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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

F No.195/698/13-RA  
F.No. 195/699/13-RA

Date of Issue:

ORDER NO. 642-643/2020 C.EX (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.

Applicants : 1. M/s ANS Overseas, Mumbai

2. M/s V.K. Enterprises, Mumbai

Respondents: 1 &2 . The Deputy Commissioner, Central Excise &  
Customs, Dn-IV, Silvassa.

Subject : Revision Application filed, under section 35EE of the Central  
Excise Act, 1944 against the Orders-in-Appeal Nos.  
SRP/307/VAPI/2012-13 and SRP/314/VAPI/2012-13 both  
dated 19.03.2013 passed by the Commissioner (Appeals),  
Central Excise, Customs & Service Tax, Vapi.

ORDER

These revision applications have been filed by M/s ANS Overseas and M/s V.K. Entrprises, 503/1, Anand Dham, Opp. Amboli Railway Crossing, Andheri(E), Mumbai-400 059 (hereinafter referred to as "the Applicants") against the Orders-in-Appeal Nos. SRP/307/VAPI/2012-13 and SRP/314/VAPI/2012-13 both dated 19.03.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vapi.

2. Brief facts of the case are that the Applicants being Merchant Exporters had filed rebate claims in respect of the goods exported which were manufactured by M/s Shree Meenakshi Food Products Pvt. Ltd., Silvassa. The adjudicating authority vide impugned two Orders-in-Original both dated 13.09.2012 rejected the rebate claims on the grounds that Applicants had not fulfilled the condition (iii) of the Notification No. 32/2008-CE(NT) dated 28.08.2008 issued under Rule 18 of the Central Excise Rules, 2002 in as much as they had failed to export the goods directly from the factory or warehouse nor taken any general/special order from CBEC and failed to submit the triplicate and quadruplicate copies of the ARE-1s to the Central Excise Range Office having jurisdiction over the factory within 24 hours after removal of goods. Aggrieved, the Applicants then filed appeals with the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vapi. The Commissioner(Appeals) vide two Orders-in-Original both dated 19.03.2013 rejected the appeals and upheld the Orders-in-Original both dated 13.09.2012.

3. Aggrieved by the said Orders in appeal, the Applicants filed the instant two Revision Applications on the following grounds :-

- (i) Notification No. 32/2008-CE(NT) dated 28.08.2008 was issued under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. Following this CBEC had issued Circular No. 294/10/97-CX dated 30.01.1997, in case the goods exported other than premises of the manufacturer for export. The

Applicants have followed procedure detailed in the said CBEC circular. The Applicants are registered with Central Excise as "Registered Dealer". The goods were in the same factory in packed condition and the same had been verified by the jurisdictional Central Excise officers and then allowed the export of goods. Therefore, the rejection on this ground is not proper and correct.

- (ii) The Applicants had purchased the "GOA 1000 GUTKA" MRP 1.5- from their manufacturer M/s Shree Meenakshi Food Products Pvt. Ltd., Silvassa under the proper Central Excise Invoice in their registered dealer premises and the whole lot in the same packed condition had been exported under ARE-1s.
- (iii) The Applicants place reliance on the Joint Secretary, GOI RA Order Nos. 490/2006 dated 19.06.2006 and 335-337/2002 dated 31.12.2002 in respect of M/s Rotam India Ltd. In these cases exports were undertaken from the premises other than the manufacturing premises. Following the Hon'ble Tribunal Order in case of Synthetics & Chemicals Ltd. Vs Collector of Central Excise, Allahabad [1997 (93) ELT 92 (Tri.)] wherein it is held that a substantive benefit, if otherwise due, could not be denied merely on account of minor procedural infractions. Similarly, the Hon'ble Supreme Court in the case reported in Mangalore Chemicals & Fertilizers Ltd., Vs Dy. Commr. [1991 (55) ELT 437 (SC)] has held that distinction is to be made between procedural condition of technical nature and a substantive condition. Non observance of the former is condonable while that of the latter is not condonable as it is likely to facilitate commission of fraud and introduce administrative inconveniences.
- (iv) The Applicants prayed that both the Orders-in-Appeal be set aside and the rebate claims of Rs. 15,22,191/- and Rs. 4,56,730/- be sanctioned.

4. Personal hearing in the matter was granted on 17.10.2019 and the same was attended by Shri R.V. Shetty and Shri Sharad R Shetty, both Advocates on behalf of the Applicants. The Applicants submitted that the

two cases were identical and reiterated the grounds of the revision applications.

