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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, Cuffe Parade,  
Mumbai- 400 005**

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F NO. 195/594/13-RA/1532

Date of Issue: 25.04.22

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ORDER NO. 360/2022-CEX (SZ) /ASRA/MUMBAI DATED 20.04.2022  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL  
EXCISE ACT, 1944.

Applicant : M/s. Tamil Nadu Newsprint & Paper Ltd.

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Respondent : Commissioner CGST Chennai Outer.

Subject : Revision Application filed, under section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. 19/2013  
dated 21.02.2013 passed by the Commissioner of CGST &  
Central Tax, (Appeals) Tiruchirapalli.

**ORDER**

This Revision Application is filed by the M/s. Tamil Nadu Newsprint and Papers Ltd. Kakithapuram-639136(hereinafter referred to as "the Applicant") against the Order-in-Appeal No. 19/2013 dated 21.02.2013 passed by the Commissioner of CGST & Central Tax, (Appeals) Tiruchirapalli.

2. The brief facts of the case are that the applicants having C.Ex Registration Certificate No.AAACT2935JXM001 filed a rebate claim on 21.05.2012 as per the provisions of Rule 18 of Central Excise Rules, 2002 for Rs.1,13,49,983/- in respect of 181 numbers of AREIs under which the goods were exported on payment of duty during the period 01.08.2011 to 31.08.2011. The lower authority vide OIO No. 18/2012-rebate dated 21.08.2012 rejected rebate to the extent of Rs. 35,71,484/- pertaining to 57 AREIs and sanctioned a rebate of Rs.77,78,499/ - under Section 11B of Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002.

3. Being aggrieved by the aforesaid order-in-original the applicant filed appeal before Commissioner of CGST & Central Tax, (Appeals) Trichy, who vide order- in-appeal No. 19/2013 dated 21.02.2013 had confirmed rejection of rebate claim in respect of ARE-1s for the reason that 'Part-B of ARE-1 is not filled and signed by the customs authority' and correction done in ARE-1 part B is not duly authorized by customs authority' to the extent of Rs. 9,83,159/- , while allowing the appeal in respect of remainder ARE-1s. The Appellate authority has disallowed the rebate claims to an extent of Rs. 9,83,159/- vide para 4.6 for the following reason:

- a) AREIs discrepancy noted was that Part-B of ARE1 was not filled in and not signed by Customs authorities and in respect of one ARE 1 one of the discrepancy was that corrections done in ARE-1 Part B is not duly authorized by Customs authorities.

- b) That the discrepancies noticed by lower authorities was that Part B of ARE1 was not filled in and not signed by the Customs authorities, the applicants claimed that Part B was duly signed by the Customs authorities and have filed Xerox Copies of relevant ARE is where "passed for shipment vide Shipping bill..... Date....' Particulars were furnished and signed by customs authorities but other particulars were not filled in.
- c) Considering the above factual position, the learned authority has observed that there is a lot of distinction between procedural condition of a technical nature and a substantive condition. Further the learned authority has observed that non-observance of the former is condonable, but non observance of the latter is not condonable. The appropriate authority could have condoned only the breach of technical conditions/ procedures.
- d) The learned authority has observed that the lapse in the instant case that Part B of ARE1 was not filled in which condition essential particulars like Vessel sailing date etc which is not mere technical in nature but these were of substantive nature
- e) That ARE 1 No.201100757, the discrepancies namely variation between ARE 1 and BL and shipping Bill in respect of country of destination and variation between excise invoice and shipping bill and BL in respect of port of discharge, though condonable, the applicants are not entitled for rebate for the reason that corrections done in ARE 1 Part B is not duly authorised by Customs Authorities.

4. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application under Section 35EE of the Central Excise Act, 1944 before the Government on the following grounds :

