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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.195/410/2013-RA / 5929

Date of Issue: 12/12/19

ORDER NO. 348/2019-CX (WZ)/ASRA/MUMBAI DATED 11.12.2019 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 Chamunda Sales Corporation, Mumbai.

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

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. US/878/RGD/2012 dated 12.12.2012 passed by the Commissioner of Central Excise(Appeals-II) Mumbai.

## ORDER

This Revision Application is filed by the M/s Chamunda Sales Corporation, 242/3B, Mangaldas Bldg, Mangaldas Road, Mumbai 400 002 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. US/878/RGD/2012 dated 12.12.2012 passed by the Commissioner of Central Excise(Appeals-II) Mumbai.

2. The Applicant, exporter had filed rebate claim amounting to Rs. 30,591/- and was issued deficiency memo-cum-SCN dated 28.05.2012 on the grounds that the rebate claims authority in the ARE-1s was different from Maritime Commissionerate, Raigad and the declaration in ARE-1 was not complete. The Deputy Commissioner, Central Excise (Rebate) Raigad vide Order-in-Original No 917/11-12/DC (Rebate)/Raigad dated 14.06.2012 rejected the rebate. Aggrieved, the Applicant then filed appeal with the Commissioner of Central Excise(Appeals) Mumbai Zone-II, who vide Order-in-Appeal No. US/878/RGD/2012 dated 12.12.2012 , upheld the Order-in-Original dated 14.06.2012.

3. Being aggrieved, the Applicant then filed the current Revision Application on the following grounds :

- 3.1 That not filling any particulars in the ARE-1 form is only a procedural lapse and is a curable defect. This is more so when it is seen that the officers of the Customs before whom the said documents are available did not raise any objection to any of such defects. Since there is no dispute regarding the fact of exports and the payment of duty in respect of the goods, it was necessary that the substantive benefit of rebate sought to have been sanctioned to the Applicant.
- 3.2 That Board's Circular No. 510/06/2000-CX dated 03.02.2000 had been issued giving clarification on the re-determination of rebate amount with reference to the ARE-4 (ARE-1) value. In the instant case there is no question of varying the amount of rebate amount as there is no dispute regarding the value at which goods were cleared from the

manufacturer's premises or the Central Excise duty that has been paid. Further, neither the Applicant had sought for any reassessment nor the Dy. Commissioner(Rebate) had rejected the rebate claim taking up any issue of assessment of the export goods. Therefore reference of the said Circular in their case is misplaced.

- 3.3 That even though the part in the declaration at Sr.No. 3 of the ARE-1 was not applicable was not struck off, the documents accompanying the rebate claim clearly showed that the manufacturer from whom they had procured the export goods had availed Cenvat credit and that the Shipping Bill also shows that the export was undertaken under the DEPB Scheme.
- 3.4 That the rebate claims was filed on 20.10.2010 and as per the Board's instructions all refund / rebate claims are required to be sanctioned within 3 months of filing. In the current case the claim was taken up for scrutiny only in May 2012, i.e. after a lapse of more than one and a half year. Hence to cover up the delay in processing, the rebate claim was rejected on frivolous ground as interest would have to be paid to the Applicant for delayed payment of rebate.
- 3.5 They prayed that the Order-in-Appeal be set aside with consequential relief.

4. Personal hearing in the case was held on 01.10.2019 which was attended by Shri Vinit P Dubey, Advocate on behalf of the Applicant.

5. 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.

6. In the instant case, the denial of rebate claim was precisely on the grounds that the Applicant did not fill up the ARE-1 form by not striking whatever applicable at Sl.No. 3 to 5 of the ARE-1 form. The said Sl.Nos pertains to availability of CENVAT or non availability of CENVAT, other export incentives, etc. The said declaration are reproduced below:

*"3. I/We hereby certify that the above- mentioned goods have been manufactured.*

*(a) availing facility/without availing facility of CENVAT credit under CENVAT Credit Rules, 2001*

*(b) availing facility/without availing facility under Notification 41/2001-Central Excise (N.T) dated 26th June, 2001 issued under rule 18 of Central Excise(No.2) Rules, 2001.*

*(c) availing facility/without availing facility under Notification 43/2001-Central Excise (N.T) dated 26th June, 2001 issued under rule 19 of Central Excise (No.2) Rules, 2001.*

*4. I/We hereby declare that the export is in discharge of the export obligation under a Quantity based Advance Licence/Under Claim of Duty Drawback under Customs & Central Excise Duties Drawback Rules, 1995.*

*5. I/We hereby declare that the above particulars are true and correctly stated."*

7. It is observed that Applicant had submitted sufficient documentary evidence such as Copy of the RG 23a Part-II of the manufacturer, Self attested EP Copy of Shipping Bill No. 854353 dated 10.06.2010, Self attested copy of Custom Invoice No. 04/2010-11 dated 8.6.2010, Self attested copy of BL No. IN360312 dated 20.6.2010, Mate receipt, to substantiate the fact that the goods in question are excise duty paid and the same have been exported. There is no allegation by the department that goods have neither been exported nor excise duty paid.

8. Government finds that the Appellate authority has held ARE-1 has not been filled up completely by the Applicant. However the same is procedural or technical nature. In cases of export, the essential fact is to ascertain and verify whether the said goods have been exported. In case of errors, if the same can be ascertained from substantive proof in other documents available for scrutiny, the rebate claims cannot be restricted by narrow interpretation of the provisions, thereby denying the scope of beneficial provision. Such procedural infractions can be condoned. In this regard the Government finds support from the decision of Hon'ble Supreme Court in the case of Suksha International - 1989 (39) ELT 503 (SC) wherein it was held that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand

what the policy gives with the other. In UOI vs. A.V. Narasimhalu – 1983 (13) ELT 1534 (SC), the Apex Court has observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. In fact, in cases of rebate it is a settled law that the procedural infraction of Notifications, Circulars etc., are to be condoned if exports have really taken place, and that substantive benefit cannot be denied for procedural lapses.

9. In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. US/878/RGD/2012 dated 12.12.2012 passed by the Commissioner of Central Excise(Appeals) Mumbai Zone-II to that extent and remands the case back to the original authority for adjudication on the basis of observations as stated above. The Applicant is also directed to submit all the requisite documents for verification. The original adjudicating authority will complete the requisite verification expeditiously and pass a speaking order after following the principles of natural justice.

10. Revision application is disposed off in above terms.

11. So, ordered.

  
(SEEMA ARORA)

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

ORDER No. 348/2019-CX (WZ)/ASRA/Mumbai DATED 11.12.2019.

To,  
M/s Chamunda Sales Corporation,  
242/3B, Mangaldas Bldg,  
Mangaldas Road,  
Mumbai 400 002.

Copy to:

1. The Commissioner of GST & Central Excise, Belapur Commissionerte.
2. The Deputy / Assistant Commissioner(Rebate), GST & CX , Belapur Commissionerte
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.