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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.195/30-31/14-RA | 618-1

Date of Issue: 22.10.2021

ORDER NO. ³⁶⁸⁻³⁶⁹ /2021-CX (WZ) /ASRA/MUMBAI DATED 13.10.2021 OF THE 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 CENTRAL EXCISE ACT,1944.

Applicant : M/s. Shree Meenakshi Food Products Pvt. Ltd.,
Survey No. 179/1/5, Kuvapada Industrial Estate,
Silli, Silvassa - 396 230.

Respondent: The Commissioner, CGST, Vapi.

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. VAP-EXCUS-000-APP-337 & 338-13-14 dated 24.10.2013 passed by the Commissioner (Appeals), Central Excise, Vapi.

ORDER

This Revision application is filed by M/s Shree Meenakshi Food Products Pvt. Ltd., Silvassa (hereinafter referred to as the 'applicants') against the Orders-in-Appeal No. VAP-EXCUS-000-APP-337 & 338-13-14 dated 24.10.2013 passed by the Commissioner (Appeals), Central Excise, Vapi.

2. The applicants are manufacturers of Pan Masala with Gutkha falling under CSH 24039990 of First Schedule to the Central Excise Tariff Act, 1985. The impugned goods are notified under Section 3A of Central Excise Act, 1944. The applicants are clearing the said notified goods for home consumption as well as for export. The applicants are working under Compounded Levy Scheme and the duty is levied under Section 3A read with Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 (hereinafter referred as "PMPM Rules") as notified under Central Excise Notification No. 30/2008-CE(NT) dated 01.07.2008. The factor relevant to the production of notified goods shall be the number of packing machines in the factory of manufacturer under Rule 5 of the PMPM Rules. The duty payable is to be calculated under Rule 7 of the said PMPM Rules read with Notification No. 42/2008-CE dated 01.07.2008, on the number of operating packing machines in the factory during the relevant period. The applicant filed 2 Rebate claims towards duty of Excise paid on the goods exported as per the procedure prescribed under Notification No. 32/2008-CE (NT) dated 01.07.2008 along with the supporting documents.

3. The rebate sanctioning authority sanctioned the rebate claims to the applicant as detailed below.

Sl. No.	ARE-1 No. / Date	OIO No. / Date	Amount of Rebate granted (Rs.)
1.	15 dated 20.05.2011	260/DC/SLV-IV/Rebate/2012-13 dated 22.06.2012	34,86,462/-
2.	16 dated 29.05.2011	264/DC/SLV-IV/Rebate/2012-13 dated 22.06.2012	34,86,462/-

4. Aggrieved by the said Orders in Original, the department filed an appeal before the Commissioner (Appeals), Central Excise, Vapi on the following grounds.

- a) The impugned order is in contravention of the provisions of Rule 6,7,14,14A and condition No. (i) to (iii) envisaged under the PMPM Rules vide Notification No. 32/2008-CE(NT) dated 28.08.2008.
- b) The claim of rebate in one case, the goods were shown to have been manufactured in December 2010. On being pointed out by the JRO, the applicant clarified that the month of manufacture was January, 2011. The Adjudicating Authority condoned the error. The adjudicating authority has no powers to condone the error in wrongly mentioning the month of production since the procedure regarding rectification of discrepancy has not been followed by the applicant even after the discrepancy was pointed out by the JRO.
- c) The applicant had exported notified goods 'Goa 1000 Gutkha 2.00 Gms MRP 1.50 and had submitted copy of Daily Stock Account (DSA) for the months January to May without indicating the year. In the said DSA, it was observed that a few pages were bearing serial number and few of them were without bearing serial number. The description of goods also was at variance. This shows that the applicant neither maintained Daily production in the DSA Register properly. Since DSA is not having running serial number of pages, the record is concocted and it is merely a ploy to get fraudulent rebate claims.
- d) In some cases, the goods were shown to have been transported by a total of two / three vehicles.
- e) The goods were not stuffed in the container at the factory of productions and cleared by the applicant under ARE-1, Excise Invoice / Export Invoice, / shipping bills. These facts show that the applicant had not followed procedure under Rule 18 of the Central Excise Rules, 2002.

- f) The applicant violated provisions of Rule 14A(ii) as they had used raw materials imported under DFIA scheme as well as duty free material from domestic market.
- g) Reliance placed on Circular No. 69/97-Cus dated 08.12.1997 is not correct.

