

**REGISTERED  
SPEED POST**



**F.No.195/735/12-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..10.2.16.....

**ORDER NO. 32/2016-CX DATED 04.02.2016** 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/315/RGD/12 dated 03.05.12 passed by the  
Commissioner of Central Excise (Appeals-II), Mumbai.

Applicant : M/s. Mahavir Synthesis Pvt. Ltd.

Respondent : Commissioner of Central Excise, Raigad.

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## ORDER

This revision application is filed by the applicant M/s. Mahavir Synthesis Pvt. Ltd. against the Order-in-Appeal No. US/315/RGD/12 dated 03.05.12 passed by the Commissioner of Central Excise (Appeals-II), Mumbai, with respect to Order-in-Original 725/11-12/DC(Rebate)/Raigad dated 05.08.2011 passed by the Deputy Commissioner of Central Excise (Rebate), Raigad.

2. Brief facts of the case are that the applicants exported the goods on payment of duty and filed rebate claims under Rule 18 of Central Excise Rule, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The original authority sanctioned the rebate claim.

3. Being aggrieved by the said Order-in-Original, department filed appeal before Commissioner (Appeals) on the ground that the Deputy Commissioner of Central Excise, Rebate, Raigad, sanctioning rebate claim amounting to Rs. 2,45,568/- on the ground that the goods were exported by availing benefit under Notification No. 21/2004-CE(NT) dated 06.09.2004 and Notification No. 43/2001-CE(NT) dated 26.06.2001 as certified by them at Sr. No. 3(b) & (c) of the ARE-1. Under the Notification No. 21/2004-CE(NT) dated 06.09.2004, it is mandatory to clear the goods for export in form ARE-2 and file the rebate claims with the jurisdictional Assistant / Deputy Commissioner. It is also, mandatory to clear goods for export under Bond / Letter of undertaking under Notification No. 43/2001-CE(NT) dated 26.06.2001.

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) rejected the appeal of the applicants only on one ground without going into other grounds submitted by the Applicants that once the ARE -1 is signed by the assessee it is the assessment. Same can be reviewed hence he has rejected the appeal of the Applicants. It is not understood how he came to this conclusion. In this case assessment is always done by the Department and not by the Applicants. Further assessment of duty payment needs to be done by the Range Officer. Once the duty payment certificate is issued after assessment by the Range Officer as per Circular No. 510/06/2000-CX dated 03.02.2000 any changes that needs to be done it can be done only by the Jurisdictional Assistant/Deputy Commissioner only. Assessment has been done and duty payment certificate has been informed to the Maritime Commissioner. Once assessment is finalised Appeal need to be filed against the assessment order of the Department if aggrieved by the Applicants and not the Applicants self assessment of "Export Certificate" which the Commissioner (Appeals) failed to appreciate.

4.2 Notification No. 21/2004-C.E.(N.T.) dated 06.09.2004 as amended, in this case ARE-2 needs to be prepared and in such cases rebate of duty on excisable goods used



in goods exported to any country except Bhutan can be claimed. In this case the finished goods necessarily be exported under bond and the jurisdictional officer has to certify the input used in the finished goods export on the ARE-2 itself. Then only rebate can be claimed. In this case rebate should be claimed only from the Jurisdictional Assistant Commissioner and not from Maritime Commissioner. If it is the case the jurisdictional Range Officer would not have certified and sent the duty payment certificate to Maritime Commissioner. For mere not crossing the certain line of the procedure rebate should not be rejected. It shows the lack knowledge of officer filing the Appeal and the Order in appeal passed for failure of procedure. The proper duty is paid on the finished goods exported. If there is any doubt same should have been got clarified from the jurisdictional officer instead of filing appeal.

4.3 The 3(b) reads as:- "(b) availing facility/without availing facility under Notification No. 41/2001- Central Excise (N.T.) dated 26<sup>th</sup> June, 2001". On the above applicants state and submit that Notification No. 41/2001-CE (N.T.) is respect of Rebate of duty on materials used in the processing or manufacture of export goods - Procedure. In this case Applicants claimed Rebate of duty on fished goods exported, therefore, there is no question of claiming any rebate of duty on inputs used in the exported goods. All the Original documents already submitted before the Maritime Commissioner for claiming the rebate on finished goods, Applicants cannot submit the same document at any other place again as Applicants do not have the same records.

4.4 The 3(b) reads as:- "(b) availing facility/without availing facility under Notification No. 43/2001- Central Excise (N.T.) dated 26th June, 2001" of Notification No. 21/2004-CE(N.T) dated 06.09.2004". On the above Applicants state and submit that Notification No. 43/2001-CE (N.T.) dated 26.06.2001 are issued under Rule 19- Export under Bond-procurement of excisable goods without payment of duty for use in manufacture of export goods- procedure. One who avails this notification the goods necessarily requires to be cleared under Bond under Rule 19 of Central Excise Rules, 2002 under ARE-2, because in this case the input is non duty paid. Hence since the, manufacture has availed Cenvat credit on the input used in the manufacture of finished goods he cannot simultaneously avail Notification No. 43/2001 on the same goods and Notification No. 21/2004-CE (NT) dated 06.09.2004 is for receipt of inputs on payment of duty refund of the same can be claimed after export. The clerk instead cutting "Without availing" strucked out "With claiming Notification No.21/2004-CE(NT) dated 06.09.2004. This is the only mistake.

