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F.No.195/103-104/11-RA-Cx  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue...4/6/13.....

Order No. 506-507/2013-CX dated 03.06.13 of the Government of India,  
passed By Shri D. P. Singh, Joint 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 orders-in-appeal No. PIII/VM/242 to 243 /2010  
dated 01-10-2010 passed by Commissioner of Central Excise  
(Appeals), Pune-III.

Applicant : M/s. Shalimar Rexine India Ltd., Pune

Respondent : Commissioner of Central Excise, Pune-III

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ORDER

These revision applications are filed by the applicant M/s Shalimar Rexine India Ltd., Pune against orders-in-appeal No. PIII/VM/242 to 243 /2010 dated 01-10-2010 passed by the Commissioner of Central Excise (Appeals), Pune-III with respect to Orders-in-Original passed by the Asstt. Commissioner of Central Excise, Pune-III.

2. Brief facts of the case are that the applicants are manufacture of PVC coated leather. They filed rebate claims in respect of excisable goods exported under Rule 18 of the Central Excise Rules, 2002. Show Cause Notices were issued proposing rejection of the said rebate claims on the following grounds:

- (i) All the exports were effected under the DEEC Advance License No 3110014356 dtd. 06-02-2004 and the said Advance License No. was mentioned on all the shipping Bills, ARE 1s and Central Excise Invoices relating to the claims.
- (ii) SCN dtd. 11-01-2008 was issued by the Commissioner (Exports) JNCH alleging misuse of the said licenses issued under the DEEC Scheme. The applicant had imported the raw-material duty free under various Advance Licenses but the said raw materials were not utilized for the intended purpose i.e. the manufacture of the resultant products exported, hence the obligation under the Advance License were not fulfilled. The imported inputs were diverted to the local market and goods exported were of inferior quality. Standard Input Output Ratio Norms (SION), H268 and H270, for issue of Advance License for PVC leather cloth was not followed. The exported goods should have a coating weight of 1000 gms per sq. mtr. +/- 5%, however the testing of the samples revealed that all the PVC leather cloth exported were having a coating weight of less than 1000 gms /sq.mtr. and as such grounds were overvalued.

2.2. The original authority, however, sanctioned the rebate claim on the ground that the Show cause notice issued by the commissioner of Customs (Exports) JNCH, Nhava Sheva is in respect of diversion of goods imported duty free under DEEC Advance license Scheme and that the show cause notices issued in the impugned rebate claims is in respect of the duty paid on the goods which were exported, are on different footing and further that all the conditions prescribed under Notification 19/2004 CE (NT) dtd 06-09-2004 in terms of Rule 18 of the Central Excise Rules are satisfied.

3. Department reviewed impugned orders-in-original and filed appeals before Commissioner (Appeals) who decided the case in favour of department.

4. Being aggrieved by the impugned orders-in-appeal, the applicant has filed these revision applications under section 35EE of Central Excise Act, 1944 before Central Government on the following grounds.

4.1 The Commissioner (Appeals) has erred in accepting the department's contention and setting aside the orders-in-original on different footings which were not alleged, in both the show cause notices. The Departmental Appeal is on different footings, not mentioned in the original S.C.Ns. The Show cause notices issued by the A.C.C.E. were having different contraventions of the provisions/allegations. The S.C.N. issued by the Commissioner of Customs (Exports), Nhava Sheva dtd. 11.1.2008 was for demanding the duty portion forgone for imported raw materials believing without evidence that applicant has failed to complete the export obligations as per the SION Norms. The rebate claims were for the refunds of Central Excise duty paid by the applicant on exported goods manufactured and exported in the year 2005. Both the Show cause notices pertaining to impugned cases were issued for rejecting the rebates and were fully based on the theory of assumption/ presumption as the charges framed were about the exported goods which were not available during the investigations.

