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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, Cuff Parade,  
Mumbai- 400 005**

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F. NO. 195/138/14-RA

Date of Issue: .08.2020

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<sup>595</sup>  
ORDER NO./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 THE CENTRAL  
EXCISE ACT, 1944.

Applicant : M/s Raghav Industries Ltd.  
T.S. No.7, Kattipalayam,  
Tiruchengode-Namakal Main Road,  
Post -Ela Nagar, District-Namakal,  
Tiruchengode- 637212.

Respondent : Commissioner of Central Excise, Salem.

Subject : Revision Applications filed, under section 35EE of the  
Central Excise Act, 1944 against the Orders-in-Appeal  
No. 109/2014-CE dated 26.02.2014 passed by the  
Commissioner of Central Excise (Appeals), Salem.

**ORDER**

This revision application is filed by M/s Raghav Industries Ltd., T.S. No.7, Kattipalayam, Tiruchengode-Namakkal Main Road, Post -Ela Nagar, District-Namakkal,Tiruchengode- 637212(hereinafter referred to as "the applicant") against the Order-in-Appeal No. 109/2014-CE dated 26.02.2014 passed by the Commissioner of Central Excise (Appeals), Salem.

2. Brief facts of the case are that the applicant is engaged in the manufacture of Polyester Yarn, Acrylic Yarn and Polyester Viscos blended yarn falling under Chapter No. 55 of the CETA, 1985. The applicant had filed rebate claim for Rs. 3,08,989/- (Rupees Three Lakh Eight Thousand Nine Hundred Eighty Nine Only) under Rule 18 of the Central Excise Rules, 2002 on 18.09.2012 for goods exported under ARE-1 No. 13 dated 30.03.2012. The date of export was 01.04.2012. On scrutiny of the claim, the Rebate Sanctioning Authority observed that the applicant had filed the photocopies of the ARE-1 duly signed by the Customs officers. The claim was therefore returned to the applicant vide letter dated 06.12.2012 with request to file the it along with Original and Duplicate copies of the relevant ARE-1s. The applicant vide letter dated 17.06.2013 informed the department that the Original and Duplicate copies of ARE-1 were not traceable. Since the claimant did not submit the required documents, the were informed by the department vide letter dated 25.06.2013 that their letter is disposed off since no claim was filed along with it. The applicant then filed the rebate claim on 18.07.2013 along with photocopies of the ARE-1s. The impugned rebate claim was rejected by the original authority being time barred as per the provisions under Section 11B of the Central Excise Act, 1944.

3. Being aggrieved, the applicant filed appeal before Commissioner (Appeals), Central Excise, Salem. The Appellate Authority observed that the payment of duty in respect of the impugned rebate claim was made on 01.04.2012 and so the rebate claim filed within one year i.e. on or before 31.03.2013 along with relevant documents whereas the applicant filed the same on 18.07.2013. The appellate authority vide impugned Order in Appeal upheld the Order in Original and rejected the appeal filed by the applicant.

4. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application on the following grounds that :

- 4.1 Non submission of Original and Duplicate ARE-1 will not deprive them of them from claiming the substantial benefit of rebate claim.
- 4.2 The applicant relied upon the Bombay High Court ruling in the case of UM Cables Ltd. Vs. UOI reported in 2013-TIOL-386-HC-MUM-CX [2013 ELT 641 (BOM)] wherein it was held that mere non production of the ARE-1 form would not ipso facto result in the invalidation of the rebate claims.
- 4.3 Rule 18 of Central Excise Rules, 2002 has self made distinction between conditions and limitations on one hand subject to which a rebate would be granted and the procedure governing grant of rebate on the other hand. While the conditions and limitations are mandatory, the procedure is directory.
- 4.4 Since they had submitted all other relevant evidences along with their rebate claim and originally submitted on 06.12.2012, the rebate may be sanctioned.

5. A Personal hearing in the matter was granted on 16.01.2020 and Shri Rajendra Kumar Kanodia, Director and Shri. Nitin Sharma, Manager appeared for hearing on behalf of the applicant. The department vide their letter dated 14.01.2020 submitted their comments and requested to pass an order accordingly.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that rebate claim was prima facie rejected / returned by the Rebate Sanctioning Authority for the reason that the applicant has not submitted the original & duplicate copy of ARE-1 No. 13 dated 30.03.2012.

8. The Government notes that the Manual of Instructions that have been issued by the CBEC specifies the documents which are required for filing a claim for rebate. Among them is the original copy of the ARE-1, the invoice and self-attested copy of shipping bill and bill of lading. Further paragraph 8.4 of the said Manual specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported as evident from the original and duplicate copies of the ARE-1 form duly certified by customs. The second is that the goods are of a duty paid character as certified on the triplicate copy of the ARE-1 form received from the jurisdictional Superintendent of Central Excise. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

9. In the instant case, the Government notes that the attested photocopies of ARE-1 available on record show that the container in question was examined and sealed by the Range Superintendent and the inspector. Therefore authenticity of photocopies submitted could have been verified from the endorsement of Central Excise Officers in Part-1 of the Triplicate Copy of ARE-1 No. 13 dated 30.03.2012. Further, the applicant had submitted the photocopies of impugned ARE-1 dully attested by the Customs Authority i.e. the officers endorsing Part -B of ARE-1. As such, non-submission of Original / Duplicate Copies of ARE-1 is a procedural lapse on the part of applicant ARE-1 especially when they have submitted collateral documents viz. shipping bill and bill of lading in respect of the said consignment exported by them. These collateral documents are sufficient to check whether the goods cleared under said ARE-1 had been exported or otherwise. Further, in case of any doubt, the genuineness of the document could have been referred to the Customs Authorities and Central Excise Authorities and could have been verified. However, Government finds that the Rebate Sanctioning Authority had returned the rebate claim without looking in to this aspect and without verifying the collateral documents

submitted by the applicant along with their rebate claim initially filed on 18.09.2012 which was well within the time limit of one year from the date of export. The applicant said to have submitted the copies of BRC also to the Rebate Sanctioning Authority in respect of export proceeds realized in the instant case.

