



REGISTERED  
SPEED POST

F.No. 195/139/11-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue.....19/6/13

ORDER NO. 571 /13-Cx DATED 18.06.2013 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.349/OBK/GGN/2010 dated 27.8.10 passed by the Commissioner of Central Excise (Appeals), Delhi-III

Applicant : M/s Jayanti Rubber Industries, Gurgaon

Respondent : Commissioner of Central Excise, Delhi-III

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**ORDER**

This revision application is filed by the applicant against the order-in-appeal No. No.349/OBK/GGN/2010 dated 27.8.10 passed by the Commissioner of Central Excise (Appeals), Delhi-III with respect to order-in-original passed by Assistant Commissioner of Central Excise, Division-I, Gurgaon.

2. Brief facts of the case are that the applicants are engaged in the manufacture of END LINK (Machined Components). On scrutiny of rebate claims of Rs.308891/- filed on 29.9.2009 as duty amount paid by the applicant on export of their goods, it appears that the applicants have contravened the provisions of Notification No.19/2004-CE(NT) dated 6.9.2004 as amended; that the applicants have failed to enclose shipping bill for correlation of the goods exported and whether any other export benefit has been claimed by merchant exporter or any other person; that the export has not been done directly but through merchant exporter; that the applicant have failed to submit disclaimer certificate. On perusal of ARE-1, it was unclear about the destination country to which goods were exported. Copy of BRC has not been produced. Accordingly, show cause notice was issued to the applicant and the case was adjudicated by the original authority and rebate claim was rejected.

3. Being aggrieved by the above said order-in-original, the applicant filed appeal before Commissioner (Appeals), who rejected the same.

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

4.1 The Commissioner (Appeals) invented a quite new ground for rejection of the appeal filed by the applicants thus violating the principles of natural justice.

In the said context, the applicants find support from the allegations as referred to in the Order-in-Original, passed by the Adjudicating Authority revealing that the applicants did not receive any Show Cause Notice as referred to in the same and in the impugned Order-in-Original two reasons were mentioned to deny rebate claim filed by the applicants under Rule 18 of the Central Excise Rules, 2002 read with Notification No.19/2004 CE (NT) and the said grounds are mentioned as under:-

- (i) That no copy of shipping bill was supplied.
- (ii) Disclaimer certificate from the Merchant Exporter besides Bank Realization Certificate were not furnished with the rebate claims.

Except the above said two allegations there was no other allegation leveled against the applicants for denying their rebate claim, however, admitting that custom endorsed copies of ARE-1s application were furnished as proof of export, besides other relevant documents as mentioned in the application claiming rebate. However, without discussing the submissions made by way of grounds of appeal though specific to the above said two allegations, a fresh ground has been imported by the Commissioner (Appeals) while rejecting the rebate claim of the applicants which states that there is difference in Container No. as mentioned on the back of ARE-1 and as mentioned in the Bill of Lading without differentiating or appreciating the submissions made by the applicants in their grounds of appeal before him both on facts and under law.

4.2 The Commissioner (Appeals) has taken shelter that there was difference of container No. as mentioned in ARE 1 and in its Bill of lading, but this does not disprove the factum of export or payment of duty while exporting goods as the copy of ARE 1 was even endorsed by the Customs Department at the time of export of goods. These Nos. are given by customs and which fact is not within the power of the applicants to know. Moreover, Merchant Exporters of the

appellants have explained the factum of change in the number as mentioned on the back of ARE 1s application.

4.3 As regards the ground of non-attending personal hearings fixed on three dates as mentioned in Order-in-Original, the applicants had asserted in their grounds of appeal that no such notice was received by them and the onus was shifted on the department to prove service of the applicants in this case, which they failed and as such the revision was liable to be accepted on this ground alone.

