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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. 195/16/14-RA/4827 Date of Issue: 04.11.19

ORDER NO. 43 /2019-CX (WZ) /ASRA/Mumbai DATED 16.09. 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 PSL Tex-Styles Pvt. Ltd. Mumbai
Respondent	: Commissioner of Central Excise, Thane-I
Subject	: Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. M-I/RKS/93/2011 dated 14.03.2011 passed by the Commissioner (Appeals) Central Excise, Mumbai-I.

ORDER

This Revision Application has been filed by PSL Tex-Styles Pvt. Ltd. Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. M-I/RKS/93/2011 dated 14.03.2011 passed by the Commissioner (Appeals) Central Excise, Mumbai-I.

2. Brief facts of the case are that the applicant is merchant exporter and had filed rebate claims in respect of duty paid goods manufactured by M/s Anant Systex Pvt. Ltd., and M/s Janki Corporation limited respectively falling under the jurisdiction of Division-Bhilwara of Jaipur-II Commissionerate and M/s Resham Overseas, Mumbai amounting to Rs.5,87,775/- (Rupees Five Lakh Eighty Seven thousand Seven Hundred Seventy Five Only). The jurisdictional Assistant Commissioner (Rebate) Central Excise, Mumbai-I vide Order in original No.239/R/05 dated 25.11.2005 sanctioned the rebate claims fully, on the basis of findings that as certification was issued by the Customs Officer on the original and duplicate copies of ARE-1s, the goods were actually exported and accepted the duty paid character of goods on the basis of certification issued by the jurisdictional Range Superintendent on the triplicate copy of ARE-1.

3. The said Order in Original dated 25.11.2005 was reviewed by the Commissioner, Central Excise, Mumbai-I Commissioner and appeal was filed before Commissioner (Appeals) Central Excise, Mumbai- -I on the following grounds :-

a) that on scrutiny of the claims, it was observed that in respect of goods cleared under ARE-1 No.18 dated 20.06.05, and Shipping Bill No. 5398469 dated 20.6.05, the goods exported have been described on the ARE-1 as 'Dyed fabrics made out of spun yarn from Man Made Fibre and Man Made Filament yarn with or without metallic yarn", whereas the description and composition shown on the relevant Shipping Bill, Export invoice, Bill of Lading and the packing list did not tally.

b) that the assessable value as shown In the said ARE-I is Rs. 5,79,455.65 whereas in the Shipping Bill No. 5398469 dated 20.06.05, the FOB value in Indian rupees is shown as Rs. 5,12,646.26, which is less than the assessable value. Therefore, the goods exported by M/s PSL Tex Styles P. Ltd., as detailed in the ARE-1 No.18/05-06 dated. 20.6.2005 against the Shipping Bill No 5398469 dated 20.06.05, involving duty amount of Rs.47,283.66 cannot be said to be the goods cleared under said Shipping Bill, as detailed above.

3. Commissioner (Appeals) Central Excise, Mumbai-I vide Order-in-Appeal No. M-I/RKS/93/2011 dated 14.03.2011 observed that :

- *the description of the goods as mentioned in ARE-1 No.18 dated 20.06.2005 was "Dyed fabrics made out of spun yarn from Man Made Fibre and Man Made Filament yarn with or without metalige yarn", whereas the same has been mentioned as "Dyed Poly. Visc. Blended Fabric (34% poly. staple fibre/ 19% viscose staple fibre in the Shipping Bill. Further, the description of the goods in the Export invoice - has been shown as "Dyed Polyester Viscose Blended Fabrics (34%polyester staple fibre/ 19% viscose staple Fibre/47% Polyester Filament Yarn". Similarly, description in packing list has been shown as "Fine Quality 55%Wool Touch 45% cosmos and in the Bill of Lading as "Polyester Viscose Twill Woolman Suiting 58" x 18 to 30 yards". I therefore find that the description of the goods in all the documents i.e. Shipping Bill, Export Invoice, Packing list as well as Bill of Lading, does not tally with the goods mentioned in the ARE-1. Further, there is also difference in the assessable value as shown in ARE-1 and Shipping Bill.*

