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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, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. NO. 195/789/13-RA/1981

Date of Issue: 22.11.2018

ORDER NO. 346/2018-CX (WZ) /ASRA/Mumbai DATED 22.10. 2018
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 Pee Vee Textiles Ltd., Jam, Tah : Samudrapur
Distt: Wardha (M.S)

Respondent : Commissioner of Central Excise (Appeals), Nagpur.

Subject : Revision Applications filed, under section 35EE of the
Central Excise Act, 1944 against the Orders-in-Appeal
No.PVR/206/NGP/2013 dated 28.03.2013 passed by the
Commissioner of Central Excise (Appeals), Nagpur.



ORDER

This Revision Application has been filed by M/s Pee Vee Textiles Ltd., Jam, Tah : Samudrapur, Dist: Wardha (M.S.) (hereinafter referred to as "the applicant") against the Order-in-Appeal No. PVR/206/NGP/2013 dated 28.03.2013 passed by the Commissioner of Central Excise (Appeals), Nagpur.

2. Brief facts of the case are that the applicant is engaged in the manufacture of Cotton & synthetic yarn and fabrics falling under Chapters 52 & 55 of the Central Excise Tariff Act, 1985. In addition to the clearances for home consumption, the final products are also exported either under bond in terms of Rule 19 of Central Excise Rules, 2002 or on payment of duty for claim of rebate of the same in terms of Rule 18 of the said Rules. The applicant had exported a quantity of 21000 Kgs. of Viscose Yarn to Spain under Rule 18 for claim of Rebate of duty under Notification No. 40 / 2001 -CEX (NT) dated 26.06.2001 under ARE-1 No. 366/2010-11 dated 07.02.2011. The export consignment value was Rs. 44,99,250/- (Rupees Forty Four Lakhs Ninety Nine Thousand Two Hundred Fifty Only) which was exported on payment of duty of Rs. 4,63,424/- (Rupees Four Lakhs Sixty Three Thousand Four Hundred Twenty Four Only). The rebate sanctioning authority observed that the original ARE-I was not submitted by the applicant as required under the procedure prescribed under Para 8.3 of Part 1 of Chapter 8 of CBEC Central Excise Manual of Supplementary Instruction. Accordingly, rebate claim was rejected by the Assistant Commissioner, Nagpur.

3. Being aggrieved, the applicant filed appeal before Commissioner (Appeals), Central Excise, Nagpur. The Commissioner (Appeals) observed that the applicant had filed the subject rebate claim for Rs. 4,63,424/- (Rupees Four Lakhs Sixty Three Thousand Four Hundred Twenty Four Only) without submission of Original as well as Duplicate copy ARE-1 No. 366/2011-12 dated 07.02.2011 alongwith the claim of rebate. Since mere

submission of the triplicate copy would not conclusively prove the fact of export of the goods in as much only examination and sealing of the container details are available as certified by the officers of the Central Excise Range and not the signature of the Customs Officer of the Port of Export. It was also observed that the Applicant had not filed any copies of the Shipping Bills, Bill of Lading and invoices alongwith the Appeal Memorandum depriving Appellate Authority to verify even the basic facts. Accordingly, Commissioner (Appeals) rejected the appeal filed by the applicant vide Order in Appeal No. PVR/206/NGP/2013 dated 28.03.2013.

4. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application on the following grounds that :

- 4.1 the discrepancy of non-filing of the original and duplicate ARE-I alongwith the rebate claim was not fatal to their entitlement to claim rebate of the duty paid on the goods duly exported.
- 4.2 it was the duty of the office of the Assistant Commissioner to point out the discrepancy to the appellant within 15 days of the receipt of the rebate claim.
- 4.3 the Assistant Commissioner appears to have not applied mind to Para 8.4 wherein the satisfaction of the Assistant Commissioner regarding the export of the goods has to be based on not only the original of ARE-1 but also triplicate copy showing endorsement by the customs and the duty paid character as certified on the triplicate copy of ARE-1.
- 4.4 the applicant has cited the case of UM Cables Ltd. vs. UOI & Others reported in 2013-TIOL-386-HC-MUM-CX where in the Hon'ble High Court held that :-

"Rebate under Rule 18 of Central Excise Rules, 2002, rejected on the ground of non-submission of original and duplicate ARE1s- Submission of ARE1s is only a procedural requirement under the Notification issued under Rule 18- the procedure which has been laid down in



the notification is to facilitate the processing of an application for rebate and to enable the authority to be duly satisfied that the two fold requirement of the goods having been exported and of the goods bearing a duty paid character is fulfilled- The procedure cannot be raised to the level of a mandatory requirement- Rule 18 itself makes a distinction between conditions and limitations on the one hand subject to which a rebate can be granted and the procedure governing the grant of a rebate on the other hand – while the conditions and limitations of the grant of rebate are mandatory, matters of procedure are directory- Rebate sanctioning authority is directed to process the rebate claim without insisting on the original and duplicate ARE1s if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled.” the Commissioner Appeals has mis-placed the reliance on the decisions – UOI v/s Rainbow Silks – 2011 (274) ELT 510 (BOM) and Sheetal Exports – 2011 (271) ELT 462 (GOI).