4.5 Further in this connection applicants rely on the following Orders/ Judgments which is favourable to them.

- Commissioner vs. Suncity Aloys Pvt. Ltd.-2007 (218) E.L.T.174 (Raj).
- G.T.C. Export Ltd.-1994 (74) E.L.T.468 (G.O.I).
- Hon. S.C. in the case of proper products Ltd. Vs. Commissioner of Central Excise-1999 (112) E.L.T.765 (S.C.).



- GOI Order No. 514/2006 dated 30.06.2006- M/s. Ambica Knitting.
- M/s. Banner International Order No. 255/07 dated 27.04.07.
- M/s. Vipul Dye Chem Ltd. Order no. 873/2006 dated 29.09.2006.
- M/s. Britannia Industries Ltd. Mumbai. Order No. 380-382/07 dated 29.06.2007.

5. Personal hearing was scheduled in this case on 03.08.2015 and 11.08.2015. Hearing held on 11.08.2015 was attended by Shri R.V.Shetty, 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 claim of under Rule 18 Read with Notification No. 19/2004-C.E. (N.T) was sanctioned by the applicant. The applicants exported the goods on payment of duty and filed rebate claims under Rule 18 of Central Excise Rule, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The original authority sanctioned the rebate claim. Being aggrieved by the said Order-in-Original, Department filed appeal before Commissioner (Appeals) on the ground that the Deputy Commissioner of Central Excise, Rebate, Raigad, order in sanctioning rebate claim amounting to Rs. 2,45,568/- on the goods that were exported by availing benefit under Notification No. 21/2004-CE(NT) dated 06.09.2004 and Notification No., 43/2001-CE(NT) dated 26.06.2001 as certified by them at Sr. No. 3(b) & (c) of the ARE-1. Under the Notification No. 21/2004-CE(NT) dated 06.09.2004, it is mandatory to clear the goods for export in form ARE-2 and file the rebate claims with the jurisdictional Assistant / Deputy Commissioner. It is also, mandatory to clear goods for export under Bond / Letter of undertaking under Notification No., 43/2001-CE(NT) dated 26.06.2001. The Commissioner (Appeals) allowed the appeal of the department. Now, the applicant has filed this R.A on grounds mentioned in para (4) above.

8. Government observes that the applicants exported the goods and filed rebate claim under Rule 18 of the Central Excise Rules, 2002 read with the Notification No.19/2004-CE/(NT) dated 06.09.2004. The applicant has contended that they have by mistake ticked the declaration on availment of benefit of Notification 21/04-CE(NT) dated 06.09.04 and Notification 43/01-CE(NT) dated 26.06.2001 in AREs-1. However, they exported the goods under Notification No.19/2004-CE/(NT) dated 06.09.2004 on payment of duty and as such they were not required to export the goods under Bond or under cover of ARE-2 as they had not claimed input rebate.

8.1 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.

8.2 However since it is a matter of fact which requires verification in view of rival claims, therefore, the case is remanded back to the original authority to verify the claim of the applicant that 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 and thereafter subject to the satisfaction of the Assistant/Deputy Commissioner the rebate claim may be disposed off accordingly. A reasonable opportunity of hearing may be given to concerned parties.

9. In view of above position, Government sets aside the impugned Order-in-Appeal and remands the case back to the original authority for fresh decision after necessary verification as above.

10. The Revision Application is disposed off in above terms.

11. So, ordered.

  
(RIMJHIM PRASAD)

Joint Secretary to the Government of India

M/s. Mahavir Synthesis Pvt. Ltd.,  
Block No. 304 & 305, Sachin,  
Surat-394230.

Attested.

(सहायक निदेशक/Assistant Commissioner)  
सहायक निदेशक (आवेदन प्रमाणित करने वाले)  
CE & C (A) (आवेदन प्रमाणित करने वाले)  
Ministry of Commerce (Dept. of New)  
भारत सरकार/Coal. of India  
नई दिल्ली/New Delhi



**ORDER NO. 32/2016-CX DATED 04.02.2016**

Copy to:

1. The Commissioner of Central Excise, Raigad Commissionerate, Ground Floor, Kendriya Utpad Shulk Bhavan, Sector-17, Plot No. 1, Khandeshwar, Navi Mumbai-410206.
2. The Commissioner of Central Excise (Appeals-II) Mumbai Zone, 3<sup>rd</sup> Floor, Utpad Shulk Bhavan, Bhandra Kurla Complex, Bhandra (E), Mumbai.
3. The Deputy Commissioner (Rebate) Central Excise, Raigad, Ground Floor, Kendriya Utpad Shulk Bhavan, Plot No. 1, Sector-17, Khandeshwar, Navi Mumbai-410206.
4. Shri R.V. Shetty, Advocate, 101-E, Sterling Court, Next to Maheshwari Nagar, Orkay Mill Road, MIDC, Andheri (E), Mumbai-093.
5. PA to JS(RA).
6. Guard File.
7. Spare copy.

ATTESTED



(B.P.Sharma )  
OSD (Revision Application)

(B.P.Sharma)  
सहायक अधीक्षक (अपील) (अ.अ.अ.अ.)  
CEFC (Central Excise Commissioner)  
विभागाध्यक्ष (अपील) (अ.अ.अ.अ.)  
Ministry of Revenue (Central Excise)  
घराना नंबर/कोट नं. 101  
महानगर नवी मुंबई