to allow export benefit is to be given where realization of foreign exchange and export of goods was not in doubt.[2007(217)E.L.T.154(Tri.Kolkata)].

Additionally, the applicant has also relied on various case laws to support their contention that the said refund claim was admissible to them.

- M/s Malwa Industries Ltd. Vs CCE Ludhiana [2004(178 E.L.T. 783 (Tri.-Del)]
- A.V. Industries [2011(269) E.L.T.122(G.O.I.)
- Ford India Pvt. Ltd. Vs A.C. CE, Chennai, [2011(272)E.L.T.353(Mad.)
- *Om Sons Cookware Pvt. Ltd. [2011(268) E.L.T.111(G.O.I.)]*
- Commissioner Of Central Excise, Bhopal [2006 (205) E.L.T. 1093 (G.O.I.)].
- Cotfab Exports [2006 (205) E.L.T. 1027 (G.O.I.)].
- Modern Process Printers [2006 (204) E.L.T. 632 (G.O.I.)].
- Comm. Of Cus. & C. Ex., Nagpur [2006 (200) E.L.T. 175 (G.O.I.)].
- Sambhaji Versus Gangabai [2009 (240) E.L.T. 161 (S.C.)].
- Dhampur Sugar Mills Ltd. CCE Meerut, 2010 (260) E.L.T. 106 (Tri. - Del.)
- CCE Banglore-I Vs Electronic Research Ltd. 2005 (187) E.L.T. 495 (Tri.- Bang.)

- Nilkamal 2011(271) E.L.T. 476(G.O.I.)
- Vandana Global Ltd. Vs CCE Raipur, 2009 (238) E.L.T. 420 (Tri.-LB).

5.4 In principle it is conceded that exports should by and large be relieved of home taxes so as to make Indian manufacturers internationally competitive. It is well recognized principle that taxes and duties are not to be exported.

5.5 Despite such well settled legal position the sad part is that both adjudicating and appellate authority ignored such core aspect fundamental principle and denied substantive benefit of exports solely on the grounds of procedural infractions. By not following orders of higher forums, the appellate authority has flouted well settled principles of judicial discipline. This legal position stands substantiated in following decisions :

- Allovers And Lace P. Ltd. Vs CCE Pune[2011 (264) E.L.T. 292
- (Tri. - Mumbai)
- Videocon International Ltd. Vs CC [2010 (261) E.L.T. 220 (Tri. – Mumbai)]
- Galaxy Indo Fab. Limited Vs UOI [2010 (252) E.L.T. 3 (All.)], Maintained in 2010 (256)E.L.T.130 (Guj.)
- Milcent Appliances Pvt. Ltd. Vs UOI [2006 (205) E.L.T. 130 (Guj.)]
- Sunflag Iron & Steel Co. Ltd. Vs Add. Coll. Of CEx Nagpur [2003 (162) E.L.T. 105 (Bom.)] maintained in 2004 (164) E.L.T. A178 (S.C.)]
- Laxmi Steel Traders Vs CCE Rajkot [2002 (145) E.L.T. 150 (Tri. - Mumbai)]
- N.C.R. Corporation Of India Ltd.Vs CC(P) Mumbai [2002 (143) E.L.T. 349 (Tri. - Mumbai)]
- Modi Cement Ltd.Vs CCE Raipur,2000 (123) E.L.T. 982 (Tribunal)
- Shapoorji Pallonji & Co. Ltd.Vs CCE Pune-I [2011 (263) E.L.T. 206 (Bom.)]

5.6 From what has been explained above in background of fact of the present case and meritorious grounds advanced therein, supported by catena of judicial decisions, they are eligible for the refund of the duty paid on raw materials used in the manufacture of said export goods, under the provisions of Section 11B of the Act.

Considering above submissions, it is submitted that the impugned OIA is bad in law and hence required to be quashed and set aside.

6. Personal hearing in this case was scheduled on 29.11.2017, 19/20.12.2018 and 29.08.2019; however neither the applicant nor its authorized representative

appeared for the personal hearing. Further, there was no correspondence from the applicant seeking adjournment of hearing again. 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 and perused the impugned Order-in-Original and Order-in-Appeal.

