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SPEED POST



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.195/1454/2012-RA / 4919

Date of Issue: 7/11/19

ORDER NO. 67/2019-CX (WZ)/ASRA/MUMBAI DATED 11.10.2019 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 Khandelwal Business Corporation

Respondent : Deputy Commissioner (Rebate), Central Excise, Raigad.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. US/485/RGD/2012 dated 10.08.2012 passed by the Commissioner (Appeals-II), Central Excise Mumbai.

## ORDER

This Revision Application is filed by the M/s Khandelwal Business Corporation, 302, Simran Plaza, 3rd & 4th Cross Road, Khar (West), Mumbai 400 052. (hereinafter referred to as "the Appellant") against the Order-in-Appeal No. US/485/RGD/2012 dated 10.08.2012 passed by the Commissioner (Appeals-II), Central Excise Mumbai.

2. The issue in brief is that the Appellant had filed a rebate claim No. 11917 dated 27.09.2011 for Rs. 36,516/- (Thirty Five Thousand, Five Hundred and Sixteen Only). On scrutiny of the claim the following deficiencies were noticed which were communicated to the Appellant vide Deficiency memo-cum-SCN dated 19.01.2012.

- (i) The address of the rebate sanctioning authority has been changed /altered by using white ink. In terms of Para 3(b) of Notification 19/2004-CENT) dated 06.09 04 read with Para 8.1 & 8.2 of Chapter 8 of CBEC's Central Excise Manual, an exporter has the option to file the rebate claim either before the Deputy/ Assistant Commissioner of Central Excise having jurisdiction over the factory of production of export goods or Maritime Commissioner. It was, therefore, essential for the exporter to indicate on the ARE-1 at the time of removal of export goods, the office and it's complete address with which they intend to claim the rebate. There was no provision under the Central Excise Laws to amend/ alter such address at the later stage. It, therefore, appeared that the claimant had violated the provisions of Para 3(a)(vii)(a) and 3(xv) of Notification 19/2004-CD(NT) dated 06.09.04 read with Para 6.3 and 7.5 of Chapter 8 of CBEC's Central Excise Manual as well as Para 3(b) of Notification 19/2004-CE(NT) dated 06.09.04 read with Para 8.1 & 8.2 of Chapter 8 of CBEC's Central Excise Manual and thereby the claim was liable for rejection and

penalty under the provisions of Rule 26(2)(ii) and / or Rule 27 of Central Excise Rules, 2002 is warranted.

- (b) There was no Certification on the ARE-1 regarding self sealing as required in terms of Para 3(a)(ii) of Notification 19/2004-CE (NT) dated 06.09.04 read with Para 6.1 of Chapter 8 of CBEC's Central Excise Manual.
- (c) Undertaking regarding erroneous refund was not submitted.
- (d) Certification/ Declaration in Para 3 (a)(b)(c), 4 and 5 of ARE-1 was not furnished.
- (d) Applicant's profile not submitted.

The Deputy Commissioner(Rebate), Central Excise, Raigad vide hid Order-in-Original No. 2172/11-12/DC(Rebate)/Raigad dated 20.02.2012 rejected the rebate claim Rs. 36,516/- and imposed a penalty of Rs. 5,000/- under Rule 27 of Central Excise Rules, 2002 on the grounds that the Appellants had changed the address of the rebate sanctioning authority by using white ink and that the certification of self sealing was not there on the ARE-1. Aggrieved, the Appellant then filed an appeal with the Commissioner(Appeals-II), Central Excise, Mumbai who vide Order-in-Appeal No. US/485/RGD/2012 dated 10.08.2012 rejected the appeal and upheld the Order-in-Original dated 20.02.2012.

3. Being aggrieved, the Appellant then filed the current Revision Application on the following grounds :

- 3.1 That these were their initial stage claims filed along with first rebate claim and they were not aware of the export procedure. They have no doubt that he had committed some procedural mistakes, but that should not have resulted in denying them the rebate of duty paid on export goods which is their substantial right. The Government of India had declared number of incentive schemes to boost the exports which brings

to the country valuable foreign exchange and to make our goods competitive in the international market. This is the spirit of all incentive schemes. The action of the Deputy Commissioner (Rebate), Central excise, Raigad in rejecting the rebate claim for procedural lapses defeat the very purpose of the policy of the Government of India, especially on the back ground that the Appellant have promised to follow the correct procedure in future. The Deputy Commissioner proceeded with a pre-determined mind to reject the rebate claim as can be seen by combined deficiency memo cum show cause notice.

3.2 that they had complied with the deficiency memo. If the compliance was not satisfactory then only the Deputy Commissioner was justified in issuing show cause notice. By combining the deficiency memo and show cause notice, the Appellant have been denied the opportunity to put up their defense. There is therefore violation of principle of natural justice by not affording the Appellant an opportunity of putting up their defense and on this ground alone the OIA is liable to be set aside.

