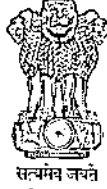


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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**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. 198/06/13-RA-CX/6481

Date of Issue: 15.11.2021

ORDER NO. 15 /2021-CX (WZ) /ASRA/Mumbai DATED 10.11.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : Commissioner of Central Excise & Customs, Rajkot

Respondent : M/s SVS Exim, A-61 A, Vishwakarma Colony, M.B. Road, New Delhi - 110044.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.868/ 2012 (RAJ) CE/ AK/Commr (A) Ahd dated 06.11.2012 passed by the Commissioner of Central Excise (Appeals-I), Ahmedabad.

ORDER

This Revision Application is filed by the Commissioner of Central Excise & Customs, Rajkot (here-in-after referred to as 'the Department') against the Order-in-Appeal No. 868/2012(RAJ)CE/AK/Commr(A)Ahd dated 06.11.2012 passed by the Commissioner of Central Excise (Appeals-I), Ahmedabad. The said Order-in-Appeal dated 06.11.2012 decided an appeal against the Order-in-Original dated 01.06.2012.

2. Brief facts of the case are that M/s SVS Exim, a merchant exporter (here-in-after referred to the respondent) had filed 33 claims for rebate totaling to Rs.14,45,868/- on 07.03.2012 in respect of 'Petroleum Coke' exported by them.

3. The Rebate Sanctioning Officer vide Order-in-Original No. DC/JAM/R-134 to 166/2012-13 dated 01.06.2012 rejected the claims on the grounds that in the present case the goods were not directly exported from a factory or a warehouse and that the exporter had failed to follow the procedure required to be followed in such situations, as laid down in the CBEC Circular No.294/10/97-CX dated 30.01.1997. The Rebate Sanctioning Authority further held that the respondent, by not following such laid down procedure, had failed to establish that they had exported the same goods that were cleared from the factory of the manufacturer.

4. Aggrieved, the respondent preferred an appeal against the said Order-in-Original dated 01.06.2012 before the Commissioner (Appeals-I), Central Excise, Ahmedabad resulting in the Order-in-Appeal dated 06.11.2012, wherein, the Commissioner (Appeals) set aside the Order-in-Original dated 01.06.2012 and allowed the appeal filed by the respondent by allowing the rebate claims filed by the respondent. The Commissioner (Appeals) found that the respondent had purchased the goods in question from a registered dealer who fell in the jurisdiction of the Rebate Sanctioning Authority and that the registered dealer had given a 'no claimer certificate' in respect of all

the rebate claims; that the original rebate sanctioning authority had incorrectly held that the goods had not been directly exported from a factory or warehouse as the same had been directly supplied from the premises of the registered dealer. The Commissioner (Appeals) held that since the fact that the goods were exported was not in doubt, rebate could not be denied on procedural grounds.

5. Aggrieved, the Department has filed the present Revision Application against the Order-in-Appeal on the following grounds:-

(a) The Commissioner (Appeals) had failed to appreciate the findings of the original Adjudicating Authority wherein it was specifically recorded that the goods were exported from the premises of the 2nd stage dealer under self-sealing procedure in violation of the first condition of notification no.19/2004-CE (NT) dated 06.09.2004 which was incorporated with the intent to ensure co-relation between the goods on which duty was paid and those exported;

(b) The 2nd stage dealer, had not followed the procedure as prescribed under CBEC circular no.294/10/94-CX dated 30.10.1997 and had thus violated the statutory conditions and provisions as laid down under Rule 18 of the Central Excise Rules, 2002;

(c) The request for seeking NOC for self-sealing and thereafter obtaining permission for the same also seemed dubious as the exporters were fully aware that they were not exporting the goods, either from the premises of a manufacturer or a warehouse and therefore, in case they were intending to claim rebate, the only option available to them was to seek exports under the supervision of the Central Excise Officer; that the obtaining of self-sealing permission does not give license to the exporter to flout the basic premise of the law which need to be adhered to if specific benefits are to be claimed;

(d) Reliance was placed on the Order no.388/2010-CS dated 25.03.2010 in the case of M/s Philip Electronics India Limited [2011(273)ELT0461 (G.O.I.)] wherein it was held that the goods exported were not having any marking/identification no. etc. by which it could be established that the same goods which had suffered duty at the time of clearance from the factory were actually exported and thereby the applicant had failed to meet out the basic mandatory requirement for claiming of rebate of duty; reliance was also placed on the Order No.204-205/09/CX dated 30.07.2009 passed by the Joint Secretary (Revision Authority) in the case of M/s BPCL wherein a similar view was taken; and

(e) The Commissioner (Appeals) had relied upon the decision of the GOI decision in the case of M/s Vinergy International P. Limited [2012 (278) ELT 407 (GOI)], against which an appeal was preferred by the Department.

