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F.NO. 198/229-230/11-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue... 8/2/13

ORDER NO. 867-868/2013-CX DATED 05-07 — 2013 OF THE  
GOVERNMENT OF INDIA, PASSED BY SHRI D P SINGH, 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. 511-512/Commr(A)/CMG/RAJ dated 30.12.10  
passed by the Commissioner of Customs & Central  
Excise (Appeals), Rajkot

Applicant : Commissioner of Central Excise & Customs, Rajkot

Respondent : M/s Vinergy International Pvt. Ltd., Shivsagar Estate  
'A' Block 1<sup>st</sup> Floor South Wing, Dr. Annie Besant Road,  
Worli, Mumbai-400018

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ORDER

These revision applications are filed by the applicant Commissioner of Central Excise & Customs, Rajkot against the order-in-appeal No.511-512/Commr (A)/CMG/RAJ dated 30.12.10 passed by the Commissioner of Customs & Central Excise (Appeals), Rajkot with respect to orders-in-original No.DC/JAM/R-246&247/2010-11 dated 14.9.10 passed by Deputy Commissioner of Customs & Central Excise, Jamnagar.

2. Brief facts of the case are that the respondents M/s Vinergy International Pvt. Ltd., Mumbai exported the duty paid goods as merchant exporter and filed rebate claim of Central Excise duty paid on excisable goods viz "Furnace oil" manufactured by M/s Essar Oil Limited, Khambhalia vide their letter dated 1.2.2010. The claims have been filed on the grounds that the said excisable goods were procured from the manufacturer under cover of total Central Excise invoices on payment of Central Excise duty and were thereafter stored at C/o Ruchi Infrastructure Ltd., Ruchi Oil Jetty, Jamnagar (hereinafter referred to as the 'M/s RIL'). Subsequently, the said respondent exported the subject goods under ARE-1 NO.VIPL/GUJ/101/09-10 date 17.10.2009, and VIPL/JAM/09-10/D-022 date 26.10.2009. The Superintendent of Central Excise, AR-II Jamnagar having jurisdiction over M/s Vinergy International Pvt. Ltd, Bunker Division, C/o Ruchi Infrastructure Ltd. Ruchi Oil Jetty Jamnagar has made an endorsement on the reverse side of Triplicate copy of the respective ARE-is indicating that "Without Sealing and Without Supervision", Hence, the subject goods were sent from factory of manufacturer to the respondent at Vinergy International Pvt Ltd., Ruchi Oil Jetty, Bunker Division C/o Ruchi Infrastructure Ltd., Ruchi Oil Jetty, Jamnagar (RIL) instead of sending the same directly from the factory of manufacturer to the port of export under cover of ARE-1. Further, the subject goods were removed from the premises of M/S RIL for export without supervision of the Jurisdictional Central Excise Officers and without their identification and co-relating the goods cleared from the factory by the said officers and without following the procedure as laid down vide

Circular No.294/10/94-CX dated 30.01.1997. Therefore, the said respondents has failed to follow the procedures and conditions as laid down under Board Circular No 294/10/1997-CX dated 30.1.1997 read with Rule 18 of the CER and are not eligible for rebate. The above proceedings resulted into issue of the show cause notices dated 07.05.2010. The lower authority vide impugned orders rejected the claim of Rs.31,04,473/- cleared under ARE-1 No.VIPL/GUJ/101/09-10 dated 17.10.2009 and Rs.45,04,731/- cleared under ARE.1 No.VIPL/GUJ/09-10/D-002 dated 26.10.2009 in respect of the goods namely Furnace Oil under section 11B of the Central Excise Act, 1944 read with rule 18 of the Central Excise Rules 2002 read with Notification No.19/2004 CE (NT) dated 06.09.2004 and CBEC Circular No.294/10/1997-CX dated 30.01.1997.

3. Being aggrieved by the said orders-in-original, respondents filed appeal before Commissioner (Appeal), who set aside the impugned orders in original and allowed the appeal.

4. Being aggrieved by the impugned orders-in-appeal, the applicant department has filed these revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 The Appellate Authority while passing the Appellate Order has not considered the finding of the Adjudicating Authority. The excisable goods cleared from the factory of manufacturer were not directly cleared for export but were first stored at the premises of the exporter M/s Vinergy International Pvt. Ltd., Bunker Division, C/o Ruchi Infrastructure Ltd. Ruchi Oil Jetty, Jamnagar subsequently the exporter prepared ARE-1 and exported the goods in contravention of the provisions of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004 and the assessee has not followed the procedures prescribed under the Circular No. 294/10/94-CX dated 30.01.1997.

