

REGISTERED
SPEED POST



F.No. 195/586-587/2012-RA(CX)
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6 FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue...18/9/15...

Order No. 79-80/2015-CX dated 16.09.2015 of the Government of India,
passed By Smt. RIMJHIM PRASAD Joint Secretary to the Government of India, under
Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under Section 35 EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. 140-141/
CE/Appl/Chandigarh-II/2012 dated 28.03.2012 passed by
Commissioner of Central Excise (Appeals), Chandigarh-II

Applicant : M/s Modi Industries, Unit-II, Malerkotla (Punjab)

Respondent : Commissioner of Central Excise, Chandigarh-II

ORDER

This revision application is filed by M/s Modi Industries (Unit-II), Malerkotla, Punjab (hereinafter referred to as Applicant) against the Order-In-Appeal No. 140-141/CE/Appl/Chandigarh-II/2012 dated 28.03.2012 passed by Commissioner of Central Excise (Appeals), Chandigarh-II with respect to Order-in-Original Rebate/SNG/469/2011 dated 27.04.2011 passed by the Deputy Commissioner, Central Excise Division, Sangrur.

2. Brief facts of the case are that the applicant are engaged in the manufacture of Writing & Printing Paper, falling under Chapter 48 of the First Schedule to Central Excise Tariff Act, 1985 and they are exporting the said goods under claim for rebate. The applicant is also availing Cenvat Credit on inputs and capital goods under Cenvat Credit Rules, 2004. On 22.02.2011 the applicant filed a claim for Rs. 2,93,106/- for rebate of duty paid on goods i.e. Auto Spring and Spring Leaves falling under Chapter 7320.10.11, exported vide ARE 1(s) No. 03 dated 31.12.2010 through M/s Surindera Auto Industries, E-711, Phase-VIII, Focal Point, Chandigarh Road, Ludhiana (Pb). The rebate claim was sanctioned by the Deputy Commissioner, Central Excise Division, Sangrur vide Order-in-Original Rebate/SNG/469/2011 dated 27.04.2011.

2.1 Aggrieved by the said Order-in-Original, Department filed the appeal alongwith stay application with Commissioner (Appeals) on the grounds that the rebate claims have been filed on the strength of defaced blackened/tampered statutory documents i.e. Commercial Invoices, Bill of Lading and Shipping Bills. That the tampering and defacement of the particulars in invoices, shipping bills and bill of lading are not permissible as these documents are essential for claiming the monetary benefit and the defacement by blackening of the particulars mentioned in the documents attribute to invalidity.

3. The Commissioner (Appeals) vide his Order-In-Appeal No. 140-141/CE/ Appl/Chandigarh-II/2012 dated 28.03.2012 upheld the appeal filed by the Department and set aside the impugned Order-In-Original.

4. Being aggrieved by the impugned Order-In-Appeal, the applicant filed this revision application under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1. That the impugned order is bad in law and contrary to the facts of the case.

4.2 That the department failed to appreciate that after receipt of a copy of the Department's appeal before Commissioner (Appeals) the applicant took up the matter of hiding of particulars with the merchant exporter and informed him about the proposed recovery of rebate claim by revenue. That the merchant exporter

agreed to give the copies of commercial invoices, shipping bill and bill of lading without hiding the particulars since by that time the export was nearly one and half year old and it would not affect his business. That the applicant enclosed all the documents received from the merchant exporter with the written submissions before Commissioner (Appeals). The Commissioner (Appeals) did not consider these documents at all. That the only ground taken in the Order-In-Appeal for denying rebate claim of the applicant is not sustainable.

4.3. That the applicant had filed the rebate claim on the basis of the documents given to them by the merchant exporter. That the merchant exporter had blackened the name of foreign purchaser, address of the purchaser and their transaction value. That the applicant had enquired from the merchant exporter about hiding these particulars. That the exporter informed that these particulars are his trade secret and he will not reveal these particulars to the applicant as the applicant will come to know about his margin of profit and the name and address of his customers, which can affect his business. So on the basis of the available documents and the information mentioned therein, the applicant had filed the rebate claim which was allowed by the refund sanctioning authority i.e. the Deputy Commissioner of Central Excise Division, Sangrur after proper scrutiny and verification and after satisfying himself that the goods had been exported and that the goods had borne the appropriate duty of excise.

4.4 That Rule 18 of Central Excise Rules, 2002, under which rebate claim has been filed by the applicant provides that:-

"Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or----- and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification."

4.5. That the Commissioner(Appeals) failed to appreciate that the "value" needed for sanctioning the rebate claim of the applicant is the assessable value of the applicant and not the transaction value between the merchant exporter and the foreign buyer. That this "value" is not indicated on the commercial invoice, shipping bill and bill of lading in any case.