In light of the above, the Department submitted that the Commissioner (Appeals) had erred in allowing rebate on the quantity of goods exported from the dealer's premises without following the proper procedure as stipulated under Circular no.294/10/94-CX dated 30.01.1997 as well as notification no.19/2004-CE (NT) dated 06.09.2004.

6. The Respondent, in response to the subject Revision Application have filed a reply dated 07.03.2013 wherein they have submitted that :-

(a) As a merchant exporter they had procured duty paid 'petroleum coke in lump form' from M/S Jay Minerals, Jamnagar, a Central Excise registered second stage dealer and cleared the same in full container loads after self-sealing and self-stuffing, as per permission F. No. VII/48-652/MP&SEZ/SS/2011-12 dated 13/01/2012 granted by the Joint Commissioner of Customs, Mundra, directly from the premises of the said second stage dealer, for export under rebate through the port of Mundra, falling under the jurisdiction of the Commissioner Central Excise & Customs, Rajkot. They had submitted 33 rebate claims on 07/03/2012 for a total rebate amount of

Rs.14,45,868/- and that out of the 33 rebate claims filed, pet coke relating to 14 claims had been exported under the supervision of the Officers of Customs, Mundra, who had examined the said goods and passed let export orders; and that the said practice could not be continued by the exporter in respect of goods relating to the remaining 19 rebate claims on account of pilferage and port congestion. Accordingly, permission to self-seal/stuff was sought for and obtained. They submitted that the fact of 14 containers having been examined by Customs officers was not brought before the Original Rebate Sanctioning Authority or the Commissioner (Appeals);

(b) The original Adjudicating Authority had proceeded on the premise that all the 33 claims have been self-sealed/stuffed by the exporter at the premises of the 2nd stage dealer. Further, they submitted that the observation of the Original Adjudicating Authority that whenever goods are exported under claim of rebate under Rule 18 of the Central Excise Rules, 2002, it has to be exported directly from a factory or warehouse, was without basis. They submitted that similarly, the allegation that the procedure contained in the said circular had not been followed, was not only a result of confusion of facts and law, but also lacked specificity; inasmuch as, on the one hand it stated that they were not entitled to the procedure laid down under the Circular dated 30.01.1997, whereas, on the other hand it was alleged that they had failed to follow the procedure laid down in the said Circular. They further submitted that the procedures prescribed under the Circular dated 30.01.1997 had been actually followed to the extent possible;

(c) The Commissioner [Appeals] had taken into consideration that there was no dispute about the fact of the impugned goods having been exported, its duty paid character, the overall co-relation of the goods exported as indicated by the relevant documents filed and that even in the subject Revision Application these facts of export, duty paid nature of the goods, co-relatability of goods exported with goods on which duty was discharged, etc., are not disputed or challenged;

(d) The excise invoices enclosed along with the Shipping Bills indicated the corresponding invoice numbers of the first stage dealer and the manufacturer and the details of duty discharged on the same by the manufacturer; that they had submitted certificate from the 2nd stage dealer indicating that they (2nd stage dealer) had not claimed rebate on the said invoices. They further submitted that as noted by the Commissioner (Appeals,) the manufacturer, the second stage dealer and the export port, all fell under the very same Commissionerate, thus the jurisdictional officers could have carried out the necessary verification in case of doubt;

(e) The Commissioner (Appeals) had rightly relied on the decision of the GOI in the case of M/s Vinergy International Pvt. Ltd. [2012 (278) ELT 407(GOI)] as, apart from being a later decision, it was also a case whose facts appeared to be similar to the present case when compared to the decision of the GOI in the case of M/s Philip Electronics Ltd. [2011(273) ELT 461 (GOI)] relied upon in the Revision Application;

(f) The CBEC vide its Circular No.294/10/97-CX dated 30.01.1997, issued in compliance with Notfn. No.19/ 2004-CE-[NT] dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002, prescribed a procedure for export of 'goods in factory packed condition'/'readily identifiable' form, cleared for export from any place other than the 'factory of manufacture' or a 'warehouse', to be eligible for claiming rebate; that in the present case petroleum coke in lump form was cleared for export in full containers from the premises of a registered second stage dealer and that by its very nature, the said pet coke can't be in a 'packed condition' even at the stage of clearance from the factory of production. They submitted that hence, very strictly and technically, one could hold that the clearance of such goods was not even covered by the aforesaid Circular, irrespective of wherefrom it was cleared. They further submitted that the said products were certainly co-relatable to the documents indicating its duty paid nature and hence rebate may not be denied;

