

F NO. 195/323/14-RA

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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, Cuff Parade,
Mumbai- 400 005

F NO. 195/323/14-RA/5881

Date of Issue: 07.10.2020

ORDER NO. 618/2020-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 : M/s Krishna & Co., Tuticorin.

Respondent : Commissioner of Central Excise, Madurai.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. 73/2014
dated 17.07.2014 passed by the Commissioner of Central
Excise(Appeals),Madurai.

ORDER

This Revision Application is filed by M/s Krishna & Co., 1/422, Chinnakannupuram, Meelavittan, Tuticorin - 628 002 (herein after as "the Applicant") against the Order-in-Appeal No. 73/2014 dated 17.07.2014 passed by the Commissioner of Central Excise(Appeals), Madurai

2. The brief facts of the case are that the Applicant, exporter had filed a rebate claim dated 23.07.2013 for Rs. 2,31,132/- (Rupees Two Lakhs Thirty One Thousand One Hundred and Thirty Two Only). The Assistant Commissioner, Central Excise, Tuticorin Division vide Order-in-Original No. 25/2013 (Rebate), dated 22.10.2013 rejected the rebate claim under Section 11B of Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002 and Notification No. 19/2004-CE(NT) dated 06.09.2004 as the identity of goods exported were not matching with the goods purchased by the Applicant.
3. Aggrieved, the Applicant filed appeal with the Commissioner of Central Excise (Appeals), Madurai, who vide Order-in-Appeal No. 73/2014 dated 17.07.2014 rejected their appeal .
4. Aggrieved, the Applicant filed the current Revision Application on the following grounds:
 - (i) The impugned export goods were purchased from M/s Santhanam Packagings Pvt. Ltd. under the cover of Invoice No. 00643 dated 04.07.2013 against Form H and the Sale Tax/VAT charged in the bill was zero.
 - (ii) The ledger account of M/s Santhanam Packagings Pvt. Ltd. from whom the importer to whom Applicant bought the goods and the ledger account of the overseas consignee importer to whom the Applicant

exported the goods evidence the purchase and sale of the impugned goods.

- (iii) The export product is in common parlance known as PP Bags. The general description PP bags is mentioned in all documents. To distinguish from laminated, the word unlaminated has been used by the manufacturer. The word "Empty New PP Bags" is in all the documents including the manufacturer's invoice. What is actually exported was only unlaminated PP bags (Empty New PP bags). All the documents had cross references with each other and they were properly linked and proving the export of duty paid unlaminated PP bags (Empty New PP bags).
- (iv) There are catena of Hon'ble Court's judgments, wherein it has been held that export related benefit cannot be denied on technical procedural lapses if the substantial condition of that benefit has been fulfilled. Substantial compliance of payment of duty and export of goods have been proved by the Applicant, as such, rebate claim cannot be denied on this count. In this regard, they placed reliance on the following case laws:
 - (a) GOI order IN RE : Commr. of C.Ex., Bhopal [2006 (205) ELT 1093 (GOI)]
 - (b) In Medopharm Vs Commr. of C.Ex., Chennai-I [2003 (160) ELT 1029 (Tri. Chennai)]
- (v) The Applicant prayed that the Order-in-Appeal be set aside and the rebate claim be sanctioned.

5. Personal hearings in this case were fixed on 09.01.2020, 15.01.2020 and 25.02.2020. On 25.02.2020, hearing was attended by Shri P Kathirvel, Deputy Commissioner on behalf of the Respondent and none on behalf of the Applicant. The Respondent submitted that the discrepancy was not amended and hence rebate could not be sanctioned.

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

7. In the instant case, rebate was rejected on ground that identity of the goods exported is not matching with documents furnished by the exporters. The reason adduced by the original authority is that the dimension of the goods (19" x 32") and printing feature (White Printed) are not mentioned in the export documents i.e. Invoice, Shipping Bills, Bill of Lading, etc. although the description of the goods i.e. Empty New PP Bags is found mentioned both in the purchase invoice as well as export documents.

8. On perusal of documents it's observed that in Shipping Bill No 6197993 dated 29.06 2013 there is cross reference of ARE-1 No. 001/13-14 dated 04.07.2013 and the endorsement of Customs officer at the port of export, on part B of the aforesaid ARE-1 No. 001/13-14 dated 04.07.2013. Further, the EP copy of Shipping Bill No. 6197993 dated 29.06 2013 shows the ARE 1 No. as "001" and ARE-1 date as "04/07/2013" and the description as "50 KG EMTY PP BAGS (200 BDL), EACH BUNDLE CONTAINS 1000 NOS., 200000.000 BAG". Therefore, Government finds that description of the goods broadly matches with Purchase Invoice and the only mistake was of not writing "Unlaminated bag" in the export invoice issued by the Applicant. As such there is sufficient corroboratory evidence to establish that goods covered under impugned excise documents have actually been exported vide impugned export documents and identity of the same is proved.

9. Government notes that the Notification No.19/2004-CE(NT) dated 6.9.2004 which grants rebate of duty paid on the goods, laid down the conditions and limitations in paragraph (2) and the procedure to be complied with in paragraph (3). The fact that the Notification has placed the requirement of "presentation of claim for rebate to Central Excise" in para 3(b) under the

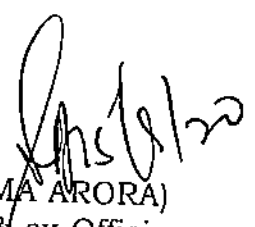
heading "procedures" itself shows that this is a procedural requirement. Such procedural infractions can be condoned.

10. Government finds that the deficiencies observed by the first Appellate authority are of procedural or technical nature. Government also notes that there are catena of judgements that the substantial exports benefits should not be denied on mere procedural infractions until and unless there is some evidence to point out major violation to defraud the Government revenue. In cases of export, the essential fact is to ascertain and verify whether the said goods have been exported. In case of errors, 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.

11. In view of the above, Government set aside the impugned Order-in-Appeal No. 73/2014 dated 17.07.2014 passed by the Commissioner of Central Excise(Appeals),Madurai.

12. The Revision Application is allowed in terms of above.

13. So ordered.


(SEEMA ARORA)

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

ORDER No. 648/2020-CX (WZ) /ASRA/Mumbai Dated 15.09.2020

To,
M/s Krishna & Co.,
1/422, Chinnakannupuram,
Meelavittan,
Tuticorin - 628 002

Copy to:

1. The Commissioner of Goods & Service Tax, Central Revenue Building, Bibikulam, Madurai - 625 002.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.