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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**  
8<sup>th</sup> Floor, World Trade Centre, Cuff Parade,  
Mumbai- 400 005

F. NO. 195/788/12-RA/809

Date of Issue: 18.01.2018

ORDER NO.31/2017-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 THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Nagreeka Foils Ltd.,

Respondent : Commissioner of Central Excise (Appeals-II), Mumbai-400051.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No.US/338 /RGD/2012 dated 22.05.2012 passed by the Commissioner of Central Excise (Appeals-II).



**ORDER**

This revision application is filed by M/s. Nagreeka Foils Ltd., 7 Kala Bhavan, 3 Mathew Road, Mumbai 400 004 (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/338/RGD/2012 dated 22.05.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone - II with respect to the Order-in-Original No. 987/11-12/DC (Rebate)/Raigad dated 12.10.2011 passed by the Deputy Commissioner of Central Excise (Rebate), Raigad.

2. Brief facts of the case are that the applicant had filed 24 rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004 - C.E. (NT) dated 06.09.2004 amounting to Rs.33,69,289/-. The original authority viz. Deputy Commissioner, Central Excise (Rebate), Raigad sanctioned the said rebate claims vide Order in Original No. 987/11-12 dated 12.10.2011.

3. Being aggrieved by the Order-in-Original, Department filed appeal before the Commissioner (Appeals) on the ground that the applicant exported the goods by availing benefit under Notification No. 41/2001-CE(NT) dated 26.06.2001 as certified by them at Sr. No. 3(b) of ARE-1 in respect of Rebate claim Nos.9336 to 9342 dt.17.8.11, 9690, 9692 & 9694 dt.23.8.11 amounting to Rs.4,61,850/-. Under the said notification, the claim for rebate of duty paid on materials used in the manufacture or processing of goods is required to be lodged with the jurisdictional Assistant/Deputy Commissioner and the goods have to be cleared under Bond in form ARE-2. The Commissioner (Appeals) vide Order in Appeal No. US/338/RGD/2012 dated 21.05.2012 set aside Order in Original No.987/11-12 dated 21.05.2012 and allowed the Revenue's Appeal with the following observation:

*The ARE-1 is a statutory form prescribed under Notification No.19/2004 dated 26.6.2001 issued under Rule 18 of Central Excise Rules, 2002. The declaration given in the ARE-1's are required to be filed so as to ascertain whether specified benefits have been availed*



*by the exporter or not. This is a statutory requirement which has not been complied with by the respondents. The respondents contend that the declaration made on an ARE-1 may be rectified as a clerical error. I find that ARE-1 is an assessment document. After self-assessing the said document, the respondents presented the same to the proper officer. Once the said document is assessed by the respondents, it is not open for them to re-assess it. Board has also clarified under Circular No.510/06/2000-CX dated 3.2.2000 that any scrutiny of the correctness of the assessment shall be done by the jurisdictional Assistant/Deputy Commissioner only. In view of the above, the impugned order is set aside.*

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 that the Ld. Commissioner (Appeals) has erred in allowing the Dept.'s Appeal and denying the rebate of Rs. 4,61,850/-covered under the specified 10 ARE-1's without considering and appreciating the submissions made, provisions of law, judgments, etc. on the issue, cited inasmuch as:

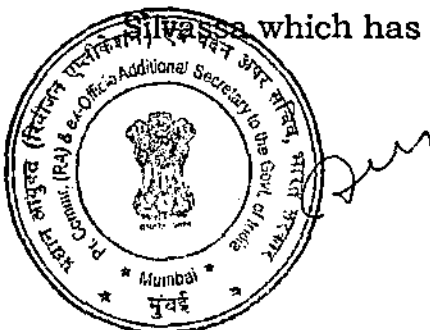
(i) that it was purely a clerical error of mentioning "availing facility under Notification No. 41/2001-CE (NT) dated 26.6.2001" instead of striking declaration at para 3(b) on ARE-1 'availing facility', the Applicants wrongly struck the expression "without availing facility".

With this error, the meaning which emerged from the declaration in the specified 10 ARE-1s was "availing facility under Notification No. 41/2001-CE (NT) dated 26.6.2001 issued under Rule 18 of CER".