(g) They had obtained a 'no objection certificate'/permission to self-seal and self-stuff from the Joint Commissioner, Customs, Mundra Port before clearance for export and that the same had been acknowledged by the original Adjudicating Authority. They submitted that it was only because of the intent to claim rebate after due export, and also to avoid routine examination by Customs officers at the port, permission was sought for from the Central Excise formation to have the goods self-sealed and self-stuffed before clearance from the second stage dealer's premises. They further submitted that the Department having granted permission, in equity and on the principle of promissory estoppel, was bound to extend the benefit of rebate, of course, subject to the exporter having complied with all other conditions laid down under the Circular No. 294/10/97-CX dated 30.01.1997;

(h) The export consignments covered by the 14 rebate claims had been examined, stuffed and sealed at the Mundra port under the supervision of the Customs Officers, Mundra and hence there could be no doubt about the eligibility of rebate on these consignments under the said 14 Claims; and

(i) The Revision Application had not disputed the fact of export or co-relatability of goods exported to the goods cleared on payment of duty. In view of the above, they submitted that the impugned Order-in-Appeal may be upheld and the Revision Application dismissed.

7. Personal hearing in the matter was granted to the applicant on 04.12.2019/11.12.2019, 14.01.2020, 08.01.2021, 15.01.2021 and 25.02.2021, however, no one appeared for the same. Sufficient opportunity having being given to the applicant to be heard in person, the case is now taken up for decision.

8. Government has carefully gone through the relevant case records available in case files, the written submissions and also perused the

impugned Order-in-Original dated 01.06.2012 and the Order-in-Appeal dated 06.11.2012.

9. Government notes that the facts of the case have already been recorded above. The Revision Application has been filed by the Department against the Order-in-Appeal dated 06.11.2012 on the limited grounds that the Commissioner (Appeals) had erred in allowing rebate on the quantity of goods exported from the dealer's premises without following the proper procedure as stipulated under Circular no.294/10/94-CX dated 30.01.1997 as well as notification no.19/2004-CE (NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002.

10. Government observes that the Commissioner (Appeals) in the said Order-in-Appeal dated 06.11.2012 had discussed the grounds raised in the present Revision Application and found them to be devoid of merits. The Government further notes that the entire crux of the Revision Application is that that the Respondent resorted to self-stuffing and sealing of the containers as against having them sealed by the jurisdictional Central Excise officer/Customs officer at the port of export. Government also notes that the Respondent has claimed that 14 consignments were stuffed and sealed in the presence of Customs officers at the Mundra port.

11. The Government observes that the Respondent had vide their letter dated 29.12.2011 sought permission/no objection for self-sealing of export consignments under the benefit free scheme at the suppliers premises from the Deputy Commissioner, Central Excise Division, Jamnagar. In response, the Deputy Commissioner had replied that vide Circular No.736/52/2003-CX dated 11.08.2003 and Circular No.860/18/2007-CX dated 22.11.2007 the facility of self-sealing was extended to all categories of manufacturer-exporters. The Deputy Commissioner further informed them that there was no need to obtain any NOC from the Central Excise Authority for availing

self-sealing of export goods. The Government further observes that, in response to a request made by the respondent, the Deputy Commissioner of Customs, Mundra, vide letter dated 05.01.2012 had granted permission to the Respondent for self-stuffing containers under their own supervision and had specified the details that needed to be recorded on the Export Invoice, with the condition that such consignments would be subject to re-examination at the port by the Customs authority, if found necessary.

12. In view of the above, the Government observes that the Respondent was eligible to avail the facility of self-sealing of their export consignments. The bone of contention that remains is that the goods were exported from the premises of the 2nd stage dealer, which allegedly, did not fall under the category of 'factory or warehouse' as prescribed by notification no.19/2004-CE (NT) dated 06.09.2004. The Government finds that the Commissioner (Appeals) had aptly addressed this issue – the relevant portion of the Order-in-Appeal is reproduced below: -

