

REGISTERED  
SPEED POST



F.No. 195/209/2015—R.A.  
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... 5/2/18

Order No. 54/2018-CX dated 05-02-18 of the Government of India, passed by Shri R. P. Sharma, Principal Commissioner & Additional 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 the Order-in-Appeal No. HPU-EXCUS/000/APPEALS-I/07/2015-16 dated 23/04/2015 passed by Commissioner of Central Excise (Appeals)-I, Meerut.

Applicant : M/s. Narendra Plastic Private Limited, Sitarganj, Uttarakhand

Respondent : Commissioner of Central Excise, Meerut-II

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**ORDER**

A revision application No.195/209/2015-R.A. dated 25/06/2015 is filed by M/s Narendra Plastic Private Limited (hereinafter referred to as the applicant) against Order-in-Appeal No.HPU-EXCUS/000/APPEALS-I/07/2015-16 dated 23/04/2015, passed by the Commissioner of Central Excise (Appeals)-I, Meerut.

2. The brief facts leading to the present proceeding are that the applicant, a manufacturer of HDPE Bags/Plastic bags, filed a rebate claim of Rs.90,18,996/- on 08/08/2012 for the period 02/04/2011 to January, 2012 under Rule 18 of Central Excise Rules, 2002, read with notification no. 21/2004-CE(NT) dated 06/09/2014 for the duty paid on the inputs used in the exported goods. The said rebate claim was rejected by the jurisdictional Assistant Commissioner vide his order dated 23.11.2012 on the ground that the goods were exported prior to approval of input-output ratio which was upheld by Commissioner (Appeals) also. The applicant then filed a revision application before the Joint Secretary to the Government of India, who vide his order dated 3.4.14, set aside the impugned Orders and remanded the case back to the original authority for de novo consideration as per input output ratio subsequently approved by the Assistant Commissioner for the identical exported products without any change. In compliance, the jurisdictional Assistant Commissioner, vide his order dated 10.11.14, sanctioned an amount of Rs. 38,43,662/- as rebate of duty out of total claim of Rs.90,18,996/- but rejected the remaining claim of Rs.51,75,334/- on the ground that approval of input-output ratio was given for "Thank You" bags only and not for the "Articles made of HDPE/HDPE bags" exported by the applicant in this case. The applicant's appeal to the Commissioner (Appeals) was

also rejected vide above mentioned order dated 23.4.2015 against which the applicant has approached the Central Government for second time with a request to set aside the OIA dated 23.4.15.

3. The revision application is filed by the applicant mainly on the grounds that the HDPE bags exported by them to M/s Spectrum Bags Inc, US, are "Thank You" carrier bags only for which the Assistant Commissioner of the Division has approved input output ratio; that the Notification No.93/2004-Cus dated 10.9.2004 and Notification No.96/2009-Cus dated 11.9.2009 do not have any application in the present case and that they had filed all the rebate claims within prescribed time for the goods exported during the period 14.8.11 to January 2012. It is also contended that the above two issues relating to application of customs notifications and time limitation were never raised earlier in the show cause notice or the order of the Assistant Commissioner and thus the Commissioner (Appeals) has travelled beyond the scope of the appeal filed by them against OIO dated 10.11.14 by considering these grounds also.

4. Personal hearing was granted on 07/12/2017 which was attended by Shri Rajan Mashelkar, Consultant, on behalf of the applicant who mainly reiterated the above discussed grounds of revision. However, no one appeared for the respondent.

5. On examination of all relevant records related to the present proceeding, the Government observes that there is no dispute about the fact that the HDPE bags/articles made of HDPE, as mentioned in the ARE-1 and other export documents, have been exported to M/s Spectrum Bags Inc., USA and the Assistant Commissioner of the Division rejected the rebate claim of Rs.5175334/-

solely on the ground that input output ratio for the exported goods were not approved by the Assistant Commissioner. Thus it is absolutely clear that the issues relating to inadmissibility of the rebate claims on account of application of the above mentioned two customs Notifications and time limitation were not raised by the Assistant Commissioner at his level and, therefore, the Commissioner (Appeals) has undoubtedly exceeded her jurisdiction by considering these two grounds also for rejection of the applicant's appeal which was filed against the order of the Assistant Commissioner not involving the above two issues. Besides above, the Government fully agrees with the applicant's contention that the above stated two custom Notifications are not relevant for considering the admissibility of the rebate claims under Rule 18 of Central Excise Rules, read with Notification No.21/2004 dated 6.9.04, and the rebate claims are not hit by time limitation as the goods were exported from 14.8.11 to January 2012 only as per claim of the applicant in the revision application which has not been questioned by the respondent in any form. The Commissioner (Appeals) has also not given the detail of rebate claims pertaining to the period prior to 8.8.2011 which only could be time barred in this case and has concluded in one line that rebate for the entire period started from 2.4.2011 should have been filed before 2.4.2012. It is obvious from OIA that no opportunity was provided to the applicant with regard to these grounds of rejection and, therefore, the OIA to this extent is vitiated for non-observance of Principle of Natural Justice. Further, the applicant has furnished a C.A's Certificate dated 25.1.18, issued by Amit Desai & Associates, Mumbai FRN:113901W, clearly stating that entire rebate of Rs.9018996/- filed by the applicant is in respect of exports of goods during the period 9.8.11 to 9.1.12.