(ii) that the fact of the Applicants non-availment of facility under Notification No. 41/2001-CE (NT) dated 26.6.2001 gets substantiated from the verification report of the jurisdictional Supdt. to Additional Commissioner of Central Excise which is as reproduced below:

"With reference to your above notice, on captioned subject address to the Superintendent of Central Excise, Range-I, Silvassa, Division-I,

which has been forwarded to this office for doing needful."



In this connection, it is submitted that M/s. Nagreeka Foils Limited, having factory at Village -Dadra, Near Check Post, UT of Dadra and Nagar Haveli and Corporate Office at 7, Kala Bhavan, 3, Mathew Road, Mumbai - 400 004. are availing the facility of Cenvat Credit under Cenvat Credit Rules, 2004. Further submitted that they are not availing the facility under Notification No. 41/2001-CE (NT) dated 26.6.2001."

This fact was brought in their reply to Appeal in para 6 which is as reproduced below:

"On receipt of the said show cause notice the Superintendent Central Excise, Range-I/Div-I Silvassa/VapiCommissionerate, vide their letter dated 16.5.2012, has clearly reported to the Additional Commissioner, Central Excise, Raigad that the Applicants are not availing the benefits of Notification No. 41/2001-CE (NT) dated 26.6.2001."

However, the same has not been taken cognizance by the Ld. Commissioner (Appeals).

4.2 that para-2 of Chapter 8 of CBEC's Excise Manual of Supplementary Instructions only says that the declaration should be made after careful reading before signing. The present case is not a mis-declaration with malafides but it is factually an incorrect declaration done due to clerical error. Therefore, the said supplementary instructions cannot be invoked against the assessee. To substantiate that such mistake was clerical the Applicants respectfully pray for referring to other 14 refund claims wherein "availing facility under Notification No. 41/2001-CE (NT) dated 26.6.2001" was struck correctly at para 3(b) on ARE-1s giving a meaning that the Applicants did not avail facility under Notn. No. 41/2001.

4.3 that the Ld. Commissioner (Appeals)'s findings that it is not open to the assessee to reassess the said 10 ARE-1's is incorrect and not sustainable as it is not the case of reassessment or change in assessments but it is a case of clerical error of striking "declaration at para 3(b) on ARE-1



*[Handwritten signature]*

"availing facility", the Applicants had wrongly struck the expression "without availing facility" instead of striking "availing facility".

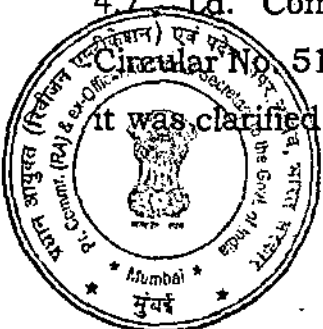
4.4 it is a settled position of law that correction of error is permissible and the same would not lead to reassessment, in support of which reliance is placed on the following judgments:

1. Birla Copper — 2005 (191) ELT 239 (T)
2. Raymond Ltd. - 2006 (201) ELT 454 (T)
3. Lakshmi Machine — 2005 (185) ELT 417 (T)
4. Indo American Electricals — 1999 (108) ELT 797 (T)
5. Punjab Maize — 1996 (84) ELT 360 (T)
6. Hind Spinners — 2005 (187) ELT 266 (T)
7. Visakhapatnam Steel Plant — 2002 (149) ELT 708 (T)
8. Raajratna Metal Inds. Ltd - 2007 (218) ELT 458 (T)
9. Tide Water Oil Company - 2002 (52) RLT 463 (T)

4.5 The Applicants' non-availment of facility under Notification No. 41/2001-CE (NT) and succeeding Notification No. 19/2004-CE (NT) dated 6.9.2004 gets substantiated from 14 out of 24 ARE-1's where in the expression struck was "availing facility" and in 10 ARE-1 by mistake the expression struck was "without availing facility" giving an exactly opposite meaning of availing facility. This is a bonafide clerical mistake which Ld. Commissioner (Appeals) should have appreciated by invoking Ld. Supdt.'s verification report dated 16.5.2012.

4.6 The above submissions would substantiate that the Applicants preparation of ARE-1 is correct as they have only claimed rebate of duty paid on Aluminium Foil Containers. As it is not the case of claim of rebate of duty paid on inputs, they were not required to prepare ARE-2 as erroneously observed by Ld. Commissioner (Appeals) and hence, preparation of ARE-1s for export is in order.

