REGISTERED
SPEED POST

F.No. 198/57/2010—R.A.
198/202/2010---R.A.
198/222-225/2011—-R.A.
198/258-259/2011----R.A.
195/275/2013—R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 6.7.18

Order No. 413-421/2018-CX dated 03-07-18 of the Government of India, passed by Shri R. P. Sharma, Principal Commissioner & Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Applications filed under section 35 EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. 243/CE/DLH/2009 dated 20/11/2009, 74/2010 dated 26/02/2010, 778-781/CE/D-II/2010 dated 29/12/2010, 40-41-CE/D-II/2011 dated 31/01/2011 and 117/CE/D-II/12 dated 18/12/2012 passed by Commissioner (Appeals), Central Excise, Delhi-II.

Applicant : 1. Commissioner of Central Excise, Delhi-II
2. M/s Ind Metal Extrusions Pvt. Ltd., Delhi

Respondent : 1. M/s Ind Metal Extrusions Pvt. Ltd., Delhi
2. Commissioner of Central Excise, Delhi-II

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ORDER

Eight Revision Applications Nos. 198/57/2010-RA dated 02/03/2010, 198/202/2010-RA dated 17/05/2010, 198/222-225/2011-RA dated 01/04/2011 and 198/258-259/2011-RA dated 29/04/2011 are filed by the Commissioner of Central Excise, Delhi-II (hereinafter referred to as applicant) against Orders-in-Appeal nos. 243/CE/DLH/2009 dated 20/11/2009, 74/2010 dated 26/02/2010, 778-781/CE/D-II/2010 dated 29/12/2010 and 40-41-CE/D-II/2011 dated 31/01/2011, passed by the Commissioner (Appeals), Central Excise, Delhi-II whereby the rebate of duty has been allowed to M/s Ind Metal Extrusions Pvt. Ltd., 138-139, Ghazipur, Near Bharat Petrol Pump, Delhi, a merchant exporter (hereinafter referred to as the respondent). Apart from Departmental applications, one Revision Application no. 195/275/13-RA dated 05/02/2013 is filed by the respondent also against the Order-in-Appeal no. 117/CE/D-II/12 dated 18/12/2012 whereby the rebate of duty is disallowed to them against the same facts and circumstances.

2. The brief facts leading to the present proceedings are that the respondent had procured the excisable goods from M/s Met Trade (India) ltd., Nathupur, M/s Met Trade (India) Ltd., Village Bheel Akbarpur, GT Road, Dadri, Gautam Budh Nagar(UP) and M/s Metal Extrusions, 154, SICOP Industrial Estate, Kathua (J&K) for home consumption on payment of duty. However subsequently these goods were claimed to have been exported without following the conditions and the procedure prescribed in notification no. 19/2004-CE (NT) dated 06/09/2004. The respondent claimed rebate of duty against such export of goods which were sanctioned in 22 cases against which the department filed appeals before the Commissioner (Appeals), Delhi. But later the original authority rejected the rebate claims of the respondent in some cases mainly for the reason that the identity of the exported goods could not be established with the duty paid goods procured by the respondent from the manufacturers as the goods had not been directly exported from the factory of the manufacturers, the exported goods were never examined by the central excise officers, the goods were not exported even under self-sealing procedure, the copy of ARE-I was not furnished to the jurisdictional Range Superintendents and even the duty payment was not confirmed by the jurisdictional authorities. The respondent filed appeals against those orders of the original authority whereby their rebate claims were rejected Thus the appeals were filed by both department and the respondent with regard to admissibility of the rebate of duty against export of the goods by the respondent. The Commissioner (Appeals) rejected all the departmental appeals

and allowed the respondent's all appeals, except one as mentioned above, by holding that since the export of duty paid goods is not in dispute and the respondent has committed some procedural errors only the rebate of duty is admissible to the respondent. However, the Commissioner (Appeals) has rejected the rebate of duty to the respondent subsequently in one Order-in-Appeal dated 18/12/2012 for the reason that the excisable goods were not exported directly from the factory of the manufacturer, the goods were not sealed by the Central Excise officers or by the manufacturers and thus the identity of the exported goods with the duty paid goods procured from the factory of the manufacturers could not be established. The applicant i.e. the department has filed the revision applications against the above mentioned Orders-in-Appeal mainly on the grounds that the mandatory condition stipulated in Para 2(a) of the notification no. 19/2004-CE (NT) dated 06/09/2004 which is that the excisable goods shall be exported after payment of duty directly from a factory or warehouse was not complied by the respondent, the procedure specified in Para 3(a)(iii) of notification 19/2004 which is that the merchant exporter other than those procuring the goods directly from the factory or warehouse shall export the goods sealed at the place of dispatch by the central excise officers was not followed, AREs-I to the jurisdictional Range Officers were not submitted for verification of payment of duty, the goods were neither examined by the central excise officers at the time of dispatch of the goods nor by the customs officers at the time of export of the goods, the CBEC circulars nos.427/61/98 CE dated 02/11/1998 and 294/10/97 CX dated 30/10/1997 relied upon by the Commissioner (Appeals) have no applicability in these cases as these were issued in the context of old Rule 12 of the Central Excise Rules, 1994, Rule 18 does not allow any waiver/relaxation of mandatory conditions and various decisions relied upon by the Commissioner (Appeals) are not relevant for the cases under consideration. The revision application by the respondent is filed mainly on the ground that they had exported those duty paid goods only which were procured from the factories of the manufacturers.