4.6. That the conditions and limitations for claiming rebate are mentioned in Notification No. 19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 ibid. Part 1 of Chapter 8 of CBEC's Excise Manual of Supplementary Instructions has elaborated the procedure of export under rebate. That the chapter contains the provisions relating to assessable value in case of export under rebate. That the goods exported should be valued at transaction value as per the provisions of Section 4 of Central Excise Act, 1944 for the purpose of allowing rebate and it has no link with the FOB value for allowing of rebate claim. That FOB value is calculated as per Customs Laws while the assessable value is calculated as per Central Excise Laws. That the

CBEC has itself accepted that such FOB value can be more than or equal to or less than the value determined under Section 4 or Section 4A of the Central Excise Act, 1944. That in case of export through merchant exporter, the assessable value of manufacturer exporter for billing to merchant exporter is to be considered and not the price charged by the merchant exporter from foreign buyer as it will always be on higher side as it will include the margin of profit of the merchant exporter. That hiding of FOB value of exported goods does not make the document invalid as this value is not required for sanctioning of rebate claim.

4.7. That without prejudice to the applicant's contention that the applicant has supplied the FOB value in the documents filed with written submissions before Commissioner(Appeals), the Commissioner(Appeals) failed to appreciate that the rebate cannot be denied only on the ground of non-availability of FOB value of exported goods when such value has no relevance for granting of rebate claim, more so, when the merchant exporter is not willing to disclose such value to the applicant being his trade secret. That it will be highly unjustified and illogical to reject the rebate claim on a ground which has no link with calculation of assessable value and accordingly the rebate claim.

4.8. That the Commissioner (Appeals) failed to appreciate that when it is not in dispute that the goods have been exported through merchant exporter by the applicant and such goods have borne the appropriate duty of excise, the denial of rebate claim on such flimsy ground is certainly bad in law, more so, when intimating the FOB value is not in the hands of applicant. That this ground is no longer valid as the applicant has filed fresh copies of the commercial invoice of the merchant exporter, the shipping bill and the bill of lading in which no particulars have been hidden. That the rebate claim of the applicant merits to be allowed.

4.9 That the provisions for calculating the assessable value are contained in Section 4 of Central Excise Act, 1944. That Section 4(1)(a) of Central Excise Act, 1944 is the relevant provision for valuation in the present case. That there is no allegation of the department about the conditions laid down under Section 4 of Central Excise Act, 1944 not fulfilled by the applicant. That in the present case, the goods are sold for export and value is determined accordingly. The applicant and the buyer who in this case is the merchant exporter are not related. The price charged on excisable invoice and also mentioned in ARE-1 is the sole consideration of sale. That as per the provisions of Section 4 of the Central Excise Act, 1944, the assessable value is the price charged from the merchant exporter by the applicant and which is verifiable from the excise invoice of the applicant and ARE-1 on which goods were cleared from the factory. That the applicant has filed the rebate claim only in respect of excise duty mentioned on the applicant's excise invoice as calculated on the assessable value determined under Section 4 of the Central Excise Act, 1944. That when all the particulars for calculation or cross checking the correctness of the assessable value for granting of rebate claim are already on

record and there is no dispute about actual export of goods, then there can be no justification for denying the rebate claim of the applicant.

4.10 That the Commissioner (Appeals) failed to appreciate that if the revenue still wants to know the FOB value of goods exported, then the same can be easily obtained by them from the Customs authorities considering that the applicant have already given a justified reason for non-disclosure of FOB value by the merchant exporter. That all the documents, without obliterating any particulars were filed by the applicant before the Commissioner (Appeals). That the rebate claim of the applicant ought to have been allowed.

4.11. That the Commissioner (Appeals) failed to appreciate that rebate is allowed of the duty paid on such excisable goods i.e. export goods or the duty paid in the manufacture of exported goods. That the applicant has cleared the export goods on payment of duty of excise. That the department is fully aware of the amount of duty charged by them from the applicant. That the fact of export of goods is not in dispute. That there can be no justification for denying the rebate claim of the applicant.

4.12 That the Central Board of Excise & Customs vide its Circular No. 203/37/96-CX dated 26.04.96 has clarified that the non-availability of FOB value of goods exported has no relevance for calculation of assessable value and accordingly the rebate claim could not have been denied to the applicant on this ground.

4.13. That the Commissioner (Appeals) failed to appreciate that para 8.4. of Part-I of Chapter 8 of CBEC's Excise Manual of Supplementary instructions has clarified that the rebate sanctioning authority is not required to check the assessable value which in any case has been checked or has to be checked by the jurisdictional central excise authorities. That he has only to verify whether the goods have been exported and are duty paid. That once it is satisfied that goods have been exported he is required to sanction the claim on its basis.