5. The appellate authority vide Orders in Appeal No. VAP-EXCUS-000-APP-337 & 338-13-14 dated 24.10.2013 allowed all the four appeals of the department except proposal for penal action and set aside all the four respective Orders in Original. The observations drawn by the Appellate Authority on the above issues are as under :-

- a) As regards the discrepancy regarding the month of manufacture, the department had contended that the JRO's letter on records stated that the goods were manufactured in December 2010. Under the circumstances, the applicant should have brought documentary evidence to show that the goods had actually been manufactured in January 2011.
- b) The applicant could not adduce any documentary evidence to prove that the goods exported were the one manufactured and cleared by them.
- c) The applicants had received non duty paid materials for manufacture of notified goods against DFIA Licence and exempted material from domestic market, which was not disputed. The applicants had failed to establish that they have satisfied Sub Rule (ii) of Rule 14A of the said PMPM Rules, according to which no material shall be removed without payment of duty from a factory or warehouse or any other premises for use in the manufacture or processing of notified goods which were exported out of India.

6. Aggrieved by the impugned Order in Appeal, the applicants have filed the instant Revision Applications on the following grounds: -

6.1 The maintenance of the Daily Stock Account register is not a mandatory requirement for sanction of the rebate. If register was not maintained to the satisfaction of the JRO, the action ought to have been initiated under Central Excise Rules, as applicable. The rebate is governed by Notification No. 32/2008-CE(NT) and the mode of maintaining the DSA was not covered in this notification. The department had not come up with any evidence to disprove that the claim of the applicant was wrong about the month of manufacture of the goods.

6.2 After self removal of goods for export purposes, the stipulated procedure as per Notification No. 19/2004-CE (NT) was followed.

6.3 From the documentation for each export, it can clearly be seen that the goods were manufactured, removed from the factory and the same were only exported and it had been verified by the Department officers about the duty paid aspect of the goods. This chain of documentation clearly establishes the link between the ARE1 and the Shipping Bills of export to demonstrate that the goods removed from factory only had been exported.

6.4 There was a seamless movement of the goods from the factory to the export, as demonstrated by string of documents and Goa 1000 gutkha, which is duty paid only was exported as can be seen from the test analysis reports and marks and numbers on the documentation. The judicial pronouncements are explicit that the substantial benefit to the exporter should not be deprived based on non critical objections.

6.5 The allegation that some exempted materials under DFIA license were used, hence the conditions of Rule 14A(ii) read with condition (ii) of Notification No. 32/2008-CE (NT) was violated and was totally based on wrong premises. The said Rule does not restrict or refuse grant of rebate on export of notified goods, where as it is putting a stop to removal of goods without payment of

duty from warehouses. In subject case, no goods had been removed without payment of duty from factory or warehouse. DFIA is legitimate scheme allowed by Government of India which allows various packing material etc. to be made available at concessional rate of duty or exempted duty. These items were imported with exemptions, and were used in the manufacture of the end products, and on export of the product, discharge of the export obligation was claimed. This availment of DFIA does not have anything to do with the duty which was paid on the end products, and rebate of such duty paid on end product only was claimed on export.

6.6 The applicant have relied upon following case laws in support of their argument.

In RE: Shrenik Pharma Ltd, - 2012 (281) E.L.T. 477 (G.O.1) wherein it was held that procedural condition of technical nature and substantive condition in interpreting statute can be condoned so that substantive benefit is not denied for mere procedural lapses.

In RE: M/s Ace Hygiene products Pvt Ltd, - 2012 (276) ELT 131 (G.O.1) wherein it was held that "Claim for rebate can't be denied merely on procedural/technical lapse - Rule 18 of Central Excise Rules, 2002. - It is now trite law that the procedural infractions of notifications/circulars should be condoned if exports have really taken place and the law is settled that substantive benefit cannot be denied for procedural lapses".

In RE: M/s Sanket Industries. - 2011 (268) E.L.T. 125 (G.O.I.) wherein it was held that the procedural infraction of Notifications, 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.

In RE: Leighton Contractors (India) Pvt. Ltd. — 2011 (267) ELT 422 (G.O.1). In this case it was held that it is now a title law that the procedural

infraction of Notifications, 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 requirement. This view of condoning procedural infractions in favour of actual export having been established has been taken by tribunal/Government of India in a catena of orders.

