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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  
8th Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

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F.No.198/37/2014-RA

Date of Issue:

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ORDER NO. 635/2020-CX (WZ)/ASRA/MUMBAI DATED 15.09.2020 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 : Commissioner of Central Excise, Kolhapur.

Respondent : M/s Eurotex Industries & Exports Ltd.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. PUN-EXCUS-002-APP-173-13-14 dated 28.01.2014 passed by the Commissioner(Appeals), Central Excise, Pune-II.

ORDER

This Revision Application has been filed by the Commissioner of Central Excise, Kolhapur (hereinafter referred as "the Applicant") against the Order-in-Appeal No. PUN-EXCUS-002-APP-173-13-14 dated 28.01.2014 passed by the Commissioner(Appeals), Central Excise, Pune-II.

2. The brief facts of the case is that M/s Eurotex Industries and Exports Limited, Plot No. E-1 & E-23, MIDC, Gokul Shirgaon, Dist. Kolhapur (hereinafter referred as "the Respondent") are engaged in the manufacture of 100% grey cotton Yarn and 100% Grey Cotton Knitted Fabric falling under Chapter Heading 5205 and 6004 respectively of the Central Excise Tariff Act, 1985.
3. The Respondent had cleared excisable goods for export on payment of Central excise duty vide ARE-1 Nos. 165 dated 12.12.2012 and 166 dated 13.12.2012 and subsequently filed rebate claim of Rs.2,65,102/- (Rupees Two Lakhs Sixty Five Thousand One Hundred and Two only) and Rs. 3,35,142/- (Rupees Three Lakhs Thirty Five Thousand One Hundred and Forty Two Only) respectively. The said rebate claims total amounting to Rs. 6,00,244/- were sanctioned by the Deputy Commissioner, Central Excise Kolhapur-II Division vide Order-in-Original No. 10/ADJ/K-II/2013 dated 19.04.2013.
4. On scrutiny of rebate claims, the Applicant Department found that the proof of export were not submitted by the Respondent, in as much as the details like Shipping Bill No., vessel name, custom's endorsement, etc. which were required to be on the reverse of the ARE-1s, were actually on a separate page.. In view of this the Applicant, not being satisfied as to the legality and propriety of the Order-in-Original dated 19.04.2013 reviewed the same filed appeal before Commissioner(Appeals), Central Excise, Pune-II against the said Order in Original.
5. The Commissioner (Appeals), while observing that "*Benefit cannot be denied merely on any presumption or anticipation of some miscues as it would be incorrect or bad in law. When the export of goods has not been*

*challenged, then the irregularity in the ARE-1, if any, is purely procedural or technical in nature, thus condonable. There are number of judgments on the issue where it has been held that substantive benefits cannot be denied for procedural lapses. I therefore do not agree with the Appellents' plea that proof of export are not submitted"* has set aside the said Appeal filed by the Applicant Department vide Order in Appeal No. PUN-EXCUS-002-APP-122-13-14 dated 22.11.2013.

6. Being aggrieved, the Applicant Department has filed Revision Application on the grounds :

(i) Scrutiny of the rebate claims, showed that the Respondent had failed to submit the Original and Duplicate copies of the ARE-1 Nos. 165 dated 12.12.2012 and 166 dated 13.12.2012, giving complete details and particulars of export, on the reverse of the ARE-1s, suitably endorsed by the Custom Authorities. These details were submitted on a separate page and not on the reverse of the ARE-1. As there was a possibility of misuse if necessary endorsements are made on separate pages, the law has required that the endorsement has to be on the reverse of the ARE-1s.