4.14 That in the present case the goods have been dispatched for export by the applicant under self-certification. That as per para 6.2 of Chapter 8 of CBEC's Excise Manual of Supplementary instructions, the exporter shall submit the triplicate and quadruplicate copies of ARE 1 from to the Superintendent or Inspector of Central Excise having jurisdiction over the factory or warehouse within twenty four hours of removal of goods.

4.15 That it is provided in the instructions that after verification, the range authorities will send the triplicate copy of ARE 1 to the officer with whom the rebate claim is to be filed. That the applicant has submitted the triplicate and quadruplicate copies of ARE-1 form to their range authorities, who further duly signed these copies after verification of particulars of assessment and the correctness of the amount of duty paid or duty payable by the applicant. That the range authorities duly certified the correctness of assessable value and the amount of duty paid or payable by the

applicant in the above copy of ARE 1 form. That as per para 3 of CBEC's circular no. 510/06/2000-CX dated 03.02.2000, the triplicate copy of AR4 is meant for scrutinizing the correctness of assessment and duty payment which is to be scrutinized by the jurisdictional range officers and then sent to the rebate sanctioning authority. That the assessable value and duty payment is already verified by the range authorities in the present case and the rebate sanctioning authority is not required to again verify the same as per above Board instructions. That the assessable value and excise duty payment particulars have already been verified by the jurisdictional range authorities and there can be no justification for denying the rebate claim.

4.16 That the Commissioner (Appeals) failed to appreciate that the fact of hiding of name and address of consignee by the merchant exporter has no relevance for the sanctioning of rebate claim when the fact of export of goods is not in dispute. That in case of claiming incentive from DGFT the Ministry of Commerce and Industry vide its circular no. 18/RE-2006/2004-2009 dated 04.09.2006 has allowed the defacement of name and address of foreign buyer in the shipping bills while submitting the same to the offices of DGFT. That in this circular, the defacement of FOB value of export was not discussed, as FOB value is the basis for all the incentives from DGFT. That hiding the name and address of the consignee has no effect for allowing of rebate claim in the present case, more so, when such disclosure of name and address of foreign buyer is not in the hands of applicant as explained in preceding paras. That the rebate claim cannot be denied to the applicant in the facts and circumstances of the present case.

5. Personal hearing scheduled in this case on 13.07.15 were attended by Shri Kamaljeet Singh, Advocate and Shri Sanjay Goel, Partner of Modi Industries on behalf of the applicant, who reiterated the grounds of Revision Application. Nobody attended the hearing on behalf of the department.

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

7. On perusal of records, Government notes that in this case the rebate claim filed by the applicant was sanctioned by the Deputy Commissioner, Central Excise Division, Sangrur. Against the Order-in-Original dated 27.04.2011, department filed an appeal alongwith stay application with Commissioner (Appeals) on the grounds that the rebate claims have been filed on the strength of defaced blackened/tampered statutory documents i.e. commercial invoices, bill of lading and shipping bills. That the tampering and defacement of the particulars in invoices, shipping bills and bill of lading is not permissible as these documents are essential for claiming the monetary benefit and the defacement by blackening of the

particulars mentioned in the documents attributes to susceptibility and invalidity, which was upheld by the Commissioner (Appeals) who set aside the impugned Order-In-Original. Now the applicant has filed this revision application on the grounds stated in para 4 above.

8. Government notes that provisions specified in Chapter 8 (8.3) & (8.4) of CBEC Basic Excise Manual as Supplementary Instructions are applicable in this case, which reads as under:-

"8. Sanction of claim for rebate by Central Excise

8.3 *The following documents shall be required for filing claim of rebate:-*

(i) *A request on the letterhead of the exporter containing claim of rebate, ARE-1 nos. dates, corresponding invoice numbers and dates amount of rebate on each ARE-1 and its calculations.*

(ii) *Original copy of ARE 1.*

(iii) *invoice issued under Rule 11.*

(iv) *self-attested copy of shipping bill and*

(v) *self-attested copy of Bill of Lading*

(vi) *Disclaimer Certificate[in case where claimant is other than exporter]*

8.4. *After satisfying himself that the goods cleared for export under the relevant ARE 1 application mentioned in the claim were actually exported, as evident by the original and duplicate copies of ARE-1 duly certified by Customs, and that the goods are of duty paid character as certified on the triplicate copy of ARE-1 received from the jurisdictional Superintendent of Central Excise (Range Office) the rebate sanctioning authority will sanction the rebate, in part or full. In case of any reduction or rejection of the claim an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued."*

From the above, Government notes that invoice, shipping bill and bill of lading are essential documents for claiming rebate. Further, the required details in statutory forms/documents to be used for above are as per stipulations in respective Central Excise Rules, 2002, the Customs Act, 1962 and CBEC Manual of Supplementary Instructions, wherein under specific columns are mentioned to be filled in with true and factual declarations. Any tampering or defacement by blackening of the particulars mentioned in the documents thus imparts a character of invalidity.