6.7 The findings given by the appellate authority to reject the rebate claim were prejudiced in as much as factual verification was not done, documents were not perused and were insufficient to hold the impugned order as reasonable and judicial. There was no fraud, or suppression of fact or clandestine removal of goods and no material evidence was forthcoming on record and no case law was found reasonable to hold that the applicant was not eligible to claim the rebate. There may be only a procedural lapse in following the prescribed procedural which was not intentional and that can be condoned as per the settled legal position explained supra, and this was done by the proper authority in the order in original. The appellate authority did not give any basis as to why such condonation granted is not valid.

6.8. The applicant requested to set aside the impugned order in appeal.

7. Personal hearing scheduled in this case on 16.01.2020, 22.01.2020, 25.02.2020, 19.03.2021 and 26.03.2021. However, no one appeared before the Revision Authority for personal hearing on any of the dates fixed for hearing. Since sufficient opportunity for personal hearing has been given in the matter, the case is taken up for decision on the basis of the records available.

8. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

9. The facts stated briefly are that the applicants hold Central Excise Registration Certificate and are engaged in the manufacture of Pan Masala containing tobacco commonly known as Gutkha falling under Chapter 24039990 of the First Schedule to the Central Excise Tariff Act, 1985 which is brought under the Compounded Levy Scheme with effect from 1.07.2008 as per the PMPM Rules notified vide Notification 30/2008-CE (NT) dated 01.07.2008. The issue involved in this case pertains to the rebate claims filed by the applicants in respect of duty paid on the excisable goods "Pan Masala (Gutkha)". The rebate claims were sanctioned by the adjudicating authority. Against the said Orders in Original, the department had filed an appeal on the grounds as details in forgoing para. The appeal filed by the department was allowed by the Appellate Authority vide impugned Order in Appeal. Aggrieved by the said order in appeal, the applicants have filed instant revision application on the grounds mentioned in para 5 supra.

10. The Government observes that the department had noticed the discrepancy in respect of month of manufacture and had alleged that the month of manufacture had been mentioned as December 2010 in ARE-1 / Invoice. Whereas, the applicants have claimed that the impugned goods were manufactured in January 2011. The appellate authority while deciding the issue made following observation at para 7 of the impugned order in appeal –

"7. As regards the discrepancy regarding the month of manufacture, the appellate department has alleged that the month of manufacture has been mentioned as December 2020 in ARE-1 / Invoice. The respondent through their letter date 21.05.2012 had claimed that the goods had been manufactured in January 2011. The appellant department has contended that the JRO's letter on record states that the goods were manufactured in December 2010. Under the circumstances, the respondent should have brought documentary evidence to show that the goods had actually been manufactured in January 2011. The respondent has not rectified the mistake (if at all there was a mistake) and has not made any suitable endorsement in those documents. Even in respect of the copies of Daily Stock Account (DSA) (Which is a statutory

document), bears unacceptable defects in as much as the Register bears serial number of pages for some months and no serial number of pages for some months. All these things only reflect the lack of adherence to the Rules and Regulations on the part of the respondent. If the respondent chooses not to follow the Rule Book, then it would be to their own peril. I hold the view that in the absence of crystal clear documentary evidence to support the contention of the respondent, the lower authority has erred in condoning the said lapses and in granting rebate. Therefore, I accept the contention of the department".

10.1 The Government opines 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 from the factory premises under the relevant ARE-1 applications were actually exported. 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 removed from the factory on payment of duty and the same have been exported. The Government holds that, being recipient of export incentives in the form of rebate, the onus lies on the applicant to satisfy the rebate sanctioning authority on the above two aspects particularly when the variation is noticed in respect of dates of the manufacture of the goods purportedly exported.

10.2 In the instant case, it is noticed that there is variation in the month of manufacturing mentioned in ARE-1 and that of corresponding shipping bills. The department has raised the objection to this regard and had filed an appeal before the appellate authority on the said ground. Under the circumstances, the applicants were obligated to submit the corroborative documents for arriving at the factual position in the matter. It is found that the appellate authority had noticed the irregularities in the Daily Stock Account maintained

by the applicants and thus allowed the appeal filed by the department on this ground.