4.2 The documents such as that the Copies of A.R.E. 1, Shipping Bills, Bills of Lading were duly endorsed by proper authority. These were not at all considered and not accepted. The fact that till date none of these documents was proved false or wrong by department. No record of efforts/enquiry/investigation to support the allegation of the S.C.N., that export is not genuine has been pointed out / put up / produced before Comm. (A) even after five years from date of export. In fact the export is considered /treated to be complete in all aspect, when ship moves out of the territorial waters of India.

4.3 The allegation that the claimant has misused the DEEC advance license as the quality of the goods exported is not as per the specifications stated in the DEEC licence. This is totally wrong and incorrect. The coating of thousand grams per square meter is indicated and eligibility as per SION norms of R.M. required to be produced. The total quantity of export goods is calculated. But the buyer gives order of the products then this norms requires to vary, depending on buyers requirement and local market conditions. In such situation, applicants supplied product of lesser GSM. The total obligation to export quantity will proportionally increase under the licence. It is legally permissible. Hence there is no misuse or violation of DEEC Advance licence. It is not at all mandatory to export only thousand GSM Coated P.V.C. cloth. What is "Mis-Use" of the DEEC Licences has been circulated by the Ministry vide Circular No. 69/95 dtd. 19-06-95 issued vide F.No. 605/111/95-DBK. The present case cannot be termed as misuse. Therefore, the appellant has not misused the facility of advance licences under the scheme of D.E.E.C..

4.4 It is well settled law that the rebate claims shall not be rejected when all conditions as per the Notification governing the rebate are fulfilled by the claimant. If the conditions are not fulfilled then only claim can be rejected. In these cases, applicant

has fulfilled all the conditions of the Notification No. 19/2004 –C.E.(NT) dtd. 06-09-2004.

4.5 The Commissioner (A) has erred in his finding that applicant had not maintained the true and proper accounts of the imported materials and its consumption in the prescribed Proforma. In this regard, it is stated that applicant had filed rebate claims for getting refund of duty paid in the exported goods. Keeping proper account is not the requirement and condition prescribed under the Rule 18 of the Central Excise Rules, 2002, and there is no such condition in the Notification No. 19/2004 - C.E. (N.T.) dated 06-09-2004. The applicant submits that the show cause notices issued for rejection of the rebate claims do not contain the allegation of not maintaining the account of the imported duty free raw materials. Hence the Commissioner (A) has erred in his findings.

4.6 The applicant was not black listed any time at Dubai Port. This inference/finding of the Commissioner (A) is far from the truth and not correct. There is no documentary evidence brought forward by the Investigating Authority so far. The Show cause notice issued by the Commissioner of Customs (Exports), Nhava Sheva is on the different footings and same cannot be the basis of this appeal's finding. Further, the issue is not at all connected with the present rebate claims.

4.7 The finding that applicant has violated the Foreign Trade Policy is not correct. It is allegation / findings of the Commissioner (Appeals) is without any document / test report of the exported consignments claimed as rebate. Therefore, the finding arrived is without reasoning basis and hence not legal and proper. The assumption of the Commissioner (A) that the goods exported should be of only 1000gsm as per the SION norms is not correct. The finished exported goods even if of lesser coatings than the SION Norms, the quantity obligation to be exported will be increased as per the Quantity based Advance Licence. Therefore, there is not violation of the FTDR Policy.

Further, the goods exported are not prohibited goods under any law, being in force, hence the findings of the Commissioner (A) that the conditions of the Notification No. 19/2004 - C.E.(N.T.) dtd. 06-09-2004, the goods exported are prohibited, are not correct.

