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F.No. 195/687/12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue 18/3/16

ORDER NO. 50/2016-CX DATED 11.03.2016 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT	:	Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against Order-in-Appeal No. US/236/RGD/2012 dated 16.4.12 passed by Commissioner of Central Excise (Appeals-II), Mumbai
APPLICANT	:	M/s USV Ltd., Mumbai
RESPONDENT	:	Commissioner of Central Excise , Customs & Service Tax, Raigad.

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ORDER

This revision application is filed by applicant M/s USV Ltd., Mumbai, against the Order-in-Appeal No.US/236/RGD/2012 dated 16.4.12 passed by the Commissioner of Central Excise (Appeals-II), Mumbai with regard to Order-in-Original No.540/11-12/Deputy Commissioner (Rebate)/Raigad dated 30.6.11 passed by the Deputy Commissioner of Central Excise (Rebate), Raigad.

2. M/s. USV Limited, Murnbai is merchant exporter, who had procured excisable goods from the manufacturer. The applicant exported the goods so procured from the manufacturer and filed following rebate claim as indicated below:

Sr.No.	RC-No	RC-Date	ARE-1 No.	ARE-1 Date	Amount Claimed
1	35597	29.03.2006	96	11.03.05	9276
2	35595	29.03.2006	97	11.03.05	40938
3	13336	31.07.2008	133	26.08.07	2004

The above mentioned claim could not be processed for the reason that the declaration at Sr. No.3 (a), (b) & (c) of AREs-1 were incomplete.

3. Being aggrieved by the said Order-in-Original applicant filed appeal before Commissioner (Appeals) who rejected the appeal and upheld impugned Order-in-Original.

4. Now, being aggrieved with the Order-in-Appeal, the applicant has filed this revision application before Central Government under Section 35 EE of Central Excise Act, 1944 mainly on the following grounds:

4.1 The Original Order to the extent-disallowing rebate of Rs 52,218/- was passed without giving any reasons for rebate claims at Sr no 2 and 3 for Rs 40,938/- and Rs 2004/- respectively, needs to be set aside as grossly violating the principles of natural justice. Thus it is erroneous and void-ab-intio to this effect, as being issued without any basis, liable to be set-aside to that extent.

4.2 As Original Order denies Rebate claim at Sr no (1) for Rs 9276/- for the reason firstly that foot note or ARE-1 was not striked out so as to know un exemption notification the claim was filed and secondly that duty payment confirmation was not furnished.

4.3 It is a fact that applicant's contract manufacturer had filed Form ARE-1 for removing the duty paid excisable goods for export to countries other than Nepal & Bhutan. This by itself means that applicants had filed rebate claim under Notification No.19/2004 CE (NT) dtd 6-9-2004, as amended. Merely not canceling the relevant portion in the certificate in ARE-1 should not be the reason for denying the

substantive export benefit for rectifiable procedural mistake. This is more so when no show cause notice was given and chance to rectify the mistake was denied.

4.4 Recently Joint Secretary in department of Revenue as Reversionary Authority in the case Sanket Industries Ltd. - 2011 (268) ELT 125 (GOI) 125 (GOI) ruled that benefit of export related scheme cannot be denied on ground of procedural infraction.

4.5 In view of above it is submitted that when export of excisable goods & duty payment thereon is supported with excise invoice not in dispute, merely non mentioning about non-availment of either Notification No.43/2001 CE(NT) dtd. 26.06.2001 and Notification No.41/2001 CE (NT) dtd 26.06.2001, should be the reason for rejecting the otherwise valid rebate claim. The said notifications otherwise provide for getting duty free inputs or rebate of duty paid on inputs used in manufacture of goods exported. In this case, excise duty was paid on final goods exported & rebate claim was of excise duty paid on final goods & not inputs. Further this mistake could have been rectified if an opportunity was given by the rebate authority. Thus had it been correctly mentioned in the first place, the rebate claim was allowable. In view of above judgment, the substantive benefit cannot be denied on rectifiable defects.