10.3. It is further observed that the applicant had exported notified goods 'Goa 1000 Gutka 2.00 Gms MRP 1.50' and had submitted the copy of the Daily Stock Account for January to May without indicating the year. Besides some of the pages of the DSA bore serial numbers and some were without serial number and the description of the goods were also at a variance. The applicant has made only superficial attempts to explain the difference in the dates on the ARE1 and to justify the manner in which they have maintained their daily stock account. Before analysing the facts, it would be pertinent to keep in sight the objective of the legislature in requiring manufacturers to maintain daily stock account in the era of self assessment. The entire system of self assessment bases its faith in the assessee. There is no day to day interference of the Department in the working of a manufacturer assessee. Therefore, the Department is entirely dependent upon the records maintained by the assessee manufacturer to assess the central excise duty due to the exchequer. The records maintained by the assessee manufacturer are a crucial cog in the era of self assessment. The work flow from the point of receipt of duty paid inputs/inputs procured without payment of duty, the credit utilised on such inputs and capital goods, the quantity of inputs utilised for manufacture, the quantity of inputs used up in the manufacture of final products, the quantity of inputs present in work in progress products and finally the quantity of goods manufactured by the assessee manufacturer is documented by the assessee himself. These records enable the Department to ascertain whether the revenue due to the government has correctly been paid. It is towards this end that the requirements of maintenance of records by the assessee^s have been prescribed in the statute and the rules. Hence, this should be the milieu in which the provisions for maintaining daily stock account must be looked at.

10.4 The text of Rule 10 of the CER, 2002 which has been made applicable to the PMPM Rules, 2008 by Rule 18 thereof is reproduced below.

“Rule 10 Daily stock account –

- (1) *Every assessee shall maintain proper records, on a daily basis, in a legible manner indicating the particulars regarding description of the goods produced or manufactured, opening balance, quantity produced or manufactured, inventory of goods, quantity removed, assessable value, the amount of duty payable and particulars regarding amount of duty actually paid.”*

The rule firstly requires that the assessee is to maintain proper records on a daily basis and in a legible manner. The words “proper records” finding mention in the rule have a definite purpose. They place upon the assessee the responsibility of maintaining records accurately and in such a manner that the Department is able to get a full picture of the manufacturing activity being carried out. Going further, the rule requires the assessee to record the description of the goods on a daily basis, giving details of the entire gamut of the quantity, quality, inventory etc, of each and every variety of the product. The rule also requires the assessee to maintain an “inventory of goods”. The word “inventory” means a detailed list of all things. In layman’s terms all useful particulars which have a bearing on the valuation, duty liability of the manufactured goods must be recorded in the daily stock register. From the Central Excise point of view, a detailed list would be one where one is able to comprehend the measure of a particular manufactured goods; viz. in actual physical terms in a standard of weight or measure. Needless to say, this view would be of particular relevance insofar as evasion prone commodities like “gutkha” are concerned. In the absence of Daily Stock Account being maintained by the applicant or not containing any details as prescribed, ascertaining the inventory would be an impossibility and would serve no useful purpose.

10.5. The use of these three sets of words in Rule 10 of the CER, 2002 should be enough to signify the importance attached by the rule to the detail in which the daily stock register is required to be maintained. An interpretation which renders words in a statute to be superfluous cannot be accepted. The contention of the applicant that maintenance of the daily stock account register is not a mandatory requirement for sanction of rebate defeats the very purpose of the rule and is an absurdity. Surely such an interpretation of the rule prescribing maintenance of daily stock account would render it redundant. Therefore, Government strongly disapproves of this contention of the applicant as they are manufacturing gutkha in packages of various sizes/weights/brands/identity/colours. In the absence of daily entries in the Daily Stock Account register as envisaged in the Rules, the claim of clearance of the said product on payment of duty is far-fetched.

10.6 The non-maintenance of Daily Stock Account Register by itself implies that the applicant has not manufactured the said exported notified goods. In view of above, it is found that there is no correlation of goods exported to that of duty discharged by the applicant. As such, Government holds that the rebate of duty on goods claimed to have been exported cannot be determined and granted in the instant case as rightly held by the appellate authority.

10.7. With regard to the assertion made by the applicant that the goods were verified by the Customs Officers at the port of export, samples were drawn and stuffed in containers under customs supervision etc., Government notes that the Customs Officers could not have halted the export. It is an admitted fact that the applicant had not followed the procedures prescribed under PMPM Rule, 2008 and therefore the essential requirement of Rule 18 of the CER, 2002 read with Notification No. 32/2008-CE(NT) dated 28.08.2008 and Notification No. 19/2004-CE(NT) dated 06.09.2004 of co-relating the duty paid goods

cleared from the factory of manufacturer with the exported goods has not been adhered to. The fact whether the goods were duty paid could not be verified by the jurisdictional Central Excise Officers due to mismatch in the dates of manufacture in various documents and due to non maintenance of Daily Stock Account register by the applicant.