From this certificate it has now become more lucid that the applicant had filed rebate claims in time and for this reason it was not rejected by the Assistant Commissioner also.

6. As regards the main reason for rejection of the rebate claim of Rs.5175334/- that the Assistant Commissioner has not approved the input output ratio in respect of HDPE bags/articles made of HDPE as held by the Assistant Commissioner and upheld by the Commissioner (Appeals), it is noticed from the first page of the orders of these two authorities itself that the applicant is acceptably a manufacturer of HDPE bags/plastic bags falling under Chapter 39 of the Central Excise Tariff Act. Further, in the letter dated 11.1.12 given by the applicant to the Deputy Commissioner of the Division, by which the approval of input output ratio of inputs for export of the goods manufactured by them was requested, it is clearly mentioned that they are engaged in the manufacture of plastic bags falling under sub-heading 39232990 of Central Excise Tariff Act and different trade names of plastic bags such as Real Carry Bags; Kipa Carry Bags, Tesco Carry Bags and Thank You Bags belonging to the broad category of plastic bags were mentioned. In reference to the said letter of the applicant, the Assistant Commissioner in his letter dated 3.4.12, while approving input output ratio declared by the applicant in respect of above mentioned different types of carry bags, has unambiguously stated that the applicant is permitted to manufacture and export the plastic bags. Thus it is nowhere mentioned in any of the above documents that the applicant is a manufacturer of "Thank You" bags or such other type of bags of different trade names as mentioned above and not the manufacturer of HDPE bags/plastic bags. On the contrary it is clearly accepted that the products manufactured and exported by the applicant

are the plastic bags only and different names of plastic bags such as Metro Real Carry Bags, Metro Aro Carry Bags, Tesco Carry Bags, Kipa Carry Bags and Thank You Carry Bags are only the different types of plastic bags only. HDPE bags are undoubtedly plastic bags and this fact is not disputed even by the lower authorities also. Now the main issue to be decided is whether the HDPE bags exported by the applicant are different from Thank You carry bags for which the input output ratio were approved by the Assistant Commissioner vide his letter dated 3.4.12 or the exported goods have been 'Thank You carry bags' only. On examination of the purchase order dated 30.8.11, received by the applicant from Spectrum Bags, Inc., USA, it is seen that this order was in fact for procuring HDPE Bags in Tshirt style with the marking of "Thank You" thereon. As per the purchase order, the word "Thank You" was not to denote a distinct variety of bags different from plastic bags, but was evidently meant for indicating some business connection of the foreign purchaser on the plastic bags. But in reality, the product ordered by the foreign buyer to the applicant remained plastic bags/HDPE bags only. Undeniably against the said purchase orders of the foreign buyer only, the applicant has exported the goods under the direct supervision of the Central Excise Officers and the export of goods have been certified by the Custom Officers also at the back of ARE-1s. The goods were cleared under AREs-1 claiming rebate of duty therein and reference of commercial invoice having description of goods as HDPE bags and "Thank You" bags was given in each ARE-1. But no objection was raised by the Central Excise Officers regarding any discrepancy in description of goods in AREs-1s and the commercial invoices when the goods were cleared for export from the factory of applicant under their direct supervision. The receipt of exported

goods have also not been questioned by the foreign buyer and the receipt of export proceeds have not been doubted by the department authorities in this case. From these facts alone, it can be clearly made out that the goods exported by the applicant are "Thank You HDPE bags" only as ordered by the foreign buyer and for which the Assistant Commissioner has already approved the input output ratio. Had the exported goods been different from the "Thank You" bags of plastic, the foreign buyer would have been in the forefront to reject the consignments of the goods exported by the applicant under the export documents submitted by the applicant. But it has not been done by the foreign buyer, an American Company, and full export proceeds are already stated to have been received against the export of these goods. But the Assistant Commissioner as well as the Commissioner (Appeals) have not considered this case from the perspective of above narrated facts. Instead, it is evident from their orders that they have emphasized more on the technicalities of minor different description given in the export documents to find some basis for rejecting the rebate claims of the applicant. As regards some anomaly in description, the applicant has also honestly accepted minor variation in description of plastic bags in the export documents. But they have strongly pleaded that this alone cannot be the basis for rejection of rebate claims. While it is true that the description of the goods in the ARE-1s, shipping bills and bill of lading is mentioned as HDPE bags, the exported goods are described as "Thank You"/Tshirt bags in commercial invoices and the packing list in addition to main description as HDPE bags. But the number of commercial invoices having description of "Thank You" bags in addition to HDPE bags are clearly mentioned in the AREs-I and the shipping bills which make it manifest that the "Thank You"