In view of the aforesaid mismatch in description of goods, Commissioner (Appeals) agreed with the contentions of the Appellant department that since the description of the goods exported by the respondent-assessee as detailed in the ARE 1 No.18/05-06 dated. 20.6.2005 did not match with the description of goods mentioned in the Shipping Bill No. 5398469 dated 20.06.05 and other documents such as Export Invoice, Packing list & Bill of Lading, the same cannot be said to be the goods which

were cleared under said ARE-1 dated 20-06-2005 and arrived at a conclusion that rebate amounting to Rs.47,283.66 in respect of the said ARE-1 had been wrongly sanctioned to the respondent-assessee. Accordingly, Commissioner (Appeals) vide impugned Order set aside the Order-in-Original No. 239/R/05, dated 25.11.2005, passed by the Assistant Commissioner (Rebate) Central Excise, Mumbai-1 Commissionerate, to the extent of sanction of rebate claim amounting to Rs.47,283.66 (Rupees Forty Seven Thousand Two Hundred and Eighty Three and Paise Sixty Six only) in respect of ARE-1 No.18 dated 20-06-2005 and allowed the appeal filed by the appellant department with consequential relief.

5. Being aggrieved with the impugned order in appeal, the applicant filed this revision application under Section 35EE of the Central Excise Act, 1944 before Central Government on the various grounds mentioned therein.

6. There was a delay of 1005 days in filing the Revision Application by the applicant and as there is no provision under Section 35EE of the Central Excise Act, 1944 to condone the delay beyond the further condonable period of three months, the Revisionary Authority vide GOI Order No. 422/2018-CX(WZ)/ASRA/Mumbai dated 30.11.2018 (issued on 20.12.2018) dismissed the Revision Application as time barred.

7. Being aggrieved by the said Revision Order, the applicant filed Writ Petition 1768 of 2019 before Hon'ble Bombay High Court challenging the afore stated Revision Order passed by the Principal Commissioner & Ex-Officio Additional Secretary to Government of India, Mumbai.

8. Vide order dated 26.07.2019 Hon'ble Bombay High Court set aside GOI Order No. 422/2018-CX(WZ)/ASRA/Mumbai dated 30.11.2018 (issued on 20.12.2018) and restored the Revision Application before Principal Commissioner & Ex-Officio Additional Secretary to Government of India, Mumbai for the consideration on merits, holding that there was no delay on the part of the applicant in filing the said Revision Application.

9. Accordingly, Revision Application No. 195/16/14-RA is taken up for adjudication on merits and a personal hearing in the matter was fixed on 05.09.2019. However, the applicant vide letter dated 31.08.2019 submitted that facts of the case are clearly mentioned in their Revision Application and their written submissions dated 31.08.2019 and they do not have anything further to submit in the in the matter and requested to decide the matter on the merits of the case as explained in the Revision Application and written submissions dated 31.08.2019.

10. In their further submissions dated 31.08.2019, the applicant contended as under :-

10.1 the Commissioner (Appeals) rejected the rebate claim of to the extent of Rs.47,283.66 on the one ground that the goods cleared under ARE 1 No.18 dated 20.06.2005, and Shipping Bill No. 5398469 dated 20.06.2005, the goods exported have been described on the ARE 1 as Dyed fabrics made out of spun yarn from Man Made Fibre and Man Made Filament yarn with or without metallic yarn, whereas the description and composition shown on the relevant shipping bill, export invoice, Bill of Lading and the packing list and the same does not tally. To the above findings they submit as under:

- while preparing the Customs invoice No. PSL/4127/2005- 06 dtd.20.06.2006, description of the goods was erroneously copied from previous invoice. As regards the description in Bill of Lading, the same has been mentioned as per the L/C terms and conditions.
- Actually this is only a clerical mistake which has happened unknowingly through oversight by the person who has prepared it. This mistake needs to be condoned.

10.2 the Commissioner (Appeals) rejected the rebate claim of Rs.47,283.66 on the ground that the FOB value is shown as Rs. 5,12,646.26 and whereas the assessable value shown on the ARE1 is Rs.5,79,455.65. To the above findings, they submit as under:

- as regards assessable value as seen different in ARE-1 and Shipping Bill, they submit that the assessable value in ARE-1

includes cost, manufacturing cost and profit which amounts to more than export value, whereas, for shipping bill they have not considered export refund and other incentive.