4.7 Ld. Commissioner (Appeals) has erroneously relied upon CBEC Circular No. 510/6/2000-CX dated 3.2.2000 [2000 (116) ELT T-42] in which it was clarified by CBEC that the FOB value declared by the Applicants and



duty paid thereon should be accepted and the same should not be questioned for allowing rebate which is not an issue at all in the present case.

4.8 Ld. Commissioner (Appeals) has erroneously relied upon CBEC Circular No. 510/6/2000-CX dated 3.2.2000 [2000 (116) ELT T-42] in which it was clarified by CBEC that the FOB value declared by the Applicants and duty paid thereon should be accepted and the same should not be questioned for allowing rebate which is not an issue at all in the present case. . In this context, it was clarified that rebate sanctioning Authority should not examine the correctness of assessment but should examine only the admissibility of rebate of the duty paid on the export goods covered by a claim. Rather the aforesaid CBEC Circular supports the Applicants contention that when factually they have not claimed input stage rebate under Notification No. 41/2001-CE (NT) dated 26.6.2001, as substantiated, the question of denying the rebate for curable and forgivable clerical error is not sustainable.

4.9 To make the matter clear the Applicants now have obtained certificate from Suptd. of Central Excise to the effect that during the period from March 2011 to August 2011, the Applicants have not at all claimed input stage rebate and also had not availed facility under Notification No. 41/20010E (NT) dated 26.6.2001 and succeeding Notification No. 21/2004-CE (NT) dated 6.9.2004.

5. A Personal hearing was held in this case on 27.12.2017 and Shri R.V. Shetty, Advocate and Shri Dinesh Kumar Mishra, Sr. AGM appeared for hearing on behalf of the Applicant and reiterated the submission filed through Revisionary Application and also submitted synopsis dated 27.12.2017. He pleaded Order-in-Appeal be set aside and Revision Application be allowed.

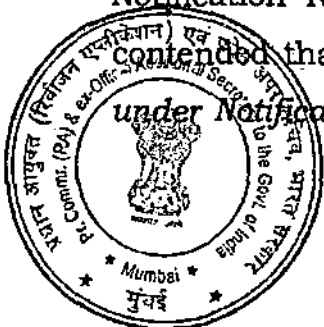
6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.



7. On perusal of records, Government observes that the applicant's rebate claim made under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 - C.E.(NT) dated 06.09.2004 was initially sanctioned by the original authority. Department filed appeal before the Commissioner (Appeals) on the ground that the applicant exported the goods by availing benefit under Notification No. 41/2001-CE(NT) dated 26.06.2001 as certified by them at Sr. No. 3(b) of ARE-1 in respect of Rebate claim Nos.9336 to 9342 dt.17.8.11, 9690, 9692 & 9694 dt.23.8.11 amounting to Rs.4,61,850/- and under the said notification, the claim for rebate of duty paid on materials used in the manufacture or processing of goods is required to be lodged with the jurisdictional Assistant/Deputy Commissioner and the goods have to be cleared under Bond in form ARE-2 which they failed to do. Now, the applicant has filed this Revision Application on grounds mentioned in para (4) above.

8. Government notes that in impugned Order-in-Original, it has been observed by the original authority that the goods were exported under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 - C.E. (NT) dated 06.09.2004. Government further notes that the fact of duty payment and export of such duty paid goods was established in Order-in-Original in unambiguous terms. Further, the applicant also submitted letter dated 17.08.2012 issued by Jurisdictional Range Officer of the Central Excise, Customs and S. Tax, Div. I, Silvassa addressed to the Additional Commissioner of Central Excise, Raigad that the applicant are not availing the facility under Notification No.41/2001-CE(NT) dated 26.06.2001, succeeding Notification no. 21/2004-CE(NT) 06.09.2004. As such, procedural infraction, if any committed by the applicant has also been cured.

9. Government observes that the applicant exported the goods and filed rebate claim under Rule 18 of the Central Excise Rules, 2002 read with the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. The applicant has contended that it was purely a clerical error of mentioning "*availing facility under Notification No.41/2001-CE(NT) dated 26.06.2001*" instead of striking



declaration at para 3(b) on ARE-1 "availing facility", and the applicant wrongly struck the expression "without availing facility" .