(ii) The observation of the Commissioner (Appeals) that the provisions of Notification No. 19/ 2004-CENT) dated 06.09.2004, which lays out the procedure for filling rebate claims, nowhere mentions that the page number 2 of ARE-1s should necessarily be on the reverse of page number 1, is erroneous in as much as the format prescribed for ARE-1 under the notification has four parts - A,B,C and D and the format prescribed as per law, clearly stipulates that the Form ARE-1s has to be prepared in such a way that the details of goods to be exported appear on the face of the ARE-1s and the certifications by the various authorities in relation to the goods being exported, have to be obtained on the reverse of the same.

7. Personal Hearing in this matter was held on 16.01.2020 and Shri Sanjay Makwana, Export Executive of the Respondent appeared for the

hearing. None appeared on behalf of the Applicant Department. The Respondent filed written submissions and requested for rejection of the Revision Application.

8. In their written submissions dated 16.01.2020, the Respondent mainly submitted that :

- (i) ARE-1 forms normally are available in market which are printed back to back, hence, the details of vessel through which export took place, date of export, mate receipt number etc. appear on the back side/reverse side of ARE-1, while in their case, they prepared computerized ARE-1 and details were printed on separate papers instead of back-to-back. Thus, as against the said details on the reverse / back of the ARE-1 in case of pre-printed ARE-1, the said details were contained on a separate paper. It was not mandatory for assessee to use pre-printed form ARE-1. In absence of any bar/requirement under the provisions for claiming rebate, an assessee is free to prepare computerized form ARE-1 and print the same on separate papers instead of printing back to back.
- (ii) The Commissioner(Appeals), had considered all other collateral evidence like shipping bill, mate receipt, bill of lading, etc. and had found that all the information's mentioned in the said documents was tallying with the information mentioned in the ARE-1s which had been duly sealed and signed by the customs authorities and that no evidence has been adduced by the department that the Respondent had misused the export facility.

9. 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.

10. Government observes that in the instant case, the Respondent had used computerized ARE-1s which were printed on separate papers instead of back-to-back. It is the contention of the department that there is a


possibility of misuse if necessary endorsements are made on separate pages (of ARE-1s) as the law requires that the endorsement has to be on the reverse of the ARE-1s.

11. From the ARE-1 form appended below the Notification No. 19/2004-Central Excise (N.T.) it is seen that PART A and PART C of the ARE-1 Form do contain the word "*overleaf*", thereby indicating that PART A is required to be printed on the back side of ARE-1. However, this requirement may be condoned if the exported goods could be co-related with the goods cleared from the factory of manufacture or warehouse. In order to examine the issue of correlatability, description, weight and quantities in the said ARE-1s has to be correlated with export documents such as export invoices, Shipping Bill and Bill of Lading. There is sufficient, corroboratory evidence, as observed by the Commissioner(Appeal), that goods covered vide impugned Excise documents have actually been exported and endorsement of Customs Officers at the port of export also conclusively supports the same observation. Therefore, no discrepancy has been noticed in any of the documents to justify the apprehension of the department that separate pages of ARE-1s could have been misused in this case.

12. It is a settled law that the procedural infraction of Notifications, circulars, etc., are to be condoned if exports have really taken place and substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is payment of duty on manufactured product and its subsequent export. As long as this requirement is met other procedural deviations can be condoned.

13. In view of above discussions and findings, Government upholds the impugned Order-in-Appeal No. PUN-EXCUS-002-APP-173-13-14 dated 28.01.2014 passed by the Commissioner(Appeals), Central Excise, Pune-II and Order-in-Original No. 10/ADJ/K-II/2013 dated 19.04.2013.

14. The Revision Application is therefore rejected being devoid of merit.
15. So ordered.

  
(SEEMA ARORA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

ORDER No. 635 /2020-CX (WZ)/ASRA/Mumbai DATED 15.09.2020.

To,  
The Commissioner of Central Goods & Service Tax,  
GST Bhavan,  
Kolhapur- 416 001

Copy to:

1. M/s Eurotex Industries and Exports Limited, Plot No. E-1 & E-23,  
MIDC, Gokul Shirgaon, Dist. Kolhapur- 416 234.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.