3. Personal hearing was granted on 28/05/2018 which was attended by Sh. Wanare Vikram Vijay, Assistant Commissioner, on behalf of the applicant who mainly reiterated the grounds pleaded in their above revision applications. However, no one appeared for the respondent and no request for any personal hearing is received from them. But to honour cannon of natural justice, another date of hearing was offered to the respondent on 20/06/2018. But they failed to attend the hearing on 20/06/2018 also and in fact did not give any response in the matter from which it is clear that the respondent is not interested in personal

hearing. Hence the revision applications are taken up for decision on the basis of available records.

4. The government has examined the matter and has observed that the applicant has filed the revision applications under consideration mainly on the grounds that the identity of the exported goods and those cleared to the respondent for home consumption from the factories of the manufacturers cannot be established because the primary conditions and the procedures laid down in the notification 19/2004 dated 06/09/2004, as discussed above, were not followed. These fundamental charges of non-following of the mandatory conditions and procedures are not denied by the respondent also in their cross–objections dated 25/11/2011 and 02/05/2014 filed in reference to one revision application no.198/202/2010-RA dated 05/03/2010 or even during the personal hearing. Even the Commissioner (Appeals) has ominously avoided to deal with this core issue in his orders and instead digressed from this issue by over emphasizing that the respondent had fulfilled the material requirements as per Circular No. 428/61/98-CX dated 02/11/1998 and 294/10/1997-CX dated 30/10/1997 by diverting the goods from their depot to the port of export and by citing general observations of the courts and without examining the applicability of the relied upon decisions.

5. The rebate of duty on the exported goods is allowed under notification 19/2004-CE subject to the conditions, limitations and procedures specified in Para 2 and Para 3 thereof. While conditions and limitations are specified in Para 2, the procedure to be followed is specified in Para 3 of this notification and from the word "shall" used in each condition stipulated in Para 2(a) to 2(g) it is manifest that all the conditions and limitations mentioned in Para 2 are mandatory and non-negotiable. Further, a condition that the excisable goods shall be exported after payment of duty directly from a factory or warehouse is prescribed on top of all the conditions in Para 2(a) and thus this condition is primary for claiming the rebate of duty. Similarly the procedure relating to sealing of goods and examination at the place of dispatch and export specified in Para 3(a)(i) and (iii) is also very significant as per which the manufacturer-exporters and merchant-exporters who procure and export the goods directly from factory or warehouse have been given the option of exporting the goods sealed at the place of dispatch by the central excise officers or under self-sealing. Thus when the respondent intended to export the goods from its trading premises, other than the factory or warehouse of three manufacturers at Nathupur, Gautam Budh Nagar and Kathua, sealing of export goods at the time of dispatch of the goods was compulsory to avail the rebate of duty. But this procedure was undoubtedly flouted. The essence of the above discussed

conditions specified in Para 2(a) and the procedures stipulated in Para(3)(i) and (iii), is undoubtedly that the rebate of duty, which is meant for genuine exports only, should be granted only after establishing the identity of the duty paid goods cleared from the factory with the exported goods and to avoid misuse of rebate of duty scheme by the unscrupulous exporters which can be possible only if the above conditions and the procedures are followed. While applying the above discussed conditions and procedures in the present cases, there is no dispute that the goods were originally procured by the respondent from the 3 manufacturers at Nathupur, Gautam Budh Nagar and Kathua for home consumption and accordingly there was no question of clearance of these goods under ARE-I procedure under the supervision of the central excise or the self-sealing of the manufacturer. The goods were undoubtedly procured by the respondent from the manufacturers for home consumption and the same had become akin to the market procured goods and the identity of the goods cleared by the manufacturer to the respondent had been lost completely. Therefore, the sealing of such goods by the central excise officers before export was pre-requisite to establish the identity of the duty paid exported goods. But it was not followed in these cases. Therefore, mere preparation of ARE-I without following the above procedure did not carry any meaning as the identity of the exported goods with the goods cleared from the manufacturers cannot be established on such AREs-I which were prepared by the Merchant Exporters without involving even the manufacturers. Besides above, even the AREs-I prepared by the respondent were not endorsed to the Range Officers to enable him to verify the payment of duty and the genuineness of the exported goods even when it is mandated in the Notification that the Triplicate Copy of ARE-I shall be sent to the Range Superintendent within 24 hours from the clearance of goods for export. Thus the respondent did not take any initiative so as to show that only the duty paid goods procured from the manufacturers were exported by them. On the contrary, non-observance of the conditions and the procedures of notification 19/2004 sufficiently demonstrates that they themselves were not convinced about genuineness of their exports. The Commissioner (Appeals) has conveniently side-tracked this obvious non-observance of the above discussed conditions and has hastily concluded that the respondent substantially fulfilled the requirement of the above mentioned two CBEC's circulars. The Government strongly disagrees with this view of the Commissioner (Appeals) first because the CBEC's circulars cannot prevail over the statutory condition of a rebate governing notification no. 19/2004 and secondly the two circulars relied upon in order-in-appeal pertain to the period much before enacting of notification no. 19/2004. This fact was accepted by the respondent also before the Commissioner