- o without prejudice to what is stated above at the most the amount of duty difference between the FOB value and Assessable value could have been deducted instead of full amount of duty paid under the Central Excise Invoice has been rejected in the impugned OIA.

It is an internationally accepted principle that goods to be exported out of a country are relieved of the duties borned by them at various stages of their manufacture in order to make them compete in the international market. The most widely accepted method of relieving such goods of the said burden is the scheme of rebate. Thus in order to make Indian goods compete in the International market, the tax element in the exporter's cost is refunded to him through the system of rebate. The Applicants have claimed the said amount of duty paid on the goods exported and paid at the time of clearance for export. This is not a kind of benefit given to the exporter. This is only a reimbursement. Therefore, a genuine rebate claim should not be denied only on silly technical grounds as is done in the present case. This is nothing but discouraging export. 3 The Applicants state and submit that these are same goods and it is certified by the central excise officers as well as Customs authorities. The AREI No. is shown on the Shipping Bill and the S.B. No. shown on the AREI. Both these entries are certified by the Customs Authorities. When the physical export is certified, even if there is any clerical mistakes are there this needs to be condoned in the interest of justice. Hon. Joint Secretary, R.A. G.O.I. has passed many order in respect of condonation of procedural mistakes if any in the interest of export, Applicants rely on the same In this connection Applicants rely on CBEC Circular No. 81/81/94-CX dated 25.11.1994.

10.3 the Honorable Supreme Court of India have confirmed repeatedly that no genuine claim should be denied on Procedural lapses / Technical grounds, under the following judgments:-

i. Union of India Vs. A V Narasimhalu 1983 (13) ELT 1534 (SC).

ii. Mangalore Chemical and Fertilizers Ltd.Vs.Dy.Commissioner1991 (51)ELT 437(SC)

iii. Suksha International Vs. Union of India 1993 (39) ELT 503 (SC).

iv. Formica India Vs. Collector of Central Excise 1995 (77) ELT 51 (SC). The impugned order should be set aside on this ground alone.

10.4 the Rebate / drawback etc. are export oriented schemes and unduly restricted and technical interpretation of procedure etc is to be avoided in order not to defeat the very purpose of such scheme which serve as export incentive to boost export and earned foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical breaches. In fact, as regards rebate specifically, it is now a title law that the procedural infraction of Notifications, circulars etc are to be condoned if export have really taken place, and the law is settled now that substantive benefits can't be denied for procedural lapse. They rely on following decisions of Government of India/Tribunal in a catena of orders, including Sanket Industries Ltd 2011(268) E.L.T.125(GOI), Barot Exports 2006(203) E.L.T.321(GOI), Modern Process Printers-2006 (204) ELT 632 (GOI), Krishna Filaments Ltd 2001(131) ELT 726 (GOI), Creative Mobus 2003(58) R.L.T. 111 (GOD, Ikea Trading India Ltd 2003(169) E.L.T.359. (GOI), GTC Exports Ltd.-1994(74) ELT 468 (G01), Birla VXL Ltd.,1998 (99) E.L.T. 387 (Tri.), Alfa Garments 1996(86) E.L.T.600 (Tri.), T.I Cycles -1993 (66) ELT 497 (Tri.) and Atma Tube Products, 1998 (103) E.L.T.270 (Tri) upheld that 'if the goods have actually been exported then all procedural conditions can be waived'. In the present case said goods have actually been exported and this is undisputed fact moreover all substantial requirements have been fulfilled. The Impugned order should be set aside on this ground.

10.5 there are many decisions where it is held that procedural irregularities are condonable when the "factum of export is not disputed". In the instant case also there has never been a dispute about the export of goods. However, the rebate has been sought to be denied on the basis of condonable procedural irregularities. The Government of India in its revisionary jurisdiction has also held that the procedural laps are condonable in interest of export promotion and rebate claims

have been allowed. The Applicant seeks to place reliance on the following decisions of the Government of India

a) 2001 (131) ELT 726 (GOI) IN RE: M/s. Krishna Filaments Ltd.
b) 1999 (111) ELT 295 (GOI) IN RE: M/s. Allanasons.
c) 1994 (074) ELT 468 (GOI) IN RE: M/s. GTC Exports Limited.
d) 1991 (054) ELT 319 (GOI) IN RE M/s. MRF Ltd.
e) 2000 (115) ELT 855 (GOI) IN RE M/s Mandhana Industries Ltd.