8. Government observes that the applicant had filed a refund claim for Rs.7,06,869/-(Rupees Seven Lakh Six Thousand Eight Hundred Sixty Nine only) being an amount of excise duty paid on inputs consumed in the manufacture of said export goods under the provisions of Section 11 B of the Central Excise Act,1944. The Original authority rejected the said refund claim for non fulfillment of condition of Notification No.21/2004-CE (N.T) dtd.06.09.2004 vide Order in Original No.24/REF/2012 dated 28.02.2012. Commissioner (Appeals) while upholding the said Order in Original vide impugned order held that the refund claim can be entertained only as per Section 11B of the Central Excise Act 1944 and Central Excise Rules 2002 which governs the Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004 issued under Rule 18 of Central Excise Rules 2002; that since the appellant has not followed any of the conditions/procedures such as (1) filing of declaration describing the finished goods proposed to be manufactured or processed along with their rate of duty etc. (2) verification of ratio of consumption of input in final product, and approval for manufacture or processing of export goods which is a substantial compliance and since in this case there is no substantial compliance of the conditions and the procedure laid down in the said Notification and therefore the rebate claim is correctly rejected by the adjudicating authority. Now the applicant has filed this revision application on grounds mentioned in Para 5 above.

9. Government notes that in the present case, it is an undisputed fact that the applicant, a unit registered with Central Excise, availed benefit of rebate under Rule 18 for inputs used in manufacture of goods for the purpose of export. There are different methodologies and procedures for refund in different situations. If the goods are exempted, then the department has prescribed a detailed procedure for refund of input taxes through Notification No. 21/2004-CE (NT) dated 06.09.2004, wherein a detailed procedure requiring verification of details like manufacturing process, input-output ratio, wastages etc., by the departmental officer is prescribed. However, the applicant did not follow the prescribed procedure and

failed to fulfill the conditions of Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004 in as much as they failed to file declaration with the Assistant/Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture with all the details as prescribed under para (1) of the said Notification and therefore prior approval of the input-output ratio could not be obtained as prescribed under Para (2) of the said Notification and did not follow "procedure for export" prescribed under para 5 which prescribed that the goods shall be exported on the application in Form A.R.E. 2. Moreover, the applicant filed refund claim under Form R which is prescribed for claiming refund of Central Excise duty i.e. (Excess payment of duty) and not rebate of duty.

10. The applicant has contended that they have complied with procedure specified in Para (3), (4), Para (5) (except minor variation that instead of ARE-2, said export goods have been removed under ARE-1), Para (6) of said notification and there cannot be any dispute on this fact. The deviation occurred is only with reference to Para (1), (2) and some part of Para (5). Had they filed declaration, got input ratio verified & removed said export goods under ARE-2, the question of rejection of refund claim would not have arisen. However, through oversight, the applicant skipped the procedure contained in above para (1) & para (2) and removed said export goods under ARE-1 instead of ARE-2. These deviations are unintentional and did not result in evasion of duty. Except these deviations, there is no dispute on all other compliance made by the applicant for export of goods. Deviation in procedure cannot be equated with non compliance.

11. The applicant in the instant case had been claiming rebate of duty paid on inputs used in the manufacture of exported goods under the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No. 21/2004- Central Excise (NT) dated 06.09.2004, hence applicant was required to mandatorily fulfill all the conditions as prescribed in the Notification No. 21/2004- Central Excise (NT) dated 06.09.2004.

12. Government also observes that GOI in its earlier orders viz. Order No. 85/2015-CX dated 21.09.2015 in Re : M/s Kriti Nutrients Ltd. Dewas and Order No. 11/2016-CX dated 20.01.2016 in Re : M/s Themis Medicare Limited, Haridwar, have also rejected the Revision Applications by upholding rejection of rebate claims of the applicants therein, for not following the other provisions of Notification

No.21/2004-CE(NT) specifically pertaining to para 1 and para 2 of the said Notification. The GOI in its aforementioned orders observed as under :-

"Government, therefore, holds that non fulfilling the statutory conditions laid down under the impugned Notification and 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 on the impugned goods. As such there is no force in the plea of the applicant that this lapse should be considered as a procedural lapse of technical nature which is condonable in terms of case laws cited by applicant.

Government notes that nature of above requirement is both a statutory condition and mandatory in substance for removal of goods for exports under claim for rebate of duty either on the final goods exported or on the inputs contained therein.

It is in this spirit and this background that Hon'ble Supreme Court in case of Sharif-ud-Din, Abdul Gani - (AIR 1980 SC 3403) has observed that distinction between required forms and other declarations of compulsory nature and/or simple technical nature is to be judiciously done. When non-compliance of said requirement leads to any specific/odd consequences, then it would be difficult to hold that requirement as non-mandatory.