5. Personal hearing was scheduled in this case on 08-08-2012. 1-10-2012, 21-12-2012 & 04-03-2012. Hearing held on 08-08-2012 was attended by Shri R.K. Sharma, Sr. Counsel on behalf of the applicant, who sought short adjournment. However, nobody attended hearing on the hearings fixed thereafter. As such Government proceeds to decide the case on the basis of available case records.
6. Government has carefully gone through the relevant case record and perused the impugned order-in-original and order-in-appeal.
7. Government observes that the applicant exported the goods and filed rebate claim. The rebate claims were initially sanctioned by the original authority. The department filed appeals against impugned Orders-in-Original. The cases were decided by the Commissioner (Appeals) in favour of department mainly on the ground that the Commissioner of Customs (Export), Nhava Sheva has issued show cause notice for fraudulent export. Now, the applicant has filed these Revision Application on grounds mentioned in para (4) above.
8. Government finds that Commissioner (Appeals) while deciding the case in favour of department has mainly observed that the issue involved in impugned rebate claims cannot be said to be on different footing w.r.t. show cause notice issued by Commissioner of Customs (Export), JNCH for fraudulent export by the applicant. The applicant on other hand has contended that SCN issued by the Commissioner (Export), JNCH and issue involved in impugned rebate claims are on different footing and since,

they have fulfilled all the conditions of the Notification no. 19/2004-C.E. (N.T.) dated 06.09.2004, they are entitled for rebate claims.

8.1 The applicant has argued that they have fulfilled all the statutory requirement of notification No. 19/2004 CE (NT) and paid the duty in accordance with law and therefore rebate claims may be allowed. Government notes that these are two substantial conditions required to be complied to avail rebate benefit; first, payment of duty on goods cleared for export and second export of such duty paid goods. In this case, issue of bonafide of export is in question and show cause notice dated 11.01.2008 has been issued by the Commissioner (Export), JNCH alleging fraudulent export by the applicant. The final outcome of the said SCN will have direct bearing in these cases. Hence, the issue of bonafide export yet to be decided in the adjudication proceedings initiated vide said show cause notice dated 11.01.2008 and outcome of said adjudication proceedings will be legally binding on both the parties.

8.2 The findings of Commissioner (appeals) in the impugned order-in-appeal are as under:-

*" 7. I do not agree with the findings of the Original adjudicating authority and the respondents' contention that the issue raised by the Commissioner of Customs Export JNCH Nava Sheva and that in the instant case are on a different footing. The goods that are imported duty free in terms of the Advance Licence under DEEC Scheme are required to be issued in the manufacture of the goods exported on which the rebate claim is availed and for that reason all the documents viz. ARE1, Shipping Bills, C.Ex invoices bore the Advance License No., hence it could be seen that it has relevance and they are interlinked and the said exports were towards fulfillment of the obligation against the DEEC Advance License 3110014356. I find that the original adjudicating authority has erred in stating in the impugned order that the issue/subject in the present Show Cause notice is different than the Show cause notice issued by the Commissioner of Customs, JNCH, Nava Sheva.*

8. *I find that the Original adjudicating authority before sanctioning the refund claims has not taken into consideration the following aspects:*

- i) *The respondent had not maintained a true and proper account of the imported material and its consumption in the prescribed Proforma.*
- ii) *The exported material was having a coating less than 1000 gms per sq. mts whereas the description, quality on the ARE 1, Shipping Bill, Export documents etc. was shown as 1000 GSM, There was a misdeclaration on the documents.*
- iii) *The respondent had not followed the Standard Input Output Ration Norms.*
- iv) *The respondent was blacklisted at Dubai Port.*
- v) *Nine containers containing PVC leather cloth which were abandoned in Dubai and subsequently auctioned by Dubai port authorities. Appellant received the amount inspite of the fact that the goods were abandoned by the importer.*
- vi) *Exported goods were subsequently re-imported. Goods were exported to Empire City General Trading Co., Dubai. Goods arrived in the name of Supreme Import Export sent by Empire City Trading Co.*
- vii) *Endorsement on all the Shipping Bills relating to the two refund claims indicated that the export was towards fulfillment of obligation against DEEC Advance License No. 3110014356.*
- viii) *Violation of the FTDR Policy, hence goods in question are prohibited goods.*
- ix) *One of the conditions under Notf. 19/2004 CE (NT) dtd. 6.9.04 is prohibition under any other law. Therefore goods exported under the said ARE 1/ Shipping Bills did not satisfy the conditions of the said notification.*
- x) *Shri Yunus Jafar Khan had admitted that they had exported PVC leather cloth of lesser GSM than what is mentioned in the license whereas the export documents indicated the description of 1000 GSM of PVC leather. He has admitted the misdeclaration in the export documents."*