9.2 Government finds that the deficiencies observed by the original adjudicating authority are merely of procedural or technical nature. In cases of export, the essential fact is to ascertain and verify whether the goods have been exported. If the same can be ascertained from substantive proof in other documents available for scrutiny, the rebate claims cannot be restricted by narrow interpretation of the provisions, thereby denying the scope of beneficial provision. Mere technical interpretation of procedures is to be best avoided if the substantive fact of export is not in doubt. In this regard the Government finds support from the decision of Hon'ble Supreme Court in the case of Suksha International - 1989 (39) ELT 503 (SC) wherein it was held that 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. In UOI vs. A.V. Narasimhalu - 1983 (13) ELT 1534 (SC), the Apex Court observed that the administrative authorities should instead of relying on technicalities, act in a manner consisted with the broader concept of justice. In fact, in cases of rebate it is a settled law that the procedural infraction of Notifications, Circulars etc., are to be condoned if exports have really taken place, and that substantive benefit cannot be denied for procedural lapses. Procedures have been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is the manufacture of goods, discharge of duty thereon and subsequent export.

9.3 Also, it is now a trite law while sanctioning the rebate claim that the procedural infraction of Notification/Circulars etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacturer and subsequent export. As long as this requirement is met, other procedural

deviations can be condoned. Such a view has been taken in *Birla VXL* - 1998 (99) E.L.T. 387 (Tri.), *Alfa Garments* - 1996 (86) E.L.T. 600 (Tri), *Alma Tube* - 1998 (103) E.L.T. 270, *Creative Mobous* - 2003 (58) RLT 111 (GOI), *Ikea Trading India Ltd.* - 2003 (157) E.L.T. 359 (GOI), and a host of other decisions on this issue.

9.4 The Government, therefore, holds that the production of the ARE-1 form in the original and duplicate is a matter of procedure and non-submission of Original & Duplicate copies of ARE-1 form by the applicant should not result in the deprivation of the statutory right to claim a rebate subject to the satisfaction of the authority on the production of sufficient documentary material that would establish the identity of the goods exported and the duty paid character of the goods.

9.5 Further, as a matter of fact, in several decisions of the Union Government in the revisional jurisdiction as well as in the decisions of the CESTAT, the production of the relevant forms has been held to be a procedural requirement and hence directory as a result of which, the mere non-production of such a form would not result in an invalidation of a claim for rebate where the exporter is able to satisfy through the production of cogent documentary evidence that the relevant requirements for the grant of rebate have been fulfilled. It is also observed that, in the present case, no doubt has been expressed whatsoever that the goods were exported goods.

10. In view of the discussion in foregoing paras, Government holds that the rejection /returning the rebate claim solely on the ground of non-submission of Original / Duplicate copies of ARE-1, when sufficient collateral documents are available on records, is not just and proper.

11. The Government, therefore, remands the matter back to the original authority for the limited purpose of verification of the claim with directions that he shall reconsider the claim for rebate on the basis of the documents submitted by the applicant after satisfying itself in regard to the authenticity of those documents. However, the rebate sanctioning authority shall not upon remand, reject the claim on the ground of the non-production of the original/ duplicate copy of the ARE-1 form, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled.

Further, in the instant case, the Government observed that the Range Officer in his verification report O.C. No. 1058/2012 in respect of the impugned rebate claim filed on 18.09.2012 at para (iv) has raised the objection for eligibility of the rebate of duty to the applicant on ground that the applicant have claimed drawback @9.5% which means the composite rate and hence the rebate of duty is not eligible. This aspect needs to be looked into by the Rebate Sanctioning Authority while scrutinizing the rebate claim afresh. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

12. In view of above discussion, Government sets aside the impugned Order-in-Appeal No. 109/2014-CE dated 26.02.2014 and remands the case to the original adjudicating authority as ordered supra.

13. The revision application is disposed off in terms of above.

14. So ordered.

(SEEMALAKHARORA)

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

ORDER No. <sup>595</sup>/2020-CX (SZ) /ASRA/Mumbai DATED ~~26~~ 26.08.2020

To,  
M/s Raghav Industries Ltd.  
T.S. No.7, Kattipalayam,  
Tiruchengode-Namakka Main Road,  
Post -Ela Nagar, District-Namakka,  
Tiruchēngode- 637212.

Copy to:

1. The Commissioner of CGST & CX, Salem, No.1, Foulks Compound, Anai Medu, Salem- 636 001.
2. The Commissioner of CGST & CX, (Appeals-I), No. 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai - 600 034.
3. The Deputy Commissioner, CGST& CEX, Salem-II Division, Foulks Compound, Anai Medu, Salem- 636 001.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.