bags/HDPE bags have only been exported. Even the number of packages, gross weight, net weight, value of the goods etc. mentioned in all the above mentioned export documents entirely tally with each other and no discrepancy has been pointed out by the Original as well as 1<sup>st</sup> Appellate Authority. Further it is also noticed by the Government that initially when the applicant's total rebate claims was rejected on the ground that prior approval of input output ratio had not been obtained, the objection regarding non export of "Thank You" bags was not raised and this issue has been raised for the first time by the Assistant Commissioner in his second Order dated 10.11.14 which was passed in compliance of Government's earlier Order dated 3.4.14 as per which it was directed to consider the applicant's rebate claims as per input output ratio approved by the Assistant Commissioner. But despite of Government's above Order and uncontroverted fact that the applicant has exported the goods as per the order of the foreign buyer for which an input output ratio has already been approved by the Assistant Commissioner vide his letter dated 3.4.12, the applicant has run from pillar to post for additional more than 3½ years due to narrow approach adopted by the Assistant Commissioner and the Commissioner (Appeals) which is evidently not in conformity of the Central Government's policy to encourage the export of the goods by granting the export incentive like rebate of duty. Such approach is also not in consonance with the Apex Court's rulings in the cases of A.V.Narsimhalu 1983 (13) ELT 1534 (SC) and Suksha International Vs. Union of India, 1989(39) ELT 503 (S.C.) wherein it is held that the administrative authorities should, instead of relying on technicalities, act in a manner consistent with the broader concept of justice and an interpretation



unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other.

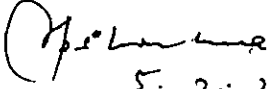
7. Considering the above stated facts, export documents and circumstances of this case, the Government finds that there is no substantive basis to support the Commissioner (Appeals)'s Order holding that the applicant has exported other than "Thank You" bags only in the instant case and the edifice of her order is entirely built on some minor difference in descriptions in different export documents which is manifestly a lapse of technical nature only. But to be fair it cannot be leveraged to deny the substantive benefit like rebate of duty to the applicant. Allowing of rebate of duty in such case despite of some minor error such as above is also supported by following Government of India's orders passed earlier

- 2013 (297) E.L.T. 476 (G.O.I.) IN RE : Shreyas Packaging
- 2006 (205) E.L.T. 1027 (G.O.I.) IN RE : Cotfab Exports
- 2006 (203) E.L.T. 321 (G.O.I.) IN RE : Barot Exports
- 2003 (158) E.L.T. 797 (G.O.I.) IN RE : Akansha Metals Pvt. Ltd.
- 2012 (276) E.L.T- 131 (G.O.I.) IN RE: Ace Hygiene Products Pvt. Ltd.

Rebate -

- 2006 (204) E.L.T. 632 (G.O.I.) IN RE : Modern Process Printers
- 2012 (284) E.L.T. 150 (G.O.I.) IN RE : Ashok Leyland Ltd.
- 2014 (314) E.L.T. 953 (G.O.I.) IN RE : Rau's Pharma Corporation
- 2014 (311) E.L.T. 929 (G.O.I.) IN RE : Lallubhai Amichand Ltd.

8. In view of the above discussion, the Government sets aside the order of the Commissioner (Appeals), allows the revision application filed by the applicant and direct the Assistant/Deputy Commissioner of the Division to grant rebate of duty in this case immediately.

  
5.2.2018

(R.P.Sharma)

Additional Secretary to the Government of India

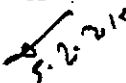
M/s Narendra Plastic Pvt. Ltd.  
7<sup>th</sup> Floor, "A" Wing, Corporate Avenue,  
Sonawala Lane, Goregaon(East),  
Mumbai-400 063

G.O.I. Order No. 54/18-Cx dated 5-2-2018

Copy to:-

1. Commissioner of Central Excise & Customs, Meerut-II, Bhainsali Ground, Meerut-250 005.
2. Commissioner of Central Excise (Appeals-I), Meerut, Opp. CCS University, Mangal Pandey Nagar, Meerut- 250 005.
3. The Assistant Commissioner, Central Excise, Division, Rampur
4. PA to AS (Revision Application)
5. Guard File

ATTESTED

  
(Debjit Banerjee)  
STO (R.A.)