8.3 Government notes that investigation conducted by department has revealed that exporter has committed fraud as is evident from above findings of the Commissioner



(appeals). In this case misdeclaration of value and description of goods is involved. The goods were also exported in violation of condition of advance licence. In case the exported goods are determined to be prohibited goods and charges levelled are upheld in adjudication of case, the admissibility of rebate will have to be determined accordingly.

9. Government finds the coverage / applicability of Hon'ble Apex court's observations in above filed case of CC Vs. Candid Enterprises [2001 (1300 ELT 404 (SC) that "Fraud nullifies everything" and all further decisions based on the same can never be held as final /judiciously correct specifically in a situation when there is provision of law to make further investigations and adjudications as per available procedure for a natural and proper justice for both the parties i.e. the applicants and the respondents. Government notes that there indeed are some investigations which were caused and proper show cause notice was issued (in this case also) by the Commissioner of Customs (Export), Nhava Sheva and the same has been put to process of adjudication. In fact, the outcome of adjudication will decide whether the export was genuine or not.
10. However, government agrees with the submission of the applicant that "fraud" cannot be termed by mere writing or on presumption / assumption but the same is needed to be established by proper evidence after following a proper course of law-keeping in view the principles of natural justice. Here, Government would like to quote the below mentioned observations/findings of the Hon'ble supreme court of India. Hon'ble Supreme Court in para 10 of the judgment in the case of Escorts Ltd. Vs. CCE Delhi-II [2004 (173) ELT 113 (SC)] observed, inter-alia that one additional or different fact may make a word of difference between conclusion of two cases; and in para 11 further inferred as following:

*"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single..... Detail may after the entire aspect....."*

11. In view of above circumstances, Government sets aside the impugned orders and remands the case back to the original adjudicating authority for denovo adjudication taking into account the observations in the preceeding paras and the final outcome of show cause notice dated 17.01.2008 pending adjudication before Commissioner of Customs Nhava Sheva. A reasonable opportunity of hearing will be afforded to the applicants before deciding the case.


12. Revision applications are disposed off in above terms.

13. So, ordered.



(D.P. Singh)  
Joint Secretary (Revision Application)

M/s. Shalimar Rexine (India) Pvt. Ltd.,  
Gat No. 1284, Sanaswadi Industrial Zone,  
Pune Nagar Road, Shirur Taluka,  
Dist. Pune – 412 208 (Maharashtra State).



(भगवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C.B.E.C - O S D (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt of Rev )  
भारत सरकार/Govt of India  
नई दिल्ली / New Delhi


GOI order no. 506-507/13-CD dt 03.06.13

F.No.195/103-104/11-RA-CX

Copy to:

1. The Commissioner, Central Excise, Pune-III, ICE House, 41-Sasoon Road, Pune-411 001.
2. The Commissioner of Central Excise & Customs (Appeals), Pune-III, ICE House, Sasoon Road, Pune -411 001.
3. The Assistant Commissioner of Central Excise & Customs, Pune-III Commissionerate, Pune Div.-VIII, "D" Wing, 1st Floor, ICE House, 41A Sasoon Road, Pune-411 001.
4. Sh. R.K. Sharma, Sr. Counsel, Customs & Central Excise, 157, 1<sup>st</sup> Floor, DDA Office Complex, C.M. Jhandewalan Extn., New Delhi-55.
5. Guard File
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