9. Government observes that the applicant has contended that in case of export through merchant exporter, the assessable value of manufacturer exporter for billing to merchant exporter is to be considered and not the price charged by the merchant exporter from foreign buyer as it will always be on higher side as it will include the margin of profit of the merchant exporter and that hiding of FOB value of exported goods does not make the document invalid as this value is not required for

sanctioning of rebate claim. Government finds that this submission of the applicant in no way validates the act of tampering or defacing of the documents mentioned in the relevant instructions/rules as mandatory documents for claiming rebate.

10. Government notes that due to defacement of the details like value etc. the crucial export documents i.e. shipping bill, commercial invoice and bill of lading cannot be correlated with originally declared/assessable value, thereby raising the question as to whether the same goods as cleared from the factory have been exported and also correlation to the export price and the market price of the goods is also not possible.

11. Government further notes that when certain documents are statutorily required for the purpose of verification before sanctioning any monetary benefit, then it is the responsibility of the beneficiary to ensure that the documents contain all prescribed details and no information is withheld in them. Withholding information by defacing prescribed particulars will negate the very purpose and renders the documents of no use. Any claim filed on the basis of such documents will tantamount to not having filed the claim properly which can neither be admitted nor sanctioned.

12. Government notes that the appellate authority has relied upon an earlier Order of the Revisionary Authority in the case of M/s JMP Casting Ltd, Jalandhar [2011 (268)ELT 120 (GOI)] wherein it was held that when due to tampering of the value the crucial export documents, i.e. shipping bill, commercial invoice and bill of lading could not be verified as the same could not be co-related with originally declared/assessed value, thereby raising susceptibility regarding factum of export of the exact nature of goods, and thus, ab-initio, invalidates the concerned rebate documents. Government finds that this order is squarely applicable to the present case where the rebate has been claimed based on tampered/defaced documents.

13. The contention of the applicant that all documents without obliterating any details were subsequently filed with the Commissioner (Appeals) and rebate ought to have been allowed is not tenable at this juncture as any claim filed without valid documents is liable for rejection. Also it is a case where the applicant was clearly aware of the documents that were required to be furnished along with the claim but deliberately furnished tampered and blackened documents. Government finds no merit in the contention of the applicant that Commissioner (Appeals) ought to have considered the copies without hiding the particulars. It is clearly the responsibility of the applicant to have taken adequate care in ensuring that valid documents were filed at the relevant time.

14. Government has gone through the pleading of the applicants for condonation of the above act of omission/commission because the same is of simple procedural category. However, Government is of the considered opinion as set by the Apex Court that simple and plain reading of all the applicable statutory provision of law are mandatory bindings. Government places reliance on the ruling of the Hon'ble Supreme Court in the case of Collector of Central Excise, Vadodara Vs Dhiren Chemical Industries 2002 (143)ELT 19 (SC), Paper Products Ltd. Vs Commissioner of Central Excise 1999(112)ELT 765(SC) and ITC Ltd. Vs CCE 2004 (171)ELT 433 (SC) in which the Apex Court has held that strict and plain readings of the statute are to be strictly adhered to and all the authorities working under the respective Central Excise/Customs Acts are to ensure strict applicability of all the relevant Notifications/Circulars as issued for the purpose.

15. Government, therefore, finds legal force and is in conformity with the views of Commissioner (Appeals) that defacement has rendered the documents based on which rebate has been claimed invalid and order sanctioning rebate filed on defaced /tampered documents is liable to be set aside.

16. In view of above discussions the revision application is thus rejected being devoid of merit.

17. So, ordered.



(RIMJHIM PRASAD)

Joint Secretary to the Government of India

M/s Modi Industries,
Unit-II, Industrial Area,
Malerkotla,
Punjab.

(Attested)



(Shaukat Ali)

Under Secretary (RA)

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शौकत अली
Shaukat Ali
अवर-सचिव (रा.स.)
Under Secretary (RA)

GOI Order No. 79-80/2015-CX dated 16.09.2015

Copy to:-

1. The Commissioner of Central Excise Chandigarh-II, Commissionerate, C.R. Building, Plot No. 19, Sector 17-C Chandigarh
2. The Commissioner of Central Excise (Appeals), Chandigarh-II Commissionerate, C.R. Building, Plot No. 19, Sector 17-C Chandigarh
3. The Deputy Commissioner of Central Excise Division, Dhuri Patiala By pass Road, Zakhmi Building, Sangrur, Punjab.
- ✓ 4. PA to JS (Revision Application)
5. Guard File
6. Spare Copy.

(Attested)



(Shaukat Ali)

Under Secretary to the Government of India

शौकत अली
Shaukat Ali
अधिकांक्षिक (स.स.)
Under Secretary (RA)