4.4 The Order-in-Appeal is beyond the contents of Show Cause Notice or Order-in-Original and as such Order-in-Appeal is liable to be set aside or the matter deserved remand on the grounds of non-service of Show Cause Notice, nor service of notices fixing personal hearing and granting rebate of the amount as factum of export and receipt of its value stood proved vide documents & disclaimer certificate furnished by our merchant exporter of the applicants as also export of goods by the endorsement made by customs overleaf the ARE 1.

5. Personal hearing was scheduled in this case on 7.08.12, 9.10.12, 6.12.12 & 20.2.13. Applicant has failed to attend any hearing on the above said dates. Shri Ayaz Ahmed Kohli, Deputy Commissioner attended the hearing on behalf of department and stated that order-in-appeal being legal and proper, may be upheld. Government proceeds to decide the case on the basis of available case records.

6. Govt. has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. Government observes that the applicant's rebate claim was rejected by the original authority mainly on the ground that the applicant failed to

produce/submit shipping bills and disclaimer certificate. Commissioner (Appeals) upheld impugned order-in-original. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government observes that in terms of para 8.3 of Chapter 8 of CBEC's Excise Manual of Supplementary Instructions following documents are required to be filed along with rebate claims:

- (i) *A request on the letterhead of the exporter containing claim of rebate, A.R.E. 1 numbers and dates, corresponding invoice numbers and dates amount of rebate on each A.R.E. 1 and its calculations,*
- (ii) *Original copy of the A.R.E.1,*
- (iii) *Invoice issued under rule 11,*
- (iv) *Self attested copy of shipping bill, and*
- (v) *Self attested copy of Bill of Lading.*
- (vi) *Disclaimer Certificate [ in case where claimant is other than exporter]*

8.1 From above provision, it is clear that self-attested copy of shipping bill is required to be filed along with rebate claim. The copy of shipping bill is essential to establish the fact of export. It is also required to establish correlation between goods mentioned in ARE-1 and exported goods to ensure that duty paid goods have indeed been exported. The shipping bill is also required to verify whether the exporter is not getting any double benefit. As such, submission of shipping bill is essential statutory requirement, which is strictly required to be complied with in order to avail rebate benefit. Similarly, submission of disclaimer certificate is also essential as mentioned in Sl.No.(vi) of para 8.3 of Chapter 8 of CBEC Excise Manual.

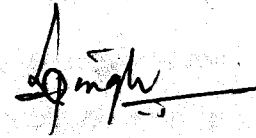
9. Government notes that nature of above requirement is a statutory condition. The submission of attested copies of shipping bill is must because allowing such leniencies would lead to possible fraud of claiming an alternatively available benefit which may amount to additional/double benefit. This has never been the policy of the Government to allow unintended benefit Hon'ble Supreme Court in case of Sharif-ud-Din. Abdul Gani AIR 1980 SC (3403) & 203 (156) ELT

(178) Bombay) has observed that distinction between required forms and other declarations of compulsory nature and/or simple technical nature is to be judiciously done. When non-compliance of said requirement leads to any specific /odd consequences then it would be difficult to hold that requirement as non-mandatory. As such there is no force in the plea of the applicant that this lapse should be considered on a procedural lapse of technical nature which is condonable in term of case laws cited by applicant.

10. In view of above discussion, Government does not find infirmity in order of Commissioner (Appeals) and hence, upholds the same.

11. Revision Application is thus rejected in terms of above.

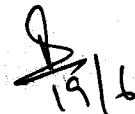
12. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

M/s Jayanti Rubber Industries  
Kadipur Industrial Area  
Pataudi Road, Behind Radha Swami Satsang Bhawan  
Gurgaon (Haryana)



(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

Order No. 571 /2013-Cx dated 18.06.2013

Copy to:

1. Commissioner of Central Excise, Delhi-III, Gurgaon, Haryana
2. Commissioner of Central Excise (Appeals), Delhi-III, Gurgaon, Haryana
3. The Assistant Commissioner of Central Excise, Division-I, 37, Gurgaon, Haryana

✓ 4. PA to JS (RA)

5. Guard File

6. Spare copy

ATTESTED



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

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