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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

F. NO. 195/89/14-RA /5954 Date of Issue: ~~09.2020~~ 16.10.2020

ORDER NO. 638 /2020-CX (SZ) /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 CENTRAL EXCISE ACT,1944.

Applicants : M/s Volvo Buses India Pvt. Ltd.,
Yalachahally Village,
Tavrekere Post, Hoskote,
Bangalore – 562 122.

Respondents : Commissioner of CGST, Bangalore.

Subject : Revision Application filed, under Section 35EE of Excise Act, 1944 against the Order-in-Appeal No. 725/2013-CE dated 31.12.2013 passed by the Commissioner(Appeals-I), Central Excise, Bangalore.

ORDER

. This revision applications is filed by M/s Volvo Buses India Pvt. Ltd., Yalachahally Village, Tavrekere Post, Hoskote, Bangalore – 562 122 against the 725/2013-CE dated 31.12.2013 passed by the Commissioner(Appeals-I), Central Excise, Bangalore.

2. Brief facts of the case are that the applicant are manufacturer of Body parts of Buses falling under Chapter subheading No. 87021020 of first schedule to the Central Excise Tariff At, 1985. During the period from 12.11.2010 to 17.06.2011, the applicant exported 10 No. of 'Volvo Air Conditioned Buses' to Sri Lanka and South Africa said to have been manufactured by using duty paid chassis purchased from M/s Volvo India Private Limited, Hoskote, Bangalore on which the Bus Body have been built and exported. The applicant claimed the refund of excise duty amounting to Rs. 42,02,638/- (Rupees Forty Two Lakh Two Thousand Six Hundred and Thirty Eight Only) paid on chassis purchased from M/s Volvo India Private Limited under Rule 18 of the Central Excise Rules, 2002 read with notification No. 21/2004-CE (NT) dated 06.09.2004. The applicant classified the Buses under CSH 87021020. However, such classification is not available in the Central Excise Tariff Act, 1985. On scrutiny of the impugned rebate claim, it was observed that the assessee had failed to follow the procedures under the Notification No. 19/2004 CE(NT) dated 06.09.2004 and 21/2004 CE(NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002. As such a show cause notice dated 14.03.2012 was issued to the applicant proposing to reject the impugned rebate claim. The Adjudicating Authority vide Order in Original No. 65/2012 (R) dated 15.05.2012 had rejected the rebate claim under the provisions of Section 11B of the Central Excise Act, 1944.

3. The applicant filed an appeal against Order-in-Original before Commissioner (Appeals-I), Bangalore. The appellate Authority rejected the appeal on vide impugned Order in Appeal. The Appellate Authority while passing the order observed that :-

3.1 The Board vide Circular No. 928/18/2010-CX has clarified the procedure to be followed in such cases. It is clarified that the manufacturers, other than 100% EOUs, who are manufacturing exempted goods and exporting them are required to follow the procedure prescribed in Notification No. 21/2004 CE(NT) dated 06.09.2004.

3.2 The said Notification is unambiguously clear that the refund of duty paid on inputs used in export goods shall be admissible subject to fulfilment of certain conditions.

3.3 In the instant case, the applicant had not followed any of the procedures such as filing of declaration before the Jurisdictional Assistant Commissioner or exporting the goods under Form ARE-2 etc.

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 activity undertaken by them amounts to 'manufacture' as defined under Section 2(f) of the Central Excise Act, 1944 and Chapter notes to Chapter 87 of the CETA, 1985. Therefore the claim of rebate cannot be rejected.

4.2 The Rule 18of the Central Excise Rules, 2002 provides for grant of rebate on the duty paid on the materials used in the manufacture or processing of goods exported if the conditions or limitations and the procedure prescribed under any notification issued by the Central Government is fulfilled.

4.3 The activity undertaken by the Applicants amounts to manufacturer and the buses have been exported to Sri Lanka and South Africa. They have purchased duty paid chassis from M/s Volvo India Pvt. Ltd. and have not availed credit of the duty paid thereon. As such they have fulfilled the basic conditions for granting rebate as prescribed under Rule 18 of the Central Excise Rules, 2002.

