REGISTERED
SPEED POST

F.No.198/260-264/11-RA
F.No.195/1099-1100/11-RA
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. 432-438/18-Cx dated 5-7-.2018 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI RAJPAL SHARMA, ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Applications filed under section 35EE of Central Excise Act, 1944 against the Orders-in-Appeal No. 27-31/CE/D-11/2011 dated 13.01.2011 and 342-343/CE/D-4/2011 dated 02.11.2011, passed by the Commissioner (Appeals), Delhi-II.

APPLICANT :(i) The Commissioner of Central Goods & Service Tax (Delhi East) for R.A. No. 198/260-264/11
(ii) M/s Met Trade India Ltd. for R.A. No. 195/1099-1100/11-RA

RESPONDENT :(i) M/s Met Trade India Ltd. for R.A. No. R.A. No. 198/260-264/11
(ii) The Commissioner of Central Goods & Service Tax (Delhi East) for 195/1099-1100/11-RA

ORDER

Revision Applications No. 198/260-264/11 dated 15.04.2011 have been filed by the Deputy Commissioner (Tech), Central Excise, Delhi-II (hereinafter referred to as the applicant) against Orders-In-Appeal No. 27-31/CE/D-11/2011 dated 13.01.2011, passed by the Commissioner (Appeals), Delhi-II, whereby the applicant's appeals filed against the orders of the of the original adjudicating authority allowing rebate claims of M/s Met Trade (I) Ltd. (hereinafter referred to as the respondent) were rejected. Apart from Departmental applications two Revision Applications No. 195/1099-1100/11-RA dated 02.11.2011 have been filed by the respondent also against the Orders-in-Appeal No. 342-343/CE/D-4/2011 dated 26.09.2011 whereby the order in original allowing rebate of duty to the respondent have been set aside against the same facts and the 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, 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 of Rs. 90720280/- and Rs. 46916129 against such export of goods which were sanctioned by the original sanctioning authority against which the department filed appeals before the Commissioner (Appeals), Delhi. The Commissioner (Appeals) vide his order dated 13.01.2011 rejected the departmental appeals 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, later on the Commissioner (Appeals) vide his order 26.09.2011 set aside orders of the original sanctioning authority allowing rebate of duty to the respondent 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 manufacturer 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. On the other had the revision applications are filed by the respondent 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 held on 14.06.2018 and Sh. Wanere Vikram Vijay, Assistant Commissioner (CGST Div-Mayur Vihar), appeared for the department which is both applicant and respondent in the abovesaid Revision Application. He pleaded that their Revision Application should be allowed, the party's Revision Application be rejected and the Order-in-Appeal dated 14.01.2011 should be set aside for the detailed reasons given in their Revision Application. However, nobody appeared on behalf of M/s Met Trade India Ltd. who are also both applicant and respondent in this case on the said date and even earlier on 24.05.2018 when hearing was fixed in this case. No

request from M/s Met Trade India Ltd. was also received for any other date of hearing from which it is implicit that they are not interested in availing the hearing. Hence, this matter is taken up for a decision on the basis of the available records.

4. The government has examined the matter and it is observed that the applicant has filed the revision applications under consideration mainly on the grounds that the identity of the exported goods with those cleared to the respondent for home consumption from the factory of the manufacturer cannot be established because the primary conditions and the procedures laid down in the notification 19/2004 dated 06.09.2004 were not followed. In addition, it is also stated that the respondent wrongly classified the sputtering targets under Subheading 85439090 and the same is classifiable under subheading 71159090 for which no excise duty was payable. However, it is found that this issue regarding wrong classification of the goods is raised for the first time in Revision Application only and the applicant had never advanced this argument before the original adjudicating authority and the first appellate authority. Moreover, the issue of classification cannot be agitated at the time of consideration of rebate claims of the merchant exporter and the same could be considered by the jurisdictional authority of the manufacturer only who never questioned the classification and rather accepted duty payment as per sub-heading 85439090. As regards other grounds of revision as mentioned above, it is evident that *these fundamental charges of non-following of the mandatory conditions and procedures are not denied by the respondent also by filing the cross-objections.* Even the Commissioner (Appeals) has ominously avoided to deal with this core issue in his orders and digressed from the issue by emphasizing that the respondent 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 the manufacturer, 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 manufacturer at Nathupur 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. After these goods had been cleared to the respondent for home consumption, these goods 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 Exporter only 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) in his order dated 13.01.2011 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. 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 manufacturer 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 Orders-in-Appeal Nos. 27-31/CE/D-11/2011 dated 13.01.2011 as mentioned in the opening Para of this order and the same have been rightly accepted subsequently in the Orders-in-Appeal Nos. 342-343/CE/D-4/2011 dated 26.09.2011. Accordingly, the respondent's claim in their revision application dated 02.11.2011 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 Orders-in Appeal Nos.27-31/CE/D-11/2011 dated 13.01.2011 passed against the revenue are set aside, the Orders-in-Appeal Nos.342-343/CE/D-4/2011 dated 26.09.2011 allowing departmental appeal is upheld, all departmental revision applications are allowed and the revision applications filed by M/s Met Trade (I) Ltd. are rejected.

5.7.18

(R. P. SHARMA)
ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

The Commissioner of Central Goods & Service Tax
East Delhi, C.R. Building, IP Estate,
New Delhi-110 109

ORDER NO.432-438/18-Cx dated 5-7-2018

OR.No – 432-438/18-Cx dt. 5-7-18

Copy to:-

1. M/s Met Trade India Ltd. 138-139, Ghaziabad, Near Bharat Petrol Pump, Delhi-110 096.
2. The Commissioner Central Excise (Appeals) Central Excise Delhi-II, C.R. Building, I.P. Estate, New Delhi.
3. The Deputy Commissioner (Tech), Central Excise Commissionerate Delhi-II, C.R. Building, I.P. Estate, New Delhi.
4. PS to AS(RA)
5. Guard File.

ATTESTED
5.7.2018
(Debjit Banerjee)
STO (REVISION APPLICATION)