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

6. The basic issue involved in the case is whether the Appellate Authority was correct in rejecting the rebate claim, as

(i) the goods were not exported directly from the place of manufacturer as mandated by condition (iii) of the Notification No. 32/2008-CE(NT) dated 28.08.2008 but the same was exported from the Central Excise Registered Dealer's premises by the Applicants as merchant exporters.

(ii) the Applicant failed to submit the triplicate /quadruplicate copies of the ARE-1s to the Central Excise range Office having jurisdiction over the manufacturer factory within 24 hrs after removal of goods.

7. On perusal of the records, it is observed that the Applicants, merchant exporters had purchased goods i.e. 'GOA 1000 GUTKA' MRP 1.5 (Pan Masala containing Tobacco) from their manufacturer M/s Shree Meenakshi Food Products Pvt. Ltd., Silvassa under Central Excise Invoice and kept them in their premises at Mumbai. The Applicants exported the goods from their premises at Mumbai under ARE-1s, which was endorsed by the Superintendent of Central Excise, Range-IV, K-II, Estrella Batteries Compound, Dharavi, Bombay.

8. Government finds that the goods were not exported directly from the manufacturer's factory or godown/warehouse, but was sold to the Applicants. The Applicants, merchant exporters had kept the purchased goods in their premises and exported it from their premises. In case of Pan Masala, the Notification No. 32/2008-CE(NT) dated 28.08.2008 provides for rebate of duty of excise paid on Pan Masala under Pan Masala Packing

Machines (Capacity Determination and Collection of Duty) Rules, 2008 read with Section 3A of the Central Excise Act, 1944. The condition under clause (iii) of the Notification No. 32/2008-CE(NT) dated 28.08.2008 is absolute-

*"(iii) the excisable goods shall be exported directly from a factory or a warehouse"*

9. In the instant case the goods were not exported directly from the manufacturer's factory or a warehouse, the Applicants are not eligible for the rebate claims. Therefore, the Government agrees with the findings of the Commissioner(Appeals)

*"12. ...There is no exception provided in the mandatory condition under clause (iii) of the said notification No. 32/2008-CE(NT) like the one provided in condition no. 2(a) of NF No. 19/2004-CE(NT). The said condition (iii) of notification No. 32/2008-CE(NT) essentially require the export to be made directly from the factory of manufacture or from the warehouse of the manufacturer for claiming rebate. Therefore, the procedure adopted under Circular dated 30.01.1997 by the appellant cannot allow them rebate of duty on Pan Masala, which is applicable for other excisable goods.*

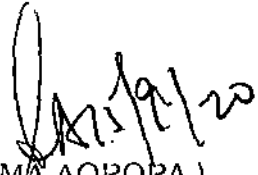
10. Since the conditions of Notification No. 32/2008-CE(NT) dated 28.08.2008 are mandatory in nature and the Applicants have failed to comply with the same, therefore, the Applicants have failed to follow the procedure specified for rebate of duty paid goods under the Notification No. 32/2008-CE(NT) dated 28.08.2008 read with Notification No. 19/2004-CE dated 06.09.2004 as they have failed to export the goods directly from the factory or warehouse nor taken any general/special order for this exception and therefore rebate claim filed by the Applicants are rightly rejected.

11. In view of above, Government holds that the impugned Orders-in-Appeal of Commissioner (Appeals) are legal and proper and hence, required to be upheld. Government, thus, finds no infirmity in the impugned Orders-in-Appeal Nos. SRP/307/VAPI/2012-13 and

SRP/314/VAPI/2012-13 both dated 19.03.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vapi and upholds the same.

12. The Revision Application are disposed off in terms of above.

13. So, ordered.

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

ORDER No ~~642-643~~ /2020-CX (WZ) /ASRA/Mumbai DATED 15.09.2020.

To,

1. M/s ANS Overseas,  
503/1, Anand Dham,  
Opp. Amboli Railway Crossing,  
Andheri(E),  
Mumbai-400 059.
2. M/s V.K. Enterprises,  
503/1, Anand Dham,  
Opp. Amboli Railway Crossing,  
Andheri(E),  
Mumbai-400 059

Copy to:

1. The Commissioner of CGST, Daman, 2<sup>nd</sup> floor, Hani's Landmark, Vapi-Daman Road, Chala, Vapi 396 191.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file
4. Spare Copy.