11. As regards another ground of Revision Application, the Government finds that the applicants had procured the materials for the manufacture of notified goods against DFIA Licence and also exempted material from domestic market. In this regard, the provisions under Rule 14A of the PMPM Rules, 2008 are very clear. The Rule 14A reads as under :-

*"Rule 14A. Export without payment of duty.
Notwithstanding anything contained in these rules or in the Central Excise Rules, 2002 -
(i) no notified goods shall be exported without payment of duty; and
(ii) no material shall be removed without payment of duty from a factory or warehouse or any other premises for use in the manufacture or processing of notified goods which are exported out of India."*

11.1. On perusal of the above Rule, it is observed that the law specifically prohibits the procurement of any material for use in the manufacture or processing of notified goods which are exported out of India. The applicant had not denied the fact that they have procured the materials under DFIA scheme and / or from domestic market without payment of duty for use in the manufacture of notified goods exported by them. The Government, therefore, holds that being beneficiary of the export incentive in the form of the rebate, it is obligatory on the part of the applicant to prove the compliance of all the conditions of the law. Therefore, the onus to prove that they have not contravened provisions of Rule 14A(ii) lies on the applicant. The Government finds that the applicant has failed to comply with the requirements of Rule 14A(ii) of the PMPM Rules in as much as they have not been able to controvert

the factum of procurement of duty free material for manufacture of notified goods.

12. Government also observes that the reliance placed by the applicant on various case laws mentioned in para 6 supra is misplaced in as much as the applicants/appellants in those cases had substantially complied with the provisions under the relevant Notifications/Circulars whereas in the instant case the applicant has failed to follow the provisions under PMPM Rules, 2008 as rightly held by Commissioner (Appeals) in his Orders In Appeal. The applicant has failed to record the production of the said goods in the Daily Stock Account, utilised non-duty paid material for manufacture of notified goods and failed to substantiate their claim of clearance of duty paid goods from factory, The PMPM Rules, 2008 have been introduced specifically to curtail revenue leakage in respect of pan masala and gutkha which are evasion prone commodities. These rules are consistent with the provisions of the Central Excise Act, 1944 and the rules thereunder and therefore they carry statutory force. The applicant has failed to comply with the provisions of the PMPM Rules, 2008 and the notifications granting rebate. The ratio of the judgment of the Hon'ble High Court of Madras in the case of India Cements Ltd. vs. Union of India [2018(362) ELT 404(Mad)] would be relevant here. The relevant text is reproduced.

"27. Whenever a statute requires a particular thing to be done in a particular manner, it is a trite position of law that it should be done in that manner alone and not otherwise."

Since the applicant has failed to comply with the requirements of the PMPM Rules and the CEA, 1944 and the rules/notifications issued thereunder, the reliance placed on these case laws by the applicant is also misplaced.

13. In view of the above discussion, Government holds that the Appellate Authority has rightly concluded that the rebate claims are not admissible to the applicant under Rule 18 of Central Excise Rules, 2002 read with Notification No 19/2004-C.E (N.T) dated 06.09.2004. Government does not find any

infirmity in the Order No VAP-EXCUS-000-APP-337 & 338-13-14 dated 24.10.2013 passed by the Commissioner (Appeals), Central Excise, Vapi and, therefore, upholds the impugned order in appeal.

14. The Revision Application is dismissed being devoid of merit.

Shrawan
13/10/21
(SHRAWAN KUMAR)

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

To

M/s. Shree Meenakshi Food Products Pvt. Ltd.,
Survey No. 179/1/5, Kuvapada Industrial Estate,
Silli, Silvassa - 396 230

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ORDER NO. /2021-CX (WZ) /ASRA/MUMBAI

DATED 13.10.2021

Copy to :

1. The Commissioner of CGST & Central Excise, Daman, GST Bhavan, RCP Compound, Vapi - 396 191.
2. The Commissioner of GST & CX, Surat Appeals, 3rd floor, Magnus Building, Althan Canal Road, Near Atlanta Shopping Centre, Althan, Surat- 395 017.
3. Sr. P.S. to AS (RA), Mumbai.
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