4.2 The conditions, limitations and procedure in respect of export under Rule 18 of the Central Excise Rules, 2002 are laid down under Notification No. 19/2004-CE (NT) dated 06.09.2004 and the guideline made in para (ii) of Part-I of Chapter 8 of the Supplementary Instructions of Central Excise Manual is not followed. The exporter in the instant case at the time and place of removal of goods from the factory gate had not shown any intention to export of the said goods and stored the same in their storage premises. The said premises of the exporter are also not registered premises under the Central Excise Act, 1944. At the time of export, the exporter produced the ARE-1 but as the goods in question were in bulk and in liquid form, it was not possible for anyone to establish that these were the same goods cleared from the manufacturer, M/s Essar Oil Ltd. As the duty payment on export goods has not been established and proved to the satisfaction of jurisdictional range superintendent of Central Excise, question of rebate does not arise.

4.3 The exporter thus grossly violated the statutory conditions and provisions as laid down under Rule 18 of the Central Excise Rules, 2002 and Board's Circulars referred para supra. Therefore, the exporter is not entitled for rebate of Central Excise duty as claimed to have paid in respect of export goods.

5. A show cause notice was issued to the respondent under Section 35EE of Central Excise Act 1944 to file their counter reply.

6. Personal hearing was scheduled in this case on 21.12.12, 8.3.13 and 27.6.13. Shri Ashok Aggarwal and Manav Purohit, Advisers attended hearing on 21.12.12 on behalf of the respondents who submitted that order-in-appeal being legal and proper may be upheld. They further sought 10 days time to file written submission. Nobody attended hearings fixed on these dates on behalf of applicant department. Respondents in their written reply received in this office on 31.12.12, have inter-alia stated that:

6.1 They had procured Furnace Oil from the refinery of M/s Essar Oil Ltd at Vadinar, Jamnagar on payment of the applicable Central Excise duties in August, 2009 under 116 invoices and had stored the same in the Tank at Bedi Bunder port at Jamnagar which was registered under Rule 9 of the Central Excise Rules, 2002. The material was transported from refinery to the tank in Bedi port in Truck Tankers duly sealed by the manufacturer EOL at their refinery and the transportation was done by well-known transporters of Jamnagar & lorry Receipts for each Tanker was separately issued with Invoice Number, Shipment Number & lorry Number mentioned thereon which were also mentioned on each Invoice. Each Invoice has the lorry Number, IR Number, Seal Number etc. mentioned)

6.2 The Respondent wanted to export the said material from the aforesaid Tank in the port area and submitted a letter dated 15.10.2009 to the Superintendent of Central Excise having jurisdiction over the area of Port where the Tank was located, to supervise the export and examine the cargo as per Board's Circular 297/10/1997-CX dated 30.01.1997. The said Superintendent instead of visiting the site, sent a letter F.No. AR-II/Misc-Tech/2009-10 dated 16.10.2009 asking whether the exports were under claim of rebate of under UT and directed to produce CT-1 along with ARE-1 duly signed by the manufacturer as the respondent was a merchant exporter. The respondent submitted reply along with ARE-1 and copy of challan evidencing payment of Supervision charges vide its letter dated 21.10.2009 clarifying that the goods were duty paid and were being exported under claim of rebate requesting him once again to supervise the export. The Superintendent did not turn up for examination or supervision of exports and the respondent was left with no option but to export the goods without his supervision. Since the material was bulk liquid cargo and its movement from Tank to Vessel was through pipeline, there was no question of sealing. The entire operation of export was carried out under the supervision of

the ISO 9000 certified renowned Surveyor Mis Geo Chem Laboratories Pvt. Ltd and the Customs officers posted at Bedi Port, Jamnagar who had also examined the cargo and had signed "Part-B" on the reverse of the ARE-is certifying that the description and quantity was checked as per ARE-1 s and the Shipping Bills. The representative samples were drawn by the Surveyor and tested in their ISO 9000 certified laboratory, confirming that the goods were Furnace Oil as declared. The test report of an ISO 9000 certified in-house laboratory of manufacturer-exporters is acceptable for exports under various export incentive schemes as per Board's Circular No. 25/2005-Cus read with Cir. No. 57/97-Cus dated 31.10.1997. From this analogy the test reports of the ISO 9000 certified laboratory of Surveyor appointed by the exporter should be acceptable. The respondent approached the said Superintendent for signature on Part-A on the reverse of the ARE-1 form. He signed the same with remarks "Without sealing & without supervision". The Bank Realisation Certificate (BRC) dated 13.07.2010 evidencing receipt of entire Foreign Exchange towards both exports was also produced at the time of hearing held on 19.07.2010 & 05.08.2010.