4.4 Non filing of the declaration is only a procedural lapse. It is not legal and proper to reject the refund claim on the ground of procedural shortfalls.

4.5 They are eligible for claim of refund under Rule 5 of the Cenvat Credit Rule, 2004.

4.6 They are also entitled for interest on the rebate sanctioned. Hence, the applicant pray to sanction the rebate along with applicable interest in terms of Section 11AB/11AA of the Central Excise Act, 1944.

4.7 The applicant have relied upon various case laws in support of their contention.

5. Personal hearing was scheduled in this case on 15.10.2019. Ms. Anjali Hirawat, Advocate attended the same on behalf of the applicant. The Advocate submitted Paper Book during the personal hearing. No one appeared for the personal hearing so fixed on behalf of the department. The Department vide letter dated 14.10.2019 filed the submissions in the case.

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 follow the procedure prescribed under Notification No. 21/2004-CE(NT) dated 06.09.2004 as under :-

a) The Applicant failed to file declaration.

b) The Applicant failed to submit the verification of input / output ratio.

c) The applicant had exported the goods under a commercial invoice. Thereby the goods had been cleared without payment of duty. For export without payment of duty they should have followed the procedure prescribed under Notification No. 42/2001-CE (NT) dated 26.06.2001 issued under Rule

19 of the Central Excise Rules, 2002. The applicant failed to furnish the Letter of Undertaking required under Rule 19 ibid.

d) The applicant failed to furnish the details of goods exported in the form of ARE-2.

The 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 26th June, 2001[G.S.R.470 (E) dated the 26th 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 raw material

used in manufacture of exported goods to claim rebate of duty paid on such Buses. However, in the instant case, it is noticed that the applicant have failed to file the required norms before the commencement of export and thus failed to fulfil the condition in respect of exported goods.

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 raw material used in the manufacture of excisable goods. 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. In reference to the above, Government further proceeds to examine the statutory position and the requirement of Form ARE-2 in the instant case.

9.1 Government notes that export of goods under claim for rebate on inputs used in manufacture of export goods is governed by Rule 18 of Central Excise Rules, 2002 and Notification No.21/2004-C.E. (N.T.), dated 6-9-2004 read with Chapter 7 of C.B.E. & C.'s Central Excise Manual and finds that ARE-2 is the basic and essential document for exports as an application for removal of goods for export under claim for rebate.

9.1.1 As per procedure prescribed in the said notification for sealing of goods at place of dispatch, the exporter shall present the goods along with four copies of application in Form ARE-2 to the Superintendent or Inspector of Central Excise who will verify the identity of goods mentioned in the application and the particulars of the duty paid or payable, and if found in order, he shall seal each package or container

in specified manner and endorse each copy of the ARE-2 in token of having done such examination done. The original and duplicate copies of ARE-2 shaft be returned to the exporter, the quadruplicate copy shall be retained by him and the triplicate copy shall be sent to rebate sanctioning officer.

9.1.2 Where the exporter desires self-sealing, the authorized person shall certify on all copies of ARE-2 that goods have been sealed in his presence and shall send the original and duplicate copies along with the goods to place of export and the triplicate and quadruplicate copies to the jurisdictional Superintendent or Inspector of Central Excise within 24 hours of the removal of the goods.

9.1.3 At the place of export, the goods shall be presented along with the original and duplicate copies of ARE-2. Then Customs authorities upon examination of the goods shall allow export thereof and certify on the original and duplicate copies of ARE-2 that the goods have been duly exported citing the shipping bill number and date and return the original copy to the exporter and forward the duplicate copy to the rebate sanctioning officer.

9.1.4 For the purpose of proof of export, the exporter shall submit a monthly statement along with original copies of ARE-2 to the jurisdictional Central Excise Officer, who in turn will *inter alia* match it with the duplicate copy received from Customs and triplicate copy available with him already. The Divisional Officer shall accept proof of export or initiate necessary action in case of any discrepancy.

9.1.5 In case of non-export within six months from the date of clearance for export or any discrepancy, the exporter shall himself deposit the duty along with interest. Otherwise, necessary action can be initiated to recover excise duties along with interest and penalty.

