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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, Centre-I, World Trade Centre, Cuff Parade, Mumbai- 400 005

F NO. 195/487/2011-RA CX / 811

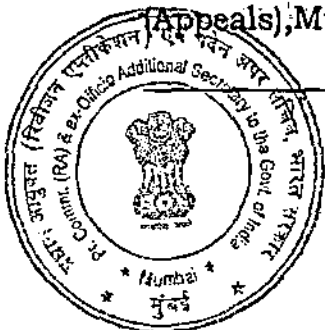
Date of Issue: 18.01.2018

ORDER NO. 29/2017-CX (WZ)/ASRA/Mumbai Dated 29.12.2017
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR
MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE
OF CENTRAL EXCISE ACT, 1944

Applicant : M/s. Dipika Overseas, B/192-193, Road No. 6, Near
Mahindra Workshop, New Udhna Udhayog Nagar,
Surat - 395 011.

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

Subject : Revision Applications filed, / under Section 35EE of Central
Excise Act, 1944 against the Orders-in-Appeal No. M-I/RKS/20/2011
dated 11.01.2011 passed by the Commissioner of Central Excise
(Appeals), Mumbai



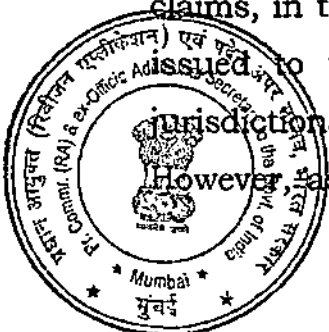
ORDER

This revision application is filed by the applicant M/s Dipika Overseas, Surat against the order-in-appeal No. M.I/RKS/20/2011 dated 11.01.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-I, with respect to order-in-original passed by Assistant Commissioner (Rebate) Central Excise, Mumbai-I.

2. Briefly stated facts of the case are that M/s Dipika Overseas, the applicant had filed rebate claims in respect of 15 ARE-1s for Rs.13,79,409/- for goods exported out of India. The applicants had procured the goods covered under 15 ARE-Is, from various manufacturers.- The details of the rebate claims are listed below;

Sl. No.	R:C. No. /date	ARE-1 No. /date	C.Ex. Inv. No. /date	Amount of Rebate claimed.
1	1915/24.08.05	317/03.12.04	339/03.12.04	16418/-
2	1916/24.08.05	294/08.11.04	547/05.11.04	50477/-
3	1917/24.08.05	51/02.11.04	441/02.11.04	75960/-
4	1918/24.08.05	52/02.11.04	443/02.11.04	54159/-
5	1919/24.08.05	57/23.11.04	483/23.11.04	65,536/-
6	1920/24.08.05	60/06.12.04	543/04.12.04	96,550/-
7	1921/24.08.05	61/13.12.04	557/11.12.04	1,59,062/-
8	1922/24.08.05	63/17.12.04	562/17.12.04	26,410/-
9	1923/24.08.05	263/11.10.04	256/09.10.04	89,216/-
10	1924/24.08.05	264/11.10.04	266/09.10.04	2,09,759/-
11	1925/24.08.05	287/01.11.04	272/28.10.04	88,871/-
12	1926/24.08.05	293/08.11.04	278/05.11.04	1,00,503/-
13	1927/24.08.05	312/29.11.04	286/26.11.04	1,35,577/-
14	1928/24.08.05	314/29.11.04	290/28.11.04	1,11,431/-
15	2426/28.11.05	56/11.11.04	479,480/11.11.04	99,480/-
			Total	13,79,409/-

3. Scrutiny of the rebate claims, revealed that, duty payment particulars were shown as "Payable" on the triplicate copy of the ARE-1's, and the applicant failed to submit the duty payment certificates along with the claims, in tamper proof sealed cover. Accordingly, a Deficiency Memo was issued to the applicant to obtain the duty payment certificate from jurisdictional Range Superintendent in tamper proof sealed cover. However, as duty payment certificates in tamper proof sealed cover were



not submitted, keeping in view the various alerts regarding misuse of Cenvat credit facility by the manufactures of textiles, the original authority rejected the rebate claims.