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 Vs. Indian Tobacco Association 2005 (187) ELT 162 (S.C.); Union of India Vs. Dharmendra Textile Processors 2008(231) ELT 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 by in case of Collector of Central Excise Vs Parle Exports (P) Ltd – 1988(38)ELT 741(S.C.) and Orient Weaving Mills Pvt. Ltd. Vs Union of India 1978 (2) ELT J 311(S.C.) (Constitution Bench).

Government notes that the applicant relied on the various judgments regarding procedural relaxation on technical grounds. The point which needs to be emphasized is that when the applicant seeks rebate under Notification No. 21/2004-NT dated 06.09.2004, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under such Notification No.21/2004-NT dated 06.09.2004 the applicant should have ensured strict compliance of the conditions attached to the Notification No.21/2004-NT dated 06.09.2004. Government place reliance on the Judgment in the case of MIHIR TEXTILES LTD. Versus COLLECTOR OF CUSTOMS, BOMBAY, 1997 (92) ELT 9 (S.C.) wherein it is held that:

"concession/ relief of duty which- is made dependent on the satisfaction of certain conditions cannot be granted without compliance of such conditions. No matter even if the conditions are only directory."

Further, Government finds that there is no provisions under Rule 18 of Central Excise Rules 2002 for condonation of non-compliance with the conditions and procedure laid down in the Notification allowing rebate under said Rule. In view of the above discussions, Government finds that the applicant failed to fulfill the above mandatory condition of the said provisions and the condition being mandatory the same in required to be followed by the applicant particularly when the applicant is the beneficiary in the claim of rebate".

13. Government notes that export of goods under claim for rebate on inputs used in manufacture of export goods is governed by Rule 18 of Central Excise Rules, 2002 and Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004 read with Chapter 7 of C.B.E. & C.'s Central Excise Manual and finds that ARE-2 is the basic and essential document for exports as an application for removal of goods for export under claim for rebate. The case law in the case of M/s. Banaras Beads Ltd., 2011 (272) E.L.T. 433 (G.O.I.), Revisionary Authority (G.O.I.) had condoned the lapse of using ARE-1 Form in place of ARE-2 Form. In that case, applicant had otherwise followed the complete procedure as laid down in the Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004. So the said case law is not applicable to the instant case as facts are totally different. The applicant has also relied upon the many earlier GOI's Orders where under the Government of India has laid down that rebate/drawback are export-oriented schemes and unduly restricted and technical interpretation of procedure there under should be avoided and that procedural infraction of notifications/circulars be condoned if exports really taken place as fundamental requirement for rebate. However, in view of the latest GOI orders on the identical issue discussed at para 12 supra, these case laws cannot be relied in the present case. Hon'ble Supreme Court in Asstt Commr., Income Tax, Rajkot Vs Saurashtra Kutch Stock Exchange Ltd. [2008(230)E.L.T. 385 (S.C.) at para 42 of its judgment dated 15.09.2008 observed that :

42. In our judgment, it is also well-settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the Court to pronounce a 'new rule' but to maintain and expound the 'old one'. In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the Court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.

As such the latest interpretation of the principles is considered to be borne out of better appreciation of the stipulations in the Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004. In the circumstances, Government is inclined to apply the ratio of the GOI Orders Re : M/s Kriti Nutrients Ltd. Dewas and M/s Themis Medicare Limited, Haridwar, discussed at para 12 hereinabove.

14. In view of above discussion Government finds no infirmity in Order in Appeal No. 227/2012(Ahd-II)CE/AK/ Commr (A)/Ahd. dated 30.08.2012 passed by Commissioner (Appeals-I), Central Excise, Ahmedabad and hence upholds the same.

15. The revision application is thus dismissed being devoid of merits.

16. So, ordered.

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

ORDER No. 297 /2020-CX (SZ) /ASRA/Mumbai Dated 04-3-2020

To,

M/S Parixit Industries Ltd.
Survey. No. 214/1/2, Virpura Bus Stop,
P.O.Iyava,Taluka Sanand, Ahmedabad
Ahmedabad – 382170.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

Copy to:

1. The Commissioner of CGST, Ahmedabad North, Custom House, 1st Floor, Navarangpura, Ahmedabad-380 009.
2. The Commissioner of CGST (Appeals), Ahmedabad, Central Excise Bhavan, Ambawadi, Ahmedabad – 380015.
3. The Deputy / Assistant Commissioner, Division IV, 2nd floor, Gokuldham Arcade, Sarkhej Sanand Road, Ahmedabad.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.