4.6 Further, when the duty payment was proved in form of Certified RG23 A Part II of the contract manufacturer & non dispute of export in toto, merely because Appellate Commissioner did not appreciate the bifurcation given to prove the exports by Sea & by Air from respective ARE-1. He should not have denied the rebate on this basis & on the basis that ARE-1 were lost without appreciating the Affidavit & undertaking given in this regards. The basis of denial was totally different from the basis taken by the adjudicating Authority in absence of any show cause notice. Thus the impugned order needs to be set aside.

5. Personal hearing was scheduled in this case on 03.08.2015 & 24.08.2015. None appeared for hearing. Applicant party vide letter dated 19.8.15 has stated that they have nothing further to add to this case and reiterated the submissions made in Revision Application.

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

7. Government observes that the original authority rejected the rebate claims filed by the applicant on the ground that the declaration given at Sr.No.3(a)(b) & (c) is incomplete. Commissioner (Appeals) upheld the impugned Order-in-Original. Now, the applicant has filed this Revision Application on grounds mentioned in para (4) above.

8. Government notes that the applicant's rebate claims were rejected on ground no incomplete declaration at Sr.No. 3(a)(b) & (c) of AREs-1. Commissioner (Appeals)

has discussed the factual aspects of all the AREs-1 and observed in relevant para as under:

> *"I have gone through the case records and considered the averments made in the appeal. In the instant case, the appellants had filed three refund claims showing the ARE-1 Nos. 96, 97 and 133 for removal of goods from the premises of M/s. Sterling Lab, Hosur, Tamil Nadu. The copy of ARE-1 No.96 dated 11.3.2005 submitted in the appeal shows the duty paid as Rs.18,552/-. The declaration in ARE-1 column nos.3 (a) (b) and (c) was not given. The duty paid was Rs.18,552/- and the rebate claimed was Rs.9,276/- on the ground that part of the consignment was exported through sea and part by Air. However, the certificate given on the back of ARE-I by the Customs Officer does not show the break- up of the quantities said to have been so exported. Similarly copy of ARE-1 No.97 dated 11.3.2005 does not contain the required declaration in column nos.3 (a) (b) and (c). The duty paid is shown as Rs.54,584/- and the rebate was claimed for Rs.40,938/-. The certificate given on the back of ARE-1 does not show the break-up of the quantities actually exported by sea/air as claimed. In ARE-1 No.96, out Of 9000 strips, 2000 strips are mentioned as free goods of no commercial value and in ARE-1 No. 97, out of 9600 packs, 1600 packs are mentioned as free goods of no commercial value. The rebate sanctioning authority in both ARE-1s is shown as Maritime Commissioner, Chowpatty."*

8.1 Commissioner (Appeals) has given detailed findings with regard to factual aspect of each AREs-1 and observed that there has been mismatch in details given in AREs-1 and Shipping Bill with regard to quantum of duty/quantity of goods. Such detailed factual findings have not been controverted in grounds of Revision Application by means of any factual submission, duly supported by any relevant documentary evidences. Under such circumstances, the conclusion of appellate authority, based on such incontrovertible factual observation required to be acceded to.

9. In view of above discussion, Government finds no infirmity in impugned Order-in-Appeal and hence upholds the same.

10. Revision Application is thus rejected being devoid of merits.

11. So, ordered.

(RIMJHIM PRASAD)
Joint Secretary to the Government of India

M/s USV Ltd.
BSD Marg, Govandi (East)
Mumbai-400088.

Attested

BHAGWAT P. SHARMA
OSD (R.A. WING)

ORDER NO. 50/2016-CX DATED 11.03.2016

Copy to:

1. The Commissioner of Central Excise Raigad, Commissionerate, Plot No.1 Sector-17, Khandeshwar, Navi Mumbai-410 206.

2. The Commissioner of Central Excise (Appeals), Mumbai Zone-II, 3rd Floor, C-24, Sector-E, Bandra Kurla Complex, Mumbai-400 051.

3. The Deputy Commissioner(Rebate), Central Excise Raigad, Maritime Commissionerate Raigad, Ground Floor, Kendriya Utpad Shulk Bhavan, Plot No.1 Sector-17, Khandeshwar, New Panvel-410 206.

4. PA to JS(RA)

5. Guard File.

6. Spare Copy

ATTESTED

(B.P. SHARMA)
OSD (Revision Application)

BHAGWAT P. SHARMA
OSD (R.A. WING)