4. Being aggrieved by the above said order-in-original, the applicant filed appeal before Commissioner (Appeals), the Appeal was rejected by the Commissioner (Appeals) on the same grounds which has resulted in the filing of this appeal, under Section 35EE of Central Excise Act, 1944 interalia on the following grounds;

- The Commissioner Appeals has grossly erred in not taking into account the written submissions dated 26.07.2007, 21.12.2010, and 01.01.2011 and duty paying certificates produced, monthly returns etc.
- The findings of the Commissioner Appeals is not based on evidences as the duty paying certificates were available on record, therefore the Appellate order is required to be set aside in the interest of justice.
- The Commissioner Appeals simply relied upon the findings of the adjudicating authority which is not sustainable under law. No findings have been given on the submissions made by the applicant and evidences adduced and therefore the entire order is in gross violation of the principles of natural justice.
- The applicant submits that the Commissioner (Appeals) has failed to appreciate the submissions dated 26.07.2007 wherein the applicant have explained the duty paid nature of the goods in all 15 ARE-1s, by way of duty payment certificates issued by the Superintendent of Central Excise and monthly returns submitted by the processors. The Commissioner (appeals) ignored all these submissions and evidences.

The reliance on the judgment in the case of Shree Shyam International as decided by this Hon'ble Court vide order No. 304-2007 dated 18.05.2007 which have been accepted by the department has been ignored by the Commissioner (Appeals) and;

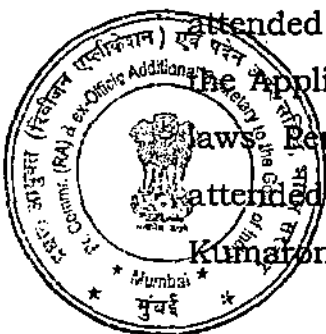


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blindly passed the order upholding the finding of the adjudicating authority which is not correct in law and therefore the said order is required to set aside.

- The applicant submits that the Commissioner (Appeals) ignored the written submissions dated 21.12.2010 whereby the applicant had made request to extend the inquiry in terms of Section 35A(3) of the Central Excise Act, 1944 as vested with the Commissioner (Appeals) for verification of the duty payment certificates and monthly returns submitted by the applicant.
- There is no cause to disbelieve the payment indicated on AREs-1 for the respective invoices as duty payable which in fact have been paid in the next month while filing the monthly returns. In view of this, the order of the Commissioner (Appeals) ignoring the vital submissions is miscarriage of justice.
- The order of the Commissioner (Appeals) is in total prejudice manner and delays the legitimate right of the rebate claims of the applicant and therefore also the said order is required to set aside in the interest of justice.
- The applicant submits that the issues involved in the present case have been settled by Hon'ble High Court Gujarat in Special Civil Application Nos. 16269 of 2010, 814 of 2011, 16270 of 2010, 16271 of 2010 & 16304 of 2010 vide order dated 31.03.2011 in case of Roman Overseas and others. In view of this, there is no cause to deny the rebate claims and therefore the applicants prays to set aside the order of the lower authorities allowing the appeal with consequential relief.

5. Personal hearing in the case was scheduled on 28.11.2017 was attended by Shri Kaushik Vyas, advocate, Ms. Deepika Kamble, wherein the Applicants requested for an adjournment to file the relied upon case laws. Personal hearing was again scheduled on 27.12.2017, which was attended by Shri Kaushik Vyas, advocate, Ms. Deepika Kamble and Tulsi Kumari on behalf of the applicant and reiterated grounds of revision



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application. They submitted duty paying certificates and other documents evidencing the duty payment character of inputs. And submitted that the Order in Original be set aside and allow the Revision Application. Nobody attended hearing on behalf of department.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal. It is observed that the original authority rejected rebate claims filed by the applicant on the grounds that they failed to submit duty payment certificates in a tamper proof sealed cover, in view of various alerts regarding misuse of cenvat credit facility by the manufacturers of textiles. Commissioner (Appeals) upheld impugned order-in-original which has resulted in the filing of this revision application on grounds mentioned in para (4) above.

7. Government observes that the Applicant in his Revision Application has claimed that duty paying certificates in respect of claims listed at Sl. Nos 1 to 8 at para 2 above have been issued by the Superintendent, Central Excise & Customs, Range-II, Div-II, Surat-I. The copies of duty paying certificates in respect of rebate claims listed at Sl. Nos 1 and Sl. Nos 3 to 8 issued by the Superintendent, Central Excise & Customs, Range-II, Div-II, Surat-I were also available in the documents submitted by the Applicant with their Revision Application and during the personal hearing. With regard to the rest of the claims, the Applicant submits that the duty payment is reflected in the monthly returns filed by the manufacturers for the respective months. This aspect does not find a mention in the order of the Appellate authority. These claims can be verified through correspondence with the jurisdictional range officer.