In view of these submissions, the applicant prayed to allow the Revision Application filed by them and to set aside impugned Order-in-Appeal No. M-I/RKS/93/2011 dated 14.03.2011 passed by the Commissioner (Appeals), Central Excise, Mumbai - I.

11. Government has carefully gone through the relevant case records available in case file, written submissions filed by the applicant and also perused the impugned Order-in-Original and Order-in-Appeal.

12. On perusal of records, Government observes that the rebate claims amounting to Rs.5,87,775/-(Rupees Five Lakh Eighty Seven thousand Seven Hundred Seventy Five Only) filed by the applicant were sanctioned fully by the original authority vide Order in original No.239/R/05 dated 25.11.2005. The said Order in Original dated 25.11.2005 was reviewed by the Commissioner, Central Excise, Mumbai-I Commissioner and appeal was filed before Commissioner (Appeals) Central Excise, Mumbai-I. Commissioner (Appeals) observed that the description of the goods exported by the respondent-assessee as detailed in the ARE 1 No.18/05-06 dated 20.6.2005 did not match with the description of goods mentioned in the Shipping Bill No. 5398469 dated 20.06.05 and other documents such as Export Invoice, Packing list & Bill of Lading and that the assessable value as shown in the said ARE-1 was Rs.5,79,455.65 whereas in the Shipping Bill No.5398469 dated 20.06.2005, the FOB value was shown as Rs.5,12,646.26 which was less than the assessable value. Therefore, the goods exported by the respondent-assessee as detailed in the ARE-1 No.18/05-06 dated 20.06.2005 against the Shipping Bill No. 5398469 dated 20.06.05 involving duty amount of Rs. Rs.47,283.66 (Rupees Forty Seven Thousand Two Hundred Eighty Three

and paise Sixty Six only) cannot be said to be the goods which were cleared under said ARE-1 dated 20-06-2005.

13. Accordingly, Commissioner (Appeals) vide impugned Order set aside the Order-in-Original No. 239/R/05, dated 25.11.2005, passed by the Assistant Commissioner (Rebate) Central Excise, Mumbai-I Commissionerate, to the extent of sanction of rebate claim amounting to Rs.47,283.66 (Rupees Forty Seven Thousand Two Hundred Eighty Three and paise Sixty Six only) in respect of ARE-1 No.18 dated 20-06-2005 and allowed the appeal filed by the appellant department with consequential relief.

14. Government further observes that the applicant in its Revision application as well as in submissions dated 31.08.2019 has contended that while preparing the Customs invoice No. PSL/4127/2005- 06 dtd.20.06.2005, description of the goods was erroneously copied from previous invoice and as regards the description in Bill of Lading, the same has been mentioned as per the L/C terms and conditions. Therefore, this was only a clerical mistake which had happened unknowingly through oversight by the person who had prepared it. This mistake needs to be condoned. As regards difference between assessable value in ARE-1 and corresponding Shipping Bill, the applicant submitted that the assessable value in ARE-1 included cost, manufacturing cost and profit which amounted to more-than export value, whereas, for shipping bill they-have not considered export refund and other incentive and at the most the amount of duty difference between the FOB value and Assessable value could have been deducted instead of full amount of duty paid under the Central Excise Invoice had been rejected in the impugned OIA.

15. While deciding a similar issue Government of India In Re.: Cotfab Exports - 2006 (205) E.L.T. 1027 (GOI) observed that :

> *"Export - Rebate - Discrepancies in particulars in documents - Goods held as not exported and excise duty demanded - Quality of goods, marks and numbers common in all documents - Export clearance verified by Range Superintendent - Endorsement in AR4 as to goods*

shipped under Customs Supervision - Contention of applicant that blended fabrics exported but description inadvertently noted as 100% Polyester Printed Fabrics accepted Procedural infractions to be condoned if exports had taken place. Fundamental requirement for rebate is manufacture and export Broad description tally with invoices, ARE-1 and shipping bills as also with other collateral evidences like purchase order and bank realization certificate - Demand not enforceable merely on account of difference in description in AR4s and shipping bills impugned order seeking duty on export goods set aside - Section 11A of Central Excise Act, 1944 - Rule 18 of Central Excise Rules, 2002. [paras 2.4, 5.1, 5.2, 5.3, 6, 7, 8, 9]"

In the referred judgment, goods were treated to have been exported, despite mismatch in the description of goods as given in ARE-I/Invoice and Shipping Bill relying on the certification by Customs Officer in Part-B of ARE-I that consignment (mentioned in ARE-I) was shipped under their supervision under Shipping Bill No.....(Shipping Bill No. was mentioned in ARE-I by Customs).