11. Government finds that the applicant prepared the ARE-1 under claim of rebate and paid applicable duty at the time of removal of goods. The original authority in rebate sanctioning orders have categorically held that applicants have exported the goods under claim of rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 and also that range Superintendent confirmed the verification of duty payment.

12. In this regard Government places its reliance on GOI in Revision Order No. 32/2016 - CX Dated 04.02.2016 in the case of M/s Mahavir Synthesis Pvt Ltd. Vs Commissioner of Central Excise, Raigad, wherein while allowing application of the applicant the Revisionary authority observed as under :-

*On perusal of copy of relevant ARE-1, Government finds that the applicant prepared the ARE-1 under claim of rebate and paid applicable duty at the time of removal of goods. The original authority in rebate sanctioning orders have categorically held that applicant has exported the goods under claim of rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE/(NT) dated 06.09.2004 and also observed that triplicate copy of ARE-1 has been endorsed by the Central Excise officer which confirmed the verification of duty payment. As such, the exported goods are duty paid goods. Once, it has been certified that exported goods have suffered duty at the time of removal, it can be logically implied that provisions of Notification 21/04-CE(NT) dated 06.09.04 and Notification 43/01-CE(NT) dated 26.06.01 cannot be applied in such cases. There is no independent evidences on record to show that the applicant have exported the goods without payment of duty under ARE-2 or under Bond. Under such circumstances, Government finds force in contention of applicant that they have by mistake ticked in ARE-1 form declaration and they have not availed benefit of Notification 21/04-CE(NT) dated 06.09.2004 and Notification 43/01-CE(NT) dated 26.06.2001. In this case, there is no dispute regarding export of duty paid goods. Simply ticking a wrong declaration in ARE-1 form cannot be a basis for rejecting the substantial benefit of rebate claim. Under such*





circumstances, the rebate claims cannot be rejected for procedural lapses of wrong ticking. In catena of judgments, the Government of India has held that benefit of rebate claim cannot be denied for minor procedural infraction when substantial compliance of provisions of notification and rules is made by claimant.

13. Government notes that identical issue of ticking wrong declaration in case of M/s. Socomed Pharma Ltd. decided by GOI in Revision Order No. 154-157/2014-CX dated 21.04.2014 (reported in 2014 (314) ELT 949 (GOI) wherein it has been observed that mere ticking of wrong declaration may not be a reason for rejection of rebate claim especially when substantial condition of export of duty paid goods established.

14. Government finds that rationale of aforesaid GOI orders is squarely applicable to this case also.

15. Further, it is now a trite law while sanctioning the rebate claim that the procedural infraction of Notification/Circulars etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacturer and subsequent export. As long as this requirement is met, other procedural deviations can be condoned. Such a view has been taken in *Birla VXL - 1998* (99) E.L.T. 387 (Tri.), *Alfa Garments - 1996* (86) E.L.T. 600 (Tri), *Alma Tube - 1998* (103) E.L.T. 270, *Creative Mobous - 2003* (58) RLT 111 (GOI), *Ikea Trading India Ltd. - 2003* (157) E.L.T. 359 (GOI), and a host of other decisions on this issue.

16 In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. US/338/RGD/2012 dated 22.05.2012 and restores the initial Order-in-Original No. 987/11-12/DC (Rebate)/Raigad dated 12-10-2011 sanctioning the rebate claims.

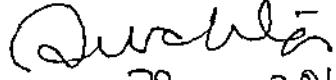


*[Handwritten signature]*



15. Revision Application thus succeeds in above terms.

16. So ordered.


  
29.12.2017

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

ORDER No. <sup>31</sup>/2017-CX (WZ) /ASRA/Mumbai DATED 29.12.2017

To,  
M/s. Nagreeka Foils Ltd.,  
7, Kala Bhavan, 3  
Mathew Road,  
Mumbai - 400 004 062

True Copy Attested

  
SANKARSAN MUNDA  
Asstt. Commissioner of Custom & C. Ex. (C&E)

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5<sup>th</sup> Floor, CGO Complex, Belapur, Navi Mumbai, Thane..
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Belapur Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai
- ✓ 5. Guard file
6. Spare Copy.

