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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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

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F. NO. 195/188/14-RA

Date of Issue: .08.2020

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ORDER NO. *594* /2020-CX (SZ) /ASRA/MUMBAI DATED *26*.08.2020  
OF THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE  
ACT,1944.

Applicants : M/s HLL Lifecare Ltd.,  
Peroorkada Factory,  
Thiruvananthapuram,  
Kerala - 695 005.

Respondents : Commissioner of Customs, Central Excise &  
Service Tax, Thiruvananthapuram.

Subject : Revision Application filed, under Section 35EE of  
Excise Act, 1944 against the Order-in-Appeal No. 66  
to 70/2014-CE dated 16.04.2012 passed by the  
Commissioner(Appeals), Central Excise, Cochin.

**ORDER**

This revision applications is filed by M/s HLL Lifecare Ltd., Thiruvananthapuram, Kerala against the Orders-in-Appeal No. 66 to 70/2014-CE dated 16.04.2012 passed by the Commissioner (Appeals), Central Excise, Cochin.

2. Brief facts of the case are that the applicant are manufacturer and exporter -of rubber condoms falling under CSH No. 40141010 of the Central Excise Tariff Act, 1985. Major portion of the goods manufactured by the applicant are exported to foreign countries. The product is not subject to excise duty as the tariff rate is 'NIL'. The applicant are claiming the rebate of duty paid on inputs used in the manufacture of the finished goods under Rule 18 of the Central Excise Rules, 2002. The rebate claims for amount of Rs. 1,95,289/- (Rupees One Lakh Ninety Five Thousand Two Hundred Eighty Nine Only) were rejected by the Original Authority vide Order in Original Nos. R-08/2009 to R-12/2009 all dated 09.04.2009 on the grounds that the applicant had not fulfilled the conditions as required under Notification No. 21/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 in as much as the norms for Wallet in respect of condom BE LOVE is not filed before the commencement of export.

3. Being aggrieved by the impugned Order-in-Original, the applicant filed appeals before Commissioner (Appeals), Cochin. The appellate Authority rejected the appeal on vide impugned Order in Appeal. The Appellate Authority while passing the order observed that :-

3.1 The applicant is manufacturer / exporter and therefore is well aware of the laws governing the manufacture and export of goods.

3.2. The applicant have filed the norms for wallet / packing materials in respect of all the other brands before the commencement of export.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of the Central Excise Act, 1944 before Government on following grounds :-

4.1 The applicant is a Public Sector Undertaking of the Government of India. According to the Ministry's Circular MF (DR) letter F. No. 390/85/93 JC dated 10.02.1994 as reported in 1994(70)ELTT 21 when an issue relating to a PSU arises and issue of SCN is proposed, the adjudicating authority should send a report to the Commissioner for a negotiated settlement of the dispute. This procedure has not been followed in the instant case.

4.2 The objections raised in the notice are only procedural lapses or curable defects.

4.3 Non fulfilment of procedure under Notification No. 43/2001 CE(NT) cannot stand in the light of the fact that final products were exported.

4.4 The applicant has relied upon various case laws in support of their contention.

5. Personal hearing was scheduled in this case on 09.01.2020 and 15.01.2020. The applicant vide their letter No. HL/AC/Reb/CE-Appal(08-09)2019-20/17903 dated 06.01.2020 informed that they were not in a position to depute a person for the hearing and requested to allow the Revision Application.

6. Government has carefully gone through the relevant case records, written submission and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records, Government observes that the original authority rejected the rebate claims of the applicants for the reason of failure to file the norms for Wallet in respect of condom BE LOVE is not filed before the commencement of export. Commissioner (Appeals) upheld the impugned Order-in Original. Now the applicant has filed this Revision Application on grounds mentioned in para (4) above.

8. Government observes that the rebate claim of the applicant was rejected for the reason of non-compliance of conditions and the procedure mentioned in the Notification No. 21/2004-CE (N.T.) dated 06.09.2004 issued under Rule

18 of the Central Excise Rules, 2002. The relevant conditions of the said notification No. 21/2004-C-E (N.T.) dated 06.09.2004 reads as under:-

*" In exercise of the powers conferred by of rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No.41/2001-Central Excise (N.T.), dated the 26<sup>th</sup> June, 2001[G.S.R.470 (E) dated the 26<sup>th</sup> June, 2001], the Central Government hereby, directs that rebate of whole of the duty paid on excisable goods (hereinafter referred to as 'materials') used in the manufacture or processing of export goods shall, on their exportation out of India, to any country except Nepal and Bhutan, be paid subject to the conditions and the procedure specified hereinafter: -*

**(1) Filing of declaration.** - *The manufacturer or processor shall file a declaration with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture describing the finished goods proposed to be manufactured or processed along with their rate of duty leviable and manufacturing/processing formula with particular reference to quantity or proportion in which the materials are actually used as well as the quality. The declaration shall also contain the tariff classification, rate of duty paid or payable on the materials so used, both in words and figures, in relation to the finished goods to be exported.*

**(2) Verification of Input-output ratio.** - *The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall verify the correctness of the ratio of input and output mentioned in the declaration filed before commencement of export of such goods, if necessary, by calling for samples of finished goods or by inspecting such goods in the factory of manufacture or process. If, after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is also satisfied that there is no likelihood of evasion of duty, he may grant permission to the applicant for manufacture or processing and export of finished goods."*

8.1 The Government finds that as per the provisions under the above Notification the applicant are required to file norms in respect of wallet/packing material used in manufacture of exported goods to claim rebate of duty paid on such wallets. It is noticed that the applicant have filed the norms for wallet / packing materials in respect of all the other brands (except BE LOVE) before the commencement of export . Thus it is apparent that the applicant were aware of the procedure to be followed for claiming rebate of duty on packing material/wallet used in manufacture of excisable goods exported. However, they have failed to fulfil the condition in respect of exported goods viz. Be Love brand.