8. Government further notes that in this matter there is no allegation of association/ connivance of the applicant in fraudulent claims, neither is there any evidences or independent investigations conducted to ascertain that the rebate claims are not genuine. In fact the Appellate authority has



stated that there is no doubt about the export of goods in respect of these claims. However, the Order in Appeal alleges that the triplicate copies of the ARE-1s duty payment particulars have been mentioned as "Payable". The Appellants were rightly issued a deficiency memo to submit duty payment certificate from the range Superintendent, especially in view the various alerts regarding misuse of Cenvat credit facility by the manufactures of textiles. The Government however, is of the opinion that if the same ie the duty payment certificates were not forthcoming from the Applicant, the duty paid character of the goods should have been ascertained from the jurisdictional range Superintendent. The para 3 (vii) of Notification 19/2004-CE(NT) dated 06.09.2004 which dwells on procedures in respect of submission of documents for rebate claims, is very clear on this aspect it quotes;

"The said Superintendent or Inspector of Central Excise shall return the original and duplicate copies of application to the exporter;

(vii) *The triplicate copy of application shall be -*

(a) *sent to the officer with whom rebate claim is to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records, or*

(b) *sent to the Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration on Electronic Data Inter-change system of Customs;*

From the above, it is clear that it is the responsibility of the Jurisdictional Superintendent /Inspector to send the duty paying documents to the officer with whom rebate claim is to be filed. Therefore, the rebate sanctioning authority should have ascertained the duty paid nature of the goods has to be ascertained from the Jurisdictional range Superintendent. It therefore follows that non submission of the such certificates by the Applicant cannot be ground for rejection of rebate claims.



9. Reliance is also placed on the order of the Revisional Authority in the case of Guria Textiles and others vide Order No. 1605-1615/12-CX dated 20.11.2012 wherein it is held that;

"The duty payment are to be submitted by the Jurisdictional Range Superintendent. Non - submission of such certificate cannot be ground for rejection of rebate claim. Department should call for such certificates from Superintendent concerned." The ratio of this judgement is squarely applicable to the facts of this case.

10. Reliance is also placed on the Supreme court judgment in the case of Decent Dyeing 1990 (45) ELT 201 (SC), wherein it was held that,

"Burden to prove not on the buyer or job worker who purchased or received them but it is for the department to prove non-payment of non-duty character of goods" Further, *"no goods can be removed from the place of manufacturer without first paying the excise duty, therefore, a purchaser can presume that goods are duty paid. It would be intolerable if the purchaser were required to ascertain whether excise duty had already been paid as they have no means of knowing it. It has to be borne in mind that duty of excise is primarily a duty levied on a manufacturer or a producer in respect of the commodity manufactured or produced."*

It is also a settled position of law that, law cannot compel the assessee to do what possibly he cannot do, based on the legal maxim "lex non cogit ad impossibilia".

11. Government is of opinion that if the department is having any doubt about genuineness of the duty paid character of the goods they may get the same verified from original records of jurisdictional Central Excise office. After such verification, if the duty payment found to be genuine, rebate claims may be sanctioned accordingly. The Government is of the view that the rejection of rebate claims based on presumptions and assumptions is not legally sustainable. Hence the impugned order in appeal is liable to be set aside and the matter is liable to be remanded for *denovo* proceedings.

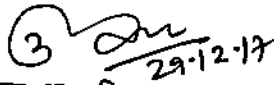



12. Finally, in the light of observations and discussions made in foregoing paras and material produced on record. The Government, in the interest of natural justice orders that the entire case matter be remanded back to the original adjudicating authority for consideration afresh. Therefore the impugned Order-in-Appeal herein are set aside and matter is remanded for denovo proceedings on the terms mentioned supra.

13. The Revision Application is thus disposed of in terms of above.

14. So, ordered.

True Copy Attested


29.12.17
एस. आर. हिरुलकर
S. R. HIRULKAR
(AC)


(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No 29/2017-CX (WZ) /ASRA/Mumbai

DATED 29.12.2017

M/s Dipika Overseas,
Plot No. B/192-193, Road No.6,
Near Mahindra Work Shop,
New Udhna Udhyog Nagar,
Surat — 395 011.

Copy to:

1. The Commissioner of Central Excise, Mumbai-I Commissionerate, 115, Central Excise Building, Maharishi Karve Road, Churchgate, Mumbai 400 020.
2. Commissioner of Central Excise (Appeals), Mumbai Zone-I, Piramal Chambers, 9th Floor, Lalbaug, Mumbai-400 012.
3. The Assistant Commissioner, Central Excise (Rebate), Mumbai South, Air India Bldg. 13th Floor, Mumbai- 400 021.
4. Shri Kaushik Vyas, Advocate, M/s Dipika Overseas, Plot No. B/192-193, Road No.6, Near Mahindra Work Shop, New Udhna Udhyog Nagar, Surat — 395 011.
5. Sr. P.S. to AS (RA), Mumbai.
6. Guard file.
7. Spare Copy.