6.3 The two claims filed by the respondent were rejected by the Deputy Commissioner of Central Excise, Jamnagar vide O/O Nos.DC/JAM/R-246/ 2010-11 and DC/JAM/R-247/2010-11 both dated 14.09.2010 on the identical grounds that the goods were exported from the premises of the merchant exporter and not directly from the factory of the manufacturer; that the procedure provided under Board's Circular No. 29711 0/1997 -CX was not followed and since the goods were not examined by the Superintendent, the export goods could not be correlated with the goods cleared from the manufacturer's factory; that the department had filed an appeal before the Revision Authority, Government of India in a similar case of M/s Shakti Shipping International, Jamnagar. The respondent filed appeals before the Commissioner of Central Excise, Rajkot at Ahmedabad who allowed both the appeals vide a common O/A No. 511 to 512/2010/Commr(A) /CMC/RAJ dated 31.12.2010.

6.4 The Revision application has been filed without any cogent reasoning or rebutting any of the findings given by the Commissioner (Appeals), Rajkot in his impugned Order-in-Appeal dated 30.12.2010 except for reproducing excerpts from Notification No. 19/2004-CE dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002 and Board's Circular No. 297/10/1997-CX dated 30.01.1997 and saying that the exporter in the instant case at the time and place of removal of goods from the factory gate did not show any intention to export the said goods and stored the same in their storage premises. It is stated that the said premises are not registered under Central Excise Act, 1944 which is factually incorrect as the exporter had stored the material in the Tank which is registered under Rule 9 of the Central Excise Rules, 2002. Then it is stated in the grounds that the goods in question were in bulk in liquid form and hence it was not possible for anyone to establish that these were the same goods cleared from the manufacturer, M/s Essar Oil Ltd and as the duty payment of export goods has not been established and proved to the satisfaction of jurisdictional Range Superintendent of Central Excise, the question of rebate does not arise. The impugned appeal has been filed routinely just for filing appeal and is completely devoid of any merits. The facts given in the R.A. are incorrect as the goods were stored in the registered premises of the respondent exporter which were duly accounted for in their records as has been discussed in detail by the Ld. Commissioner (Appeals), Rajkot in his impugned order-in-Appeal.

6.5 It is established beyond any doubt that the respondent had taken all necessary measures to comply with the provisions of law by intimating the jurisdictional Range Superintendent of Central Excise vide their letters dated 15.10.2009 and 21.10.2009 that they wanted to export the goods from their Tank with request to supervise the export, submitted ARE-1 s and all necessary information mentioned in the Circular. The requisite supervision charges had also been paid. The Invoices of the manufacturer evidencing payment of duty at the time of removal of goods to the respondent, the registered dealer and the

evidence of entering the material in their records, disclosure in their Quarterly returns. The Superintendent had signed "Part-A" on the ARE-1s which confirms that duty payment particulars were checked by him and he had only not sealed or supervised the exports of goods. The sealing was not required in this case as the goods were transported directly from tank to vessel through pipeline. The goods were also examined by the Customs officers at the port who had signed Part-B on ARE-1s. The entire operation of export was carried out under supervision of the Customs staff and the ISO 9000 certified Surveyor who had drawn the representative sample and had tested in their own laboratory.

6.6 The respondent had submitted a copy of the Order-in Original No. 21/R/2010 dated 31.10.2010 passed by Assistant Commissioner of Central Excise, Mumbai-I whereby three similar claims of the respondent had been sanctioned and the said order had been accepted by the department. The department cannot take a contradictory stand as has been held by Hon'ble Supreme court in case of Marsons Fan Industries Vs CC, Calcutta [2008 (225) E.L.T. 334 (S.C.)] and in many other judgments.

6.7 Even the cases of Shakti Shipping International referred to by the Deputy Commissioner in his Orders-in-Original have been finally decided in favour of the claimant by the Hon'ble Gujarat High Court vide Orders dated 28.06.2011 & 21.07.2011 in SCA Nos. 15212/2010 and 4449/2011 respectively and both the SLPs filed by the department against those Orders had been dismissed by the Hon'ble Supreme Court on 2nd March, 2012. In those cases also the claims had been rejected by the lower authorities on the grounds that the Central Excise Superintendent had not signed Part-A on ARE-1 s and correlation between the duty paid and export goods was doubted.