9.2 In light of the above stated statutory provision, Government observes that any export clearance, intended to be made for claiming import duty

rebate, will be subject to Rule 18 ibid read with Notification No. 21/2004C.E. (N.T.), dated 6-9-2004 in case of registered units. Also, ARE-2 is the principle document under Notification No. 21/2004 -C.E. (N.T.), dated 6-9-2004 that establishes that the applicant has either followed the procedure for sealing of goods and examination of goods at place of dispatch either by Central Excise Officer or by self-sealing. In the absence of the ARE-2 and without following the procedure described above, it cannot be established that goods which were cleared from factory were the ones actually exported or that goods exported cannot be correlated with goods cleared from the factory. The submission of application for removal of export goods in ARE-2 form is important as leniencies may lead to possible claim of alternatively available benefits which may lead to additional/double benefits.

9.3 Therefore, Government holds that nature of above requirement is both a statutory condition and mandatory in substance as an application for removal of goods for exports under claim for rebate of duty either on the final goods exported or on the inputs contained therein.

9.4 Government in its Orders 774/2011-CX, dated 14-6-2011 in the case of *Amira Tanna Industries Pvt. Ltd.* [2013 (292) E.L.T. 134 (G.O.I.)] and 871/2011-CX, dated 4-7-2011 in the case of *Synergy Technologies* [2012 (280) E.L.T. 578 (G.O.I.)] has held that preparation of statutory requirement of ARE-1 cannot be treated as a minor or technical procedural lapse for the purpose of accepting proof of export of goods as such leniencies could lead to possible fraud of claiming an alternately available benefit. The ratio of these orders is squarely applicable to the present case.

9.5 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".

9.6 Government notes that the applicant have 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-N.T., dated 6-9-2004, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under such Notification No. 21/2004 -N.T., dated 6-9-2004 the applicant should have ensured strict compliance of the conditions attached to the Notification No21/2004 -N.T., dated 6-9-2004. Government, therefore, holds that non-preparation of statutory document of ARE-2 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. In view of above, the Government holds that rebate claims were rightly held inadmissible by the lower authorities.

10. Further, it is noted that the applicant have claimed that they are alternatively eligible for refund of duty paid on inputs under Rule 5 of the Cenvat Rule 2004. However, it is found that Rule 5 of the Cenvat Credit Rule, 2004 provides that the manufacturer shall be allowed refund of cenvat credit in respect of the input utilized in the manufacturer of final product cleared for export under bond or letter of undertaking. It is therefore unambiguous that the exported goods should be cleared under bond or letter of undertaking in order to claim refund of duty under Rule 5 ibid on inputs used in the manufacture of such goods. In the instant case, it is noted that the applicant had neither executed the required bond nor furnished the letter of undertaking as required under Rule 5 of the Cenvat Credit Rules, 2004 before the competent authorities in respect of exported goods and thus failed to fulfill the principal condition laid under said Rule. In view of discussion in forgoing para, Government holds that the applicant are not eligible for refund under

Rule 5 of the Central Excise Rules, 2004.

11. The Government finds no infirmity in the impugned Order-in-Appeal and hence, upholds the same.

12. Revision application is thus rejected being devoid of any merits.

13. So ordered.

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

ORDER No 638 /2020-CX (SZ) /ASRA/Mumbai DATED 15 .09. 2020

To,

M/s Volvo Buses India Pvt. Ltd.,
Yalachahally Village,
Tavrekere Post, Hoskote,
Bangalore – 562 122.

Copy to:

1. The Principal Commissioner of Central Tax, Bengaluru East Commissionerate, TTMC Building, Above BMTC Bus Stand, 4thFloor, Domlur, Bengaluru- 560 071.
2. The Commissioner of CGST (Appeals-I), Bengaluru, BMTC Building, Old Air Port Road, Domlur, Bengaluru-560071
3. The Dy. Commissioner, CGST,Bengaluru East Division-9, TTMC Building, BMTC Bus Stand, Old Air Port Road, Domlur, Bengaluru-560071
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.