16. Government observes in the instant case that the original authority vide Order in original No.239/R/05 dated 25.11.2005 sanctioned the rebate claims fully, on the basis of findings that as certification was issued by the Customs Officer on the original and duplicate copies of ARE-1s, the goods were actually exported and accepted the duty paid character of goods on the basis of certification issued by the jurisdictional Range Superintendent on the triplicate copy of ARE-1.

17. Government further observes that it is not the case of the department that number of packages, gross weight, net weight, also did not tally alongwith the description of the goods exported. In the instant case, it is evident from the original authority's Order in Original dated 25.11.2005 that the Customs Officer has duly endorsed the original and duplicate copy of the ARE-1s, after satisfying himself about the fact that the goods intended for export are the same which were cleared on the relevant ARE-1s. There is no reason for not accepting said Customs certification.

18. In view of above circumstances, Government is of the considered opinion that what is compulsorily required here in the interest of justice is that the department should make positive efforts so as to confirm the basic ingredient of co-relatibility specifically when there is nothing on record to out rightly negate the claim of applicant that duty paid goods cleared vide ARE-1 No.18 dated 20-06-2005 were exported. Government, thus holds that duty paid goods have been exported in this case and rebate claim is admissible to the applicant. Here substantial requirement of law is fulfilled so the rebate cannot be denied for minor procedural infraction as held by Government of India in the case of Cotfab Exports reported in 2006 (205) E.L.T. 1027 (G.O.I.) referred supra.

19. As regards the assessable value shown in the said ARE-1 as Rs.5,79,455.65 and in the Shipping Bill No.5398469 dated 20.06.2005, the FOB value was shown as Rs.5,12,646.26, Government observes that the applicant is not liable to pay Central Excise duty on the CIF value of the goods but the Central Excise duty is to be paid on transaction value of the goods as prescribed under Section 4 of the Central Excise Act, 1944, as held in GOI Order No. 271/2005, dated 25-7-2005 in the case of CCE, Nagpur v. M/s. Bhagirth Textiles Ltd. reported in 2006 (202) E.L.T. 147 (GOI). Government is therefore, of the considered opinion that the rebate is admissible only on the duty paid on the transaction value of the goods as determined under Section 4 of the Central Excise Rules, and not on the excess amount paid on differential value not forming part of transaction value. From the Order in original No.239/R/05 dated 25.11.2005 passed by the original authority, it is not clear as to which amount out of Rs.5,79,455.65 and Rs.5,12,646.26 has been considered by the original authority for calculating / sanctioning the rebate. Therefore, the case is remanded back to the original authority for the limited purpose of determining the transaction value of exported goods under Section 4 of Central Excise Act, 1944 and to sanction the admissible rebate accordingly.

20. In the light of the discussion made above, the impugned order of the Commissioner (Appeals) is set aside and the matter is sent back to the original adjudicating authority for determining the applicable amount of rebate afresh in the light of what has been discussed above, after hearing both the sides.

21. The revision application is disposed of in terms of above.

22. So, ordered.

(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 43/2019-CX (WZ) /ASRA/Mumbai DATED 16.9.2019

To,

M/s PSL Tex-Styles Pvt. Ltd,
6/147, Mittal Ind Estate,
Andheri Kurla Road, Andheri (East),
Mumbai 400 059.p

Copy to:

1. The Commissioner of CGST & CX, Mumbai South, 13th Floor, Air India Building, Nariman Point, Mumbai – 400 021.
2. The Commissioner of CGST & CX, (Appeals-I), 9th Floor, Piramal Chambers, Jijibhoy lane, Lalbaug, Parel, Mumbai 400 012.
3. The Deputy / Assistant Commissioner, (Rebate) , CGST & CX, Mumbai South, Air India Building, Nariman Point, Mumbai – 400 021
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.