4.5 the impugned order rejecting the rebate claim, which is an export incentive given to the exporter on failure to follow the procedural requirement, cannot be sustained in view of the settled law that a substantive benefit cannot be rejected on the ground of procedural infraction.

4.6 for any other ground that may be raised at the time of personal hearing, the impugned order cannot stand scrutiny of law and as such is liable to be quashed and set aside.

5. A Personal hearing was held in respect of RA No. 195/789/13-RA. Ms. Rutika Patrikar, Advocate appeared for hearing on behalf of the applicant and reiterated the submission filed through Instant RA.



8.4 of the said Manual specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported as evident from the original and duplicate copies of the ARE-1 form duly certified by customs. The second is that the goods are of a duty paid character as certified on the triplicate copy of the ARE-1 form received from the jurisdictional Superintendent of Central Excise. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

12. The Government in the instant case observes that sufficient documentary evidence has been produced by the applicant consisting of the bill of lading; Shipping bill; an endorsement of the customs authorities on the triplicate copy of the ARE-1 form which would establish that the goods were exported and had a duty paid character. In order to qualify for the grant of a rebate under Rule 18, the mandatory conditions required to be fulfilled are that the goods have been exported and duty had been paid on the goods.

Hence, the production of the ARE-1 form in the original and duplicate is a matter of procedural omission and non-submission of Original & Duplicate copies of ARE-1 form by the applicant should not result in the deprivation of the statutory right to claim a rebate subject to the satisfaction of the authority on the production of sufficient documentary material that would establish the identity of the goods exported and the duty paid character of the goods.

13. In several decisions of the Union Government in the revisional jurisdiction as well as in the decisions of the CESTAT, the production of the relevant forms has been held to be a procedural requirement and hence directory as a result of which, the mere non-production of such forms would not result in an invalidation of a claim for rebate where the exporter



is able to satisfy through the production of cogent documentary evidence that the relevant requirements for the grant of rebate have been fulfilled. In the present case, no doubt has been expressed whatsoever that the goods were not exported goods.

14. Thus, the Government further observes that a distinction between those regulatory provisions which are of a substantive character and those which are merely procedural or technical has been made in a judgment of the Supreme Court in "**Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner-1991 (55) E.L.T. 437 (S.C.)**". The Supreme Court held that the mere fact that a provision is contained in a statutory instruction "does not matter one way or the other". The Supreme Court held that non-compliance of a condition which is substantive and fundamental to the policy underlying the grant of an exemption would result in an invalidation of the claim. On the other hand, other requirements may merely belong to the area of procedure and it would be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes which they were intended to serve. The Supreme Court held as follows :

"The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some other may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."

DETERMINED

15. In view of the above, Government sets aside the impugned Order in Appeal No. No. PVR/206/NGP/2013 dated 28.03.2013 and remands the matter back to the original authority for the limited purpose of verification of the claim with directions that he shall reconsider the claim for rebate on the basis of the documents submitted by the applicant after satisfying itself in regard to the authenticity of those documents. However, the rebate

sanctioning authority shall not upon remand, reject the claim on the ground of the non-production of the original/ duplicate copy of the ARE-1 form, if it is otherwise satisfied that the conditions for the grant of rebate have been

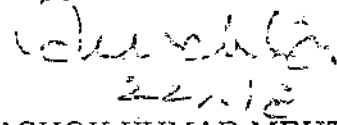


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fulfilled. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

16. The revision application is disposed off in terms of above.

17. So ordered.



(ASHOK KUMAR MEHTA)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

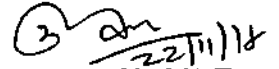
ORDER No. 346 /2018-CX (WZ) /ASRA/Mumbai DATED 22.10.2018.

To,
M/s Pee Vee Textiles Ltd.,
Jam, Tah : Samudrapur
Distt Wardha (M.S)

Copy to:

1. The Commissioner of CGST & CX, Nagpur-I, Telanghedi Road, Civil Lines, Nagpur - 440 001.
2. The Commissioner of GST & CX, (Appeals), Nagpur, Telanghedi Road, Civil Lines, Nagpur - 440 001.
3. Ms. Rutika Patrikar, Advocate, B2-706, Amrutvel Society, Near Chaitanya Hospital, Warje, Pune - 411 058.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

ATTESTED



S.R. HIRULKAR
Assistant Commissioner (R.A.)