8.2 The Government further notes that filing of norms before commencement of export is essential in order to enable jurisdictional Assistant Commissioner / Deputy Commissioner to verify the input / output

ratio and satisfy himself that there is no evasion of duty. Hence, the contention of the applicant that non filing of the norms is procedural lapse is improper. In the instant case, the applicant did not file the norms in respect of wallet / packing material for excisable goods with brand name BE LOVE. In the absence of the same the verification of the input/output ratio relating to goods exported cannot be done by the Rebate Sanctioning Authority. In view of above, Government holds that the applicant has failed to comply with crucial condition of Notification No. 21/2004-CE(NT) dated 06.09.2004 in spite of being aware of it.

9. Government also observes that GOI in its earlier orders viz. Order No. 85/2015-CX dated 21.09.2015 in Re : M/s Kriti Nutrients Ltd. Dewas and Order No. 11/2016-CX dated 20.01.2016 in Re : M/s Themis Medicare Limited, Haridwar, have also rejected the Revision Applications by upholding rejection of rebate claims of the applicants therein, for not following the provisions of Notification No.21/2004-CE(NT). The GOI in its aforementioned orders observed as under :-

*“Government, therefore, holds that non fulfilling the statutory conditions laid down under the impugned Notification and not following the basic procedure of export as discussed above, cannot be treated as just a minor or technical procedural lapse for the purpose of availing the benefit of rebate on the impugned goods. As such there is no force in the plea of the applicant that this lapse should be considered as a procedural lapse of technical nature which is condonable in terms of case laws cited by applicant.*

*Government notes that nature of above requirement is both a statutory condition and mandatory in substance for removal of goods for exports under claim for rebate of duty either on the final goods exported or on the inputs contained therein.*

*It is in this spirit and this background that Hon'ble Supreme Court in case of Sharif-ud-Din, Abdul Gani - (AIR 1980 SC 3403) 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.*

*It is a settled issue that benefit under a conditional Notification cannot be extended in case of non-fulfillment of conditions and/or non-compliance of procedure prescribed therein as held by the Apex Court in the case of Government of India Vs. Indian Tobacco Association 2005 (187) ELT 162 (S.C.); Union of India Vs. Dharmendra Textile Processors 2008(231) ELT 3 (S.C.). Also it*

*is settled that a Notification has to be treated as a part of the statute and it should be read along with the Act as held by in case of Collector of Central Excise Vs Parle Exports (P) Ltd - 1988(38)ELT 741(S.C.) and Orient Weaving Mills Pvt. Ltd. Vs Union of India 1978 (2) ELT J 311(S.C.) (Constitution Bench).*


*Government notes that the applicant relied on the various judgments regarding procedural relaxation on technical grounds. The point which needs to be emphasized is that when the applicant seeks rebate under Notification No. 21/2004-NT dated 06.09.2004, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under such Notification No.21/2004-NT dated 06.09.2004 the applicant should have ensured strict compliance of the conditions attached to the Notification No.21/2004-NT dated 06.09.2004.*

*Government place reliance on the Judgment in the case of MIHIR TEXTILES LTD. Versus COLLECTOR OF CUSTOMS, BOMBAY, 1997 (92) ELT 9 (S.C.) wherein it is held that:*

*"concession/ relief of duty which- is made dependent on the satisfaction of certain conditions cannot be granted without compliance of such conditions. No matter even if the conditions are only directory."*

*Further, Government finds that there is no provision under Rule 18 of Central Excise Rules 2002 for condonation of non-compliance with the conditions and procedure laid down in the Notification allowing rebate under said Rule. In view of the above discussions, Government finds that the applicant failed to fulfill the above mandatory condition of the said provisions and the condition being mandatory the same is required to be followed by the applicant particularly when the applicant is the beneficiary in the claim of rebate".*

10. In view of above discussions, the Government finds that rebate claims were rightly held inadmissible by the lower authorities. The Government finds no infirmity in the impugned Order-in-Appeal and hence, upholds the same.
11. Revision application is thus rejected being devoid of any merits.
12. So ordered.

  
(SEEMA ARORA)

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

ORDER No 594 /2020-CX (SZ) /ASRA/Mumbai DATED 26 .08. 2020

To,

M/s HLL Lifecare Ltd.,  
Peroorkada Factory,  
Thiruvananthapuram,  
Kerala - 695 005.

Copy to:

1. The Principal Commissioner of Central Goods & Service Tax, Thiruvananthapuram, I.C.E. Bhavan, Press Club Road, Statute, Thiruvananthapuram- 695 001.
2. The Dy. Commissioner, CGST, Thiruvananthapuram North Division, I.C.E. Bhavan, Press Club Road, Statute, Thiruvananthapuram- 695 00.
3. The Commissioner of Central Goods & Service Tax (Appeals), 4<sup>th</sup> Floor, C.R. Building, I.S. Press Road, Ernakulam, Cochin-682 018.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.