"12. Now reverting back to all vital issue, regarding exportability of the goods (petroleum coke), I find that the appellant have purchased the goods from M/s. Jay Minerals, Jamnagar who are registered dealers' holding Excise Regd. No. DPHPS4954CED001 issued by the Office of Assistant/Deputy Central Excise, Jamnagar. It is neither the charge or allegation in the entire proceedings that the goods have not been actually purchased from M/s. Jay Minerals, Jamnagar or M/s. Jay Minerals, Jamnagar have claimed the rebate claim. Besides, M/s. Jay Minerals, Jamnagar being situated in the jurisdiction of the same Central Excise Office if anything was amiss it was very easy for the Deputy Commissioner to point out or verify the omissions or commissions on the part of the appellant. This apart, the appellant have submitted the claim wise and invoice wise 'Rebate no claimer certificate' from M/s. Jay Minerals, Jamnagar indicating that they have not claimed the rebate in respect of the ARE number/ dated, for which they have debited entry in RG 23D register in Cenvat account register. There is no allegation or findings in the impugned order that the benefit of rebate claims has been taken by any other person other than the appellant who are claiming by virtue of these proceedings. Besides, no wrong doing has been alleged at the suppliers' end, i.e. M/s Jay Minerals, Jamnagar, and therefore under the given set of

circumstance for any procedural deviation substantial benefit in form of rebate cannot be denied to the appellant.

Further, the findings of the lower adjudicating authority that the goods have directly not been exported from the factory or warehouse is also not proper, inasmuch as, the goods have been directly supplied from the premises of registered dealer situated in the jurisdiction of the same authority.

So once the factum of export is not in doubt, it was not open or proper for the lower adjudicating authority to deny the rebate claim on the ground of procedural infractions.”

The Government finds that the grounds on which the present Revision Application has been made, have been addressed in the impugned Order-in-Appeal inasmuch as the Commissioner (Appeals) found that the goods were exported from the premises of a registered dealer and would hence qualify as an export done from the premises of a 'warehouse'. The Government notes that the second issue raised in the Revision Application is that the Respondent had not followed the procedure laid down in Circular no.294/10/94-CX dated 30.01.1997. The Government finds that the Respondent has submitted the documents, viz. the Invoices, the ARE-1s, Shipping Bills, Worksheet,,etc. which were examined by the Commissioner (Appeals) who found that the same indicated that the goods in question were exported. As regards the goods being in original factory packed condition for the purposes of being clearly identified, the Government finds that this particular condition of original packing would not be applicable to the present case due to the very nature of goods exported, viz. 'Petroleum coke', which would not be expected to have a standard packing like other goods.

13. Government further observes that a distinction between those regulatory provisions which are of a substantive character and those which are merely procedural or technical has been made in a judgment of the Supreme Court in "Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner-1991 (55) E.L.T. 437 (S.C.)". The Supreme Court held that the mere fact that a provision is contained in a statutory instruction "does not matter one way or the other". The Supreme Court held that non-

compliance of a condition which is substantive and fundamental to the policy underlying the grant of an exemption would result in an invalidation of the claim. On the other hand, other requirements may merely belong to the area of procedure and it would be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes which they were intended to serve. The Supreme Court held as follows:

“The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some other may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve.”

Thus, the Government, in light of the views expressed by the Hon'ble Supreme Court, finds that it would be erroneous to deny the rebate claims filed by the Respondent for the only reason that they carried out self-sealing/stuffing from the premises of a 2nd stage registered dealer, which the Revision Application alleges was improper. Government finds that neither the duty paid nature of the goods in question is in doubt nor is the claim of the Respondent that these goods were exported. Government also observes that the Respondent in the present case had approached, both the jurisdictional Central Excise authorities and the Customs Authorities at the port of export seeking permission for self-stuffing/sealing; and that the Customs Authorities have also acceded to their request.

14. Government finds that the grounds on which the Revision Application has been preferred have been clearly addressed by the Commissioner (Appeals) in the impugned Order-in-Appeal. The decision of the Commissioner (Appeals) to allow the rebate claims filed by the respondent is just and legal.

15. In view of the findings recorded above, Government finds no reason to annul or modify the Order-in-Appeal No. 868/2012(RAJ)CE/AK/Commr(A) Ahd dated 06.01.2012 passed by the Commissioner of Central Excise (Appeals-I), Ahmedabad.

16. The Revision Application is dismissed.

Shrawan
10/11/21

(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 86/2021-CX (WZ) /ASRA/Mumbai dated 10.11.2021

To,

The Commissioner,
Central Excise & Customs, Rajkot,
Central Excise Bhavan,
Race Course Ring Road,
Rajkot - 360 001.

Copy to:

1. M/s SVS Exim, A-61 A, Vishwakarma Colony, M.B. Road,
New Delhi - 110044.
2. The Commissioner (Appeals - I), Central Excise, 7th floor, Central Excise
Building, Near Polytechnic, Ambavadi, Ahmedabad - 380015.
3. The Deputy/Assistant Commissioner, Central Excise Division, Pritam
Chambers, Above Bank of India, Opp. M. P. Shah Medical College,
Jamnagar.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Notice Board.