3.3 that the Tribunals and Govt. of India have taken a consistent view that when the export of goods is established the substantial right of refund should not denied. The Appellant have produced copy of the A.R.E.1 duly certified by the custom's authority that the goods have been exported along with all other necessary documents as is admitted in the Order-in-Original. The Appellant humbly feel that when export of goods has been accepted by the Customs authority, the Deputy commissioner (Rebate) should have ignored or waived the procedural infraction and sanctioned the rebate claim.

3.4 that this was the first time that they had filed rebate claim. Since this was their new venture they entrusted the work of

customs to one consultant in customs and they followed his advice. The Appellant are expecting more export orders and that they have promised to follow the procedure. On this back ground there was no need to reject the rebate claim.

- 3.5 that procedural lapses are condonable Changing rebate sanctioning authority's address or not giving self sealing certificate in the export document are not such serious lapses to reject the rebate claim. The Deputy Commissioner should have exercised his discretionary powers and condoned the procedural lapses and sanctioned the rebate claims. Instead he choose to rejectt the claim with a pre-determined mind as can be established from the action of combining deficiency memo and show cause notice there by refusing the Appellant the opportunity of defending their case.
- 3.6 that for procedural lapses, the substantive right of rebate granted under the statue should not be denied. In support they relied on the cases law.
- 3.7 that the goods in question have been exported is not in dispute. Thre is no allegation that the goods have not been exported. When it has been proved that the goods have been factually exported by sufficient documentary evidence, by applying the ration of the relied judgments, the procedural lapses may kindly be condones and the rebate be sanctioned.
- 3.8 The Commissioner(Appeals) did not give his finding in the appellate order inspite of pointing out to him the various judgments of Government of India on the same issue. There is no application of mind on his part. On these grounds also the appellate order is liable to be set aside.
- 3.9 that regards imposition of penalty of Rs. 5,000/- under Rule 27 of the Central Excise Rules, 2002, the Appellant submitted that

Rule 27 says that breach of these rules shall, where no other penalty is provided herein or in the Act be punishable with a penalty which may extend to five thousand rupees and with confiscation of goods in respect of which the offences is committed. Here there is no dispute as regards export of goods. There is procedural lapse. There is no allegation of any fraud of Govt. money in the SCN and the OIO. Therefore there is no branch of any rule. Rule 27 is not attracted.

3.10 that in such cases penalty cannot be imposed filing claim with some deficiency in it is not punishable under the Excise Act or the rules made there under. The Appellant's case is not of false claim hence penalty is not imposable.

3.11. that they prayed that the Order-in-Appeal be set aside with consequential relief to the Appellant.

4. A personal hearing in the case was held on 22.11.2017, 27.12.2017, 12.02.2018 and 20.08.2019. However no one attended the hearing.

5. 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.

6. On perusal of records, Government observe that the Appellant had filed a rebate claim No. 11917 dated 27.09.2011 for Rs. 36,516/- along with the following documents :

- (a) Original, duplicate & triplicate copies of ARE-1.
- (b) Central Excise Invoice under which the export goods were removed from the factory of manufacture.
- (c) Self attested copies of Shipping Bill, Bill of Lading and Mate Receipt.
- (d) Commercial invoice.

(e) No objection certificate from manufacturer.

On scrutiny of the claim the deficiencies were noticed which were communicated to the Appellant vide Deficiency memo-cum-SCN dated 19.01.2012. The Appellant vide their reply letter dated 10.02.2012 stated:

*"Sub : Deficiency memo-cum-SCN – call for Personal hearing.*

*Please refer to the above mentioned deficiency memo in case of Rebate claim filed by us.*

*The changes in the address of the rebate sanctioning authority was made by using white ink as we were not aware of the changes in the distribution of work between different commissionerates as previously the sanction of rebate claim work was centralised.*

*However we have instructed the concern person not to use whitener and in case of any mistake to correct it duly attested by claimant.*

- 1) The mistake is regretted with a request to condone it as will not happen in future.*
- 2) The certification regarding self sealing will be done on the ARE-1 in future.*
- 3) We undertake to refund the amount paid by you, if the refund is found to be erroneous paid subsequently.*

*We declare that*

- a) We have not availed facility of Cenvat Credit.*
- b) Not availed facility under Notification No. 21/2004 dt. 06.09.04.*

*The claimant profile has been submitted on 10.02.2012.*

*We submit that we are new in-the-field of Export and we are not aware of the formality to be complied with. Your advice in the matter is really appreciated.*

*We desire personal hearing in the matter on any of the date fixed for personal hearing."*

The Deputy Commissioner(Rebate), Central Excise, Raigad vide his Order-in-Original No. 2172/11-12/DC(Rebate)/Raigad dated 20.02.2012 rejected the rebate claim Rs. 36,516/- and imposed a penalty of Rs. 5,000/- under Rule 27 of Central Excise Rules, 2002 on the grounds that the Appellants had changed the address of the rebate sanctioning authority by using white ink and that the certification of self sealing was not there on the ARE-1.