7. Government has carefully gone through the relevant case records, oral and written submission of both parties and perused the impugned Orders-in-Original & Orders-in-Appeal.

8. On perusal of records, Government observes that the original authority rejected the claim on the grounds that the respondents did not follow the procedure laid down in CBEC Circular No.294/10/97-CX dated 30.1.97; that the goods were cleared without sealing and supervision of Jurisdictional Superintendent of Central Excise; that goods were not directly exported from a factory/warehouse and the claimant failed to give concrete proof establishing that the goods cleared from factory of manufacturer were the same goods which have been exported. The Commissioner (Appeals) has set aside the impugned orders in original and allowed the appeal of respondents. Now the applicant department has filed these Revision Applications on the grounds stated at para (4) above.

9. Government notes that the applicant department have basically contended that:

- (i) The excisable goods cleared from the factory of manufacturer were not directly cleared for export and sealing of goods was not done by a central excise officer at the place of dispatch.
- (ii) The claimant has not followed the procedure laid down in Board's Circular No.294/10/94-CX dated 30.1.97 and correlation between goods cleared and those exported was not established.

9.1 In this regard, Government observes that the respondent has procured the furnace oil from M/s Essar Oil, Jamnagar on payment of duty on valid central excise invoices. The goods are removed in truck tanker to the storage tank in Ruchi Oil Jetty, Jamnagar itself which is registered under Rule 9 of Central Excise Rules 2002 as registered dealer. The said goods were transported from storage

tank located in port area to vessels through pipeline. They had intimated to the department about the tank/warehouse and the material furnace oil stored therein which is exported under relevant ARE-1s. The tank where the subject goods were stored was also intimated to the department. The respondent wanted to export the said material from the above tanks in the port area and submitted letters dated 15.10.09 to the Jurisdictional Superintendent of Central Excise to supervise the export and examine the cargo and the respondents paid the supervision charges also. But the Superintendent, Central Excise did not supervise the export of goods. It was the duty of Supdt., Central Excise to examine the goods and supervise the clearance of goods for export as and when requested by exporter. However the customs authorities duly supervised the loading and allowed the export without raising any objection as evident from the certification made by them on Part B of relevant ARE-1 forms. Since the goods were cleared from tank to vessel through pipeline, there was no question of sealing the same. Superintendent, Central Excise did not examine the goods despite written request and therefore lapse cannot be attributed to the respondents.

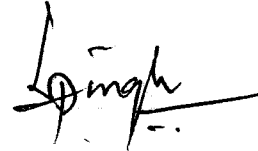
10. As regards correlation of goods, Commissioner (Appeals) has verified the relevant documents namely; the survey report, vessel tank inspection report, shore tank measurement data, vessels ullage report, summary of loaded products certificate of quantity loaded on board statement of events, vessel particular. Bunker inspection report etc. He came to conclusion that the exported goods were furnace oil on which duty was paid when cleared from factory, and correlation of goods cleared from factory of manufacture with the goods finally exported is established. Department has not disputed this finding by pointing out any deficiency in said documents. As such, both the objections do not survive. Applicant has otherwise complied with all the relevant provisions of Notification No.19/04-CE(NT) dated 6.9.04 and CBEC Circular dated 30.1.97. The case law of Shakti Shipping International relied upon by original authority is

in fact in favour of respondents since Hon'ble High Court of Gujarat vide orders dated 28.6.11 and 21.7.11 in SCA No.15212/10 and 4449/11 have decided the cases in favour of party.

11. In view of above circumstances Government does not find any infirmity in impugned orders-in-appeal and therefore upholds the same.

12. Revision Applications are thus rejected being devoid of merit.

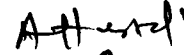
13. So ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

Commissioner of Central Excise and Customs  
Rajkot Commissionerate  
Central Excise Bhavan, Race Course  
Ring Road, Rajkot-360001



(भागवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C B E C - O S D (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt of Rev)  
भारत सरकार/Govt of India  
नई दिल्ली / New Delhi

Order No. 867 - 868 /2013-Cx dated 05-7-2013

Copy to:

1. M/s Vinergy International Pvt. Ltd., Shivsagar Estate 'A' Block 1<sup>st</sup> Floor South Wing, Dr. Annie Besant Road, Worli, Mumbai-400018.
2. Commissioner of Central Excise (Appeals), 2<sup>nd</sup> Floor, Central Excise Bhavan, Race Court Ring Road, Rajkot-360 