(Appeals) in as much as it was pleaded in their appeals that the two circulars were issued earlier in context of notification no. 41/1994-CE. Even the Trade Notice No. 10/2004 dated 03/08/2004 issued by Commissioner of Central Excise, Tirunelveli, as relied upon by the Commissioner (Appeals) in his order does not have any relevance for the same reason as the conditions and procedures stipulated in statutory notification cannot be diluted at the level of Commissioner. Moreover, it was issued just to facilitate the export of goods by improving the administrative mechanism in the ICDs and CFSs in the Commissionerate and not to over-ride the mandatory conditions of the notification. Even inspection/examination of the goods by the Customs officers cannot be considered as a basis for establishing the identity of the exported goods with the duty paid goods procured from the manufacturers since the customs officers did not have any document like ARE-I for clearance of the goods from the factory or warehouse sealed by the central excise officers or by the responsible officials of the manufacturers. Thus, while Customs Officer's endorsement on the ARE-I prepared by the respondent can only indicate that the goods were exported, it cannot be the basis for drawing a conclusion that the goods cleared for home consumption by the manufacturers were ultimately exported by the respondent. Further as elaborated above, the above discussed conditions and procedures are manifestly not of just technical nature as claimed by the respondent and Commissioner (Appeals) and thus not condonable. Therefore, the government agrees with the applicant's contention that contravention of the mandatory conditions stipulated in Para (2) cannot be waived or relaxed under Rule 18 of Central Excise Rules, 2002. Since the present matter is clearly regarding not establishing the identity of the exported goods with the duty paid goods cleared from the manufacturers and not mere non-observance of some of the technical procedures, the Commissioner (Appeals)'s heavy reliance on Government of India's orders like M/s Cotfab Exports [2006(2005)ELT 1207], M/s Allansons Ltd. [1999(1110 ELT 295(GOI)], M/s Krishna Filaments Ltd. [2001(131)ELT 726(GOI)], M/s Indo Textiles (P) Ltd.[1998(97)ELT 550(GOI)], M/s Barot Exports [2006(203)ELT 321] and M/s Modern Process Printers [2006(204)ELT 632(GOI)]is completely misplaced. Further, his reference to several decisions of the Apex Court such as UOI Vs Suksha International [1989(29) ELT 503], UOI Vs Wood papers[1990(47)ELT 500(SC)] and CCE Vs M/s Himalayan Co. Op. Milk Products Union Ltd.[2000(201)ELT 327(SC)] are also found to be of no relevance as in these decisions only general principles such as rules and procedures should not be the mistress of justice, interpretation unduly restricting the scope of beneficial provisions is to be avoided and the purpose behind exemption notifications

should not be unreasonably denied are laid down in peculiar context of each case. But in none of these decisions it is held that in spite of not establishing the identity of the exported goods with the duty paid goods cleared from the factory of the manufacturer and non-following of the mandatory statutory conditions, rebate of duty can be granted in respect of manipulated exports.

6. In view of the above detailed discussion, the government is fully convinced that the Commissioner (Appeals) has not appreciated the true facts, the real spirit and the text of the notification 19/2004 and gross violations of the statutory conditions by the respondent while passing the first 8 Orders-in-Appeal as mentioned in the opening Para of this order and the same have been rightly accepted subsequently in the 9th Order-in-Appeal dated 18/12/2012. Accordingly the respondent's claim in their revision application dated 05/02/2013 and in their replies dated 25/11/2011 and 02/05/2014 furnished in reference to the Department's revision applications that they have exported the duty paid goods only which were cleared from the factory of the manufacturer cannot be accepted.

7. In view of the above detailed discussions, the 8 Orders-in Appeal passed against the revenue are set aside, the 9th Order-in-Appeal no.117/CE/D-II/12 dated 18/12/2012 allowing departmental appeal is upheld, all departmental revision applications are allowed and the revision application dated 05/02/2013 of M/s Ind Metal Extrusions Pvt. Ltd. is rejected.

3.7.18

(R. P. Sharma)
Additional Secretary to the Government of India

1. The Principal Commissioner of CGST(East)
   CR Building, IP Estate, New Delhi-110109.
2. M/s Ind Metal Extrusions Pvt. Ltd.
   138-139, Ghazipur,
   Near Bharat Petroleum Pump,
   Delhi-110 096

G.O.I. Order No. 413 – 421 /18-Cx dated 03-7-2018

Copy to:-

1. Commissioner of Central Excise (Appeals), Delhi-II, IP Estate, New Delhi.
2. PA to AS(Revision Application)

ATTESTED
3-7-18
(Nirmala Devi)
Section Officer (R.A.)