

REGISTERED
SPEED POST



F.No. 195/536/11-RA
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...06/6/13

ORDER NO. 556 /13-Cx DATED 06.06.2013 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 APPLICATION filed under section 35 EE of the
Central Excise Act., 1944 against the Order-in-Appeal No.
M-I/RKS/106/2011 dated 18.03.2011 passed by
Commissioner (Appeals) Central Excise , Mumbai-I.

APPLICANT : M/s Rainbow Silks, Mumbai

RESPONDENT : Commissioner of Central Excise, Mumbai-I

ORDER

This revision application is filed by the applicant M/s Rainbow Silks, Mumbai against the order-in-appeal No. M-I/RKS/106/2011 dated 18.03.2011 passed by Commissioner (Appeals) Central Excise, Mumbai-I with respect to order-in-original passed by Assistant Commissioner (Rebate), Central Excise, Mumbai-I.

2. Brief facts of the case are that the applicants M/s Rainbow Silks, has filed rebate claims in respect of duty paid on goods manufactured by M/s Kinchit Textiles, and by M/s Glamour Dyg. & Ptg Mills (Surat) Pvt. Ltd. The goods were exported through Mumbai Port under AREs-1. The Assistant Commissioner (Rebate), Central Excise, Mumbai-I vide impugned Order-in-Original sanctioned the rebate claims. The said Order-in-Original was reviewed by the Commissioner, Central Excise, Mumbai-I Commissionerate, in exercise of powers vested under Section 35E(2) of Central Excise Act, 1944 and ACCE was directed to filed appeal against the impugned Order-in-Original dated 19.01.2006, before Commissioner (Appeals). Commissioner (Appeals) decided the case in favour of department.

3. Being aggrieved by the impugned order-in-appeal, the applicant filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds :

3.1 The Order-in-Appeal did not raise any doubt about the exportation of goods as the Customs officer at the Port of Shipment has physically verified the export consignments with the two sets of documents and certified all the documents putting, his dated signature.

3.2 The Order-in-Appeal did not dispute the duty paid nature of the exported goods as the rebate sanctioning authority before sanction of the rebate claims has cross verified the duty payment particulars from the jurisdictional Central Excise Range

Superintendent of manufacturer at departmental internal level keeping in mind the fraudulent availment of Cenvat Credit used by some of the manufacturers.

3.3 The Order-in-Appeal also did not after any findings on non exportation of goods as the Bank Realization Certificates produced as evidence of receipt of exported goods by the foreign buyers as well as documents of exports submitted duly signed by the Customs & Central Excise Officers.

3.4 the Order-in-Appeal did not find any variations between two sets of documents with consignments. The particulars shown in first set of documents i.e. ARE-1s, Central Excise Invoices and particulars shown in second set of documents like Shipping Bills, Bills of Lading, Customs Export Invoices, Mates Receipts are tallied with each other. Thus the basic requirements for sanction of rebate claims have been satisfactorily fulfilled. There is some change in description of goods in which is a procedural mistake.

3.5 Applicants received the goods from manufacturers under the cover of the Central Excise Invoices which are the Processed/Printed cotton and man made Fabrics either falling under the Central Excise Tariff Chapter heading No. 54 or 55 depending upon the predominancy of yarn contained in the fabrics, either synthetic/polyester/nylon or acrylic yarn. While giving the description on ARE-1s or Central Excise Invoices, the broad description given as "Fancy Fabrics/Dyed Fabrics or Printed Fabrics". The goods written as Grey Synthetic/Fancy Fabrics on the Central Excise Invoices are Yarn Dyed fabrics also called "Top Dyed Fabrics". The same are not processed further as they are Yarn Dyed Fabrics. Therefore, it has been mentioned as Dyed Fabrics as per DEPB Norms and the goods were exported in the same condition as received from the manufacturer. The manufacturers have cleared the Fabrics at Factory Gate in "Bale" form giving bale serial numbers and while exporting the said fabrics were packed in the cartons, keeping the serial numbers of the bales tacked in same condition inside the cartons. The packages depicted with serially numbered cartons with clear identification marks as "D.T./S.T./Singapore, G.V./S.T.M./Singapore BABU, T.J./Mumbai/Singapore,

R.T.C./Port Rashid (Dubai), R.S./S.F.T./Port Rashid (Dubai) etc. The said carton serial numbers with identification marks are also depicted in the prescribed columns of two sets of documents i.e. ARE-1, Shipping Bill etc.

3.6 The date of preparation of corresponding Central Excise Invoices and removal of goods from factory premises are much earlier than actual preparation of ARE-1s export.- In this context, it is to state that applicants are purchasing these goods from manufacturers under the valid Central Excise Invoices. The applicants given the order to the manufacturer lot wise as per the buyers requirements. The goods were manufactured design wise and on completion of one design the invoices was prepared by the manufacturer to get the exact status of the order and design. The goods were kept in the manufacturer's custody and delivery of the entire lot was taken at one time. On receipt of the goods applicants just stack the "Bales" in cartons to avoid damages and prepared the Export Documents like ARE-1s, Export Invoices, Packing Lists etc. Naturally, the invoices prepared by the manufacturers are the earlier than the preparation of ARE-1s. In other words, the manufacturers prepared invoices and kept the same in his factory of manufacturer and the said goods were cleared under ARE-1s at the time of removal to the port of shipment. Thus the Central Excise invoices are prepared before the preparation of ARE-1. Further, the Range Superintendent was appraised of the facts at the time of clearance and it may be seen that he has not taken any objection while certifying the triplicate copy of ARE-1's.