7. Government observe that the Commissioner(Appeal) in his findings stated

*"The first issue involved in the appeal is changing the address of the Rebate Sanctioning Authority in the ARE-1 by using white ink at a later stage. The copy of the ARE-1 received in this officer from the jurisdictional Range Superintendent shows the rebate sanctioning authority as "Assistant Commissioner of Central Excise (Refund), Meher Building, Dadi She Lane, Chowpatty, Mumbai". The rebate claim was filed at Maritime Commissioner, Raigad and the adjudicating authority has recorded in the impugned order that the rebate sanctioning authority has been changed at a later stage. This is confirmed from the copy of the ARE-1 received from the Range. The appellants have also admitted having done the same....."*

8. Government notes that Para 8 of Chapter of C.B.E.& C Excise Manual of Supplementary instructions stipulates that the rebate can be sanctioned by Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of production of export goods or the warehouse; or Maritime Commissioner and the exporter has to indicate on the ARE-1 at the time of removal of export goods the office and its complete address with which they intend to file claim of rebate. It is further observed that as per clause (viii) of Para 3(b) of Notification No.19/2004-CE (NT) dated 06.09.2004, rebate claim of duty paid on excisable goods which are exported can be filed either before the Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of manufacturer or warehouse or before Maritime Commissioner. Government also finds that the goods were exported from JNPT, Raigad and the jurisdiction for sanction of rebate claims for exports made from ICD JNPT, Raigad was vested with Maritime Commissioner, Raigad who has jurisdiction in respect of exports made through Nhava Sheva. Moreover, mentioning wrong address of the authority before whom the rebate claim was to be filed cannot be sustainable ground for rejection of rebate claim on the reason assigned by the appellate ground in the impugned order. Further, 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 limitation 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 " on para



3(b) under the heading "procedures" itself shows that this is a procedural requirement. Such procedural infractions can be condoned. Government notes that in the instant case the address of the rebate sanctioning authority has been changes / altered by using white ink and the Appellant in their reply stated that

*"The changes in the address of the rebate sanctioning authority was made by using white ink as we were not aware of the changes in the distribution of work between different commissionerates as previously the sanction of rebate claim work was centralised.*

*However we have instructed the concern person not to use whitener and in case of any mistake to correct it duly attested by claimant.*

*1) The mistake is regretted with a request to condone it as will not happen in future."*

9. Government finds that the grounds taken by the lower authorities in rejection of the rebate claim is purely of technical nature. Government finds that this procedural lapse is condable as the changed/ altered by using white ink in the address of the rebate sanctioning authority cannot be made ground for denying the substantial benefit of rebate of duty paid on exported goods. Further, in this case, the export of duty paid goods is not in dispute. Hence Government holds that procedural lapse is condoned and the rebate claims cannot be rejected on the point of procedural lapse.

10. Government observes that as regards to the Appellant not furnishing the certification of self sealing on the ARE-1, the Appellant in their reply letter dated 10.02.2012 stated -

*"2) The certification regarding self sealing will be done on the ARE-1 in future.*

*3) We undertake to refund the amount paid by you, if the refund is found to be erroneous paid subsequently.*

*We declare that*

*a) We have not availed facility of Cenvat Credit.*

*b) Not availed facility under Notification No. 21/2004 dt. 06.09.04."*

Government notes that the Appellant had admitted their mistake of not giving the certificate of self sealing as they are new in the field of Export and

was not aware of the formality to be complied with and had requested for the department advice in the matter. Further Government notes that the Appellant had submitted sufficient documentary evidence that the goods in question have been exported. Government finds that the said mistake was a procedural lapse and the same is condoned and hence their rebate claims cannot be rejected on the point of procedural lapse.

11. Government finds that the deficiencies observed by the original adjudicating authority and by the first appellate authority are 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 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 consistent 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.

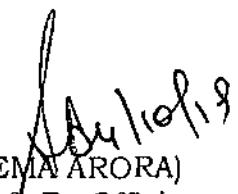
12. In view of the foregoing, the Government holds that detail verification of the rebate by the original adjudicating authority as to the evidence regarding payment of duty i.e relevant Invoice and ARE 1 as produced by the appellants in their rebate claim, has to be taken into consideration. The

Appellant is also directed to submit their relevant records/ documents to the original authority in this regard for verification.

13. In view of the above, Government set aside the impugned Order-in-Appeal No. US/485/RGD/2012 dated 10.08.2012 and remands back the instance case to the original authority which shall consider and pass appropriate orders on the claimed rebate and in accordance with law after giving proper opportunity within eight weeks from receipt of this order.

13. The Revision Application is disposed off in terms of above.

14. So ordered.

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

ORDER No. 67/2019-CX (WZ)/ASRA/Mumbai DATED 4.10.2019.

To:  
M/s Khandelwal Business Corporation,  
302, Simran Plaza, 3rd & 4th Cross Road,  
Khar (West), Mumbai 400 052.

Copy to:

1. The Commissioner of GST & Central Excise, Raigad Commissionerte.
2. The Deputy / Assistant Commissioner (Rebate), GST & CX, Raigad Commissionerte
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.