- i) The order of the lower authority is erroneous and unsustainable either in law or on facts and is liable to be set aside to the extent of rejection of rebate claim.
- ii) They approached the Customs Authorities of Tuticorin and Chennai ports for counter signature in Part B of the disputed ARE-1 and they have obtained the counter signature which happened to be a reason for the rejection of rebate claim. In view of the same, the applicants submit that rejection of rebate claim in respect of ARE 1 No.201100757 is not sustainable.
- iii) The learned authorities has erroneously observed that the applicants have not fulfilled substantive condition which is not correct because the condition the learned authority states is only a procedural one. The applicants submit, if they have produced the relevant ARE1 wherein it clearly consisted the required details to show export has taken place which is the substantial condition to prove, the learned authority has rejected the claim for procedural lapse by stating that certain other particulars were not filled which is only procedural one. Thus the impugned order is not sustainable to the extent of rejection and thus liable to be dismissed to that extent alone. However, the applicants submit that they have fulfilled the condition by filing the details and has obtained counter signature, in view of the same the applicants submit that even the procedural condition has been fulfilled.
- iv) Though the authorization has been obtained with an delay, the rejection of benefit to claim rebate is not justifiable for procedural lapse as the export of goods is genuine and not been disputed in the order. In this context, the applicants place reliance the decision of the Tribunal in the

case of Vaz Forwarding Pvt. Ltd. v. Collector 1983 (14) E.L.T. 2019 (CEGAT), wherein the Hon ble Tribunal has held at para 6 as follows:

"6. The only ground on which the applicants' claim for refund had been rejected is that they had not applied for NMI Certificate before the shipment of the goods, otherwise there is no dispute that the applicants and the goods are entitled to benefit of Notification in question. Considering the entire facts and circumstances of the case, the Bench feels that a highly technical view in the matter should not be taken as the applicants though later have fulfilled all the conditions of the Notification."

In view of the above, the applicants submit that the benefit should not be denied in the instant case for the non-production of required documents, when the same has been produced though it may be with delay. Further the applicants place reliance on the following case laws wherein similar view has been expression::

- a. CCE., CHENNAI Vs DYNASPEDE INTEGRATED SYSTEMS LTD.  
reported in 2002 (147) E.L.T. 541 (Tri. - Chennai)
- b. CCE., VADODARA-II VS IRCON INTERNATIONAL LTD. reported  
in 2008 (228) E.L.T. 587 (Tri. - Ahmd.)

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v) The applicant therefore prays for setting aside the impugned order with consequential relief.

5. Personal hearing in this case was fixed for 14.09.2021, Shri M.N. Bharathi, Advocate appeared online on behalf of the applicant and submitted that matter may be remanded back to original authority for verification.

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. The Government observes that the impugned rebate claims were rejected on the basis of following two grounds:-

- i) Part-B of ARE-1 is not filled and signed by the customs authority
- ii) Correction done in part B of ARE-1 No. 201100757 is not duly authorized by customs authority

8. ARE-1's in question for the reason that the " Part B of ARE-1 is not filed and signed by custom authority" , Government finds that Part-B of the ARE-1 was endorsed by the customs official on the back side indicating only the Shipping Billing No. and date of filing of shipping bill but the Vessel's name and the sailing date was not mentioned. However , it is seen that the Applicant got the necessary details filed lately with the endorsement of the customs officer. In case of the ARE-1 where the reason was " correction done in ARE-1 Part-B is not duly authorized by customs authority" , Applicant got the ARE-1's countersigned where the corrections were made by the customs authority.

9. It is observed 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. 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"*

10. In view of above, Government observes that though later the objection raised in the OIA has been resolved, the rebate claim in question cannot be denied merely on technical/procedural lapses. The matter is remanded back to the adjudicating authority for sanctioning of rebate claims subject to establishing veracity of the facts by corroborating with the documents like shipping bills, customs invoices, bill of lading etc.

11. Revision application is disposed off in above terms.

  
(SHRAWAN KUMAR)

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

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ORDER No 360/2022-CEX (SZ) /ASRA/Mumbai Dated 20.04.2022

To,  
M/s. Tamil Nadu Newsprint and Papers Ltd.  
Kakithapuram-639136)

Copy to:

1. The Commissioner of CGST & CX, Chennai Outer Commissionerate  
,No. 2054-I,II Avenue, 12 the Main Road, Newry Towers, Anna Nagar ,  
Chennai-600040.

2. The Commissioner of CGST &CX(Appeals), Trichy, Office of the Commissioner of Customs & Central and Excise (Appeals-2) No.1 Williams Road, Cantonment, Tiruchirappali-620001.
3. The Assistant Commissioner of CGST & CX , Karur Division, No. 15, Gowripuram Extension Area, Anna Nagar Main road, Karur-639002.
4. Sr. P.S. to AS(RA), Mumbai.
5. Guard File