3.7 The whole Order-in-Appeal is based on presumption and assumption and on technical and procedural one. There is no clinching evidence showing that the same goods cleared from factory gate were not physically exported by the applicants. The ARE-1 numbers are shown on the S.B. and S.B. number is shown the ARE-1 along with other particulars such as Ships name, date of sailing etc. This itself shows whatever cleared in the ARE-1 has been exported.

3.8 It is a settled issue that rebate claim shouldn't be rejected on Procedural/Technical infractions, if the mandatory condition like export of the goods and its duty paid character is established. In support of the contentions Applicants are rely upon following Government of India order.

- (i) No. 456/2006 issued vide F.No. 195/126/2006-RA dated 29.05.2006 in the case of M/s KMS Exports Vs. UOI.
- (ii) No. 771/2006 issued vide F.No. 195/632/2005-RA dated 05.09.2006 in the case of M/s Personna Cosmetics Vs. UOI.

4. The personal hearing scheduled in the case on 05.03.2013 was attended by Shri R.V. Shetty, advocate on behalf of applicant who reiterated the grounds of revision application. Nobody attended hearing on behalf of respondent department.

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

6. Government observes that the applicant, a merchant exporter exported the goods and filed rebate claim. The rebate claims were initially sanctioned by the original authority vide impugned Order-in-Original. The department filed appeal before Commissioner (Appeals) against impugned Order-in-Original mainly on the ground that there were difference in description of the goods mentioned in impugned AREs-1 from the description mentioned in corresponding manufacturer excise invoices and also that date of preparation of corresponding invoices and removal of goods were much earlier than the actual preparation of impugned AREs-1. Commissioner (Appeals) decided the case in favour of department. Now, the applicant has filed this Revision Application on grounds mentioned in para (4) above.

7. Government observes that Commissioner (Appeals) has mainly observed that there was substantial difference in description mentioned in impugned AREs-1 and impugned Excise Invoices. In this regard, the applicant has stated that Fancy Fabrics

mentioned in impugned Excise Invoices and Deyed Fabric mentioned in impugned ARE-1 are the same and falling under Central Excise Tariff Chapter No. 54 & 55. Hence, the products are same. Further, when the goods were cleared locally, the same were cleared on bale form, but while export, the same were packed in catons to avoid damages.

7.1 On Sample perusal of excise and export documents submitted by the applicant, Government observes that the quantity in meter, value of goods, duty details, No. of pieces etc. are identical in impugned excise invoices and AREs-1. Further there is mention of relevant excise invoice nos. on copy of AREs-1. Also, there is mention in part B of impugned AREs-1, the impugned Shipping Bills. The Customs officer has certified the goods covered by relevant Shipping Bills pertain to impugned AREs-1 and as such goods cleared under such AREs-1 were indeed exported. There is no documentary evidence brought out by the department that goods covered vide impugned excise invoices donot correlate to goods covered vide impugned AREs-1 and hence, the same were actually not exported. As such, all such co-relatable evidences put together proves that goods cleared vide ARE-1/Invoice were exported. Under such circumstances, difference in description in excise invoice and AREs-1 and preparation of ARE-1 at much later date from the date of invoice are to be treated as procedural infraction which is condonable.


8. For situations as above, the observations to be kept in mind should be as per Hon'ble Supreme Court judgement in case of Sharif-Ud-Din, Abdul Gani [AIR-1980 SC (3403) & 203 (156) ELT (178) Bombay] that distinction between requirements of procedure and other declarations of compulsory nature and/or simple technical nature are to be judiciously done. What needs to be considered that a particular lapse on the part of applicant would be having what consequences and as to whether the same can be taken as otherwise verified/checked so as to avoid any undue benefits. Therefore since the substantial evidences of co-relatability are there, the rebate should not be

denied as held by this authority in case of COTFAB Exports [2006 (206) ELT 1027(GOI)] in addition to above cited case laws.

9. Government therefore sets-aside the impugned Order-in-Appeal and allows the revision application.

10. The revision application thus succeeds for above terms.

11. So, ordered.



(D.P. Singh)

(Joint Secretary to the Government of India)

M/s Rainbow Silks,
Shop No. 10, 50/86, fitekar Building,
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(Attested)

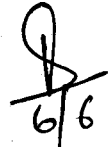


(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C.B.E.C.-O.S.D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev)
भारत सरकार/Govt. of India
नई दिल्ली / New Delhi

G.O.I. Order No. 556/13-Cx dated 06.06-2013

Copy to:-

1. The Commissioner of Central Excise & Customs, Mumbai-I, 115 Kendriya Utpad Shulk Bhavan, Maharishi Karve Road, Mumbai – 400020.
2. Commissioner of Central Excise (Appeals), Mumbai-I, Meher Building, Bombay Garage, Chowpatty, Mumbai- 400 007.
3. The Assistant Commissioner (Rebate), Central Excise, Mumbai-I, Meher Building, Bombay Garage, Chowpatty, Mumbai- 400 007.
4. Shri R.V. Shetty, Advocate, Flat No. 101, 1st Floor, E-Wing, Sterling Court, Marol, MIDC Orkay Mill Lane, Next to Maheshwari Nagar, Andheri (E), Mumbai 400093.
- ✓ 5. PS to JS (Revision Application)
6. Guard File
7. Spare Copy.


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(Bhagwat P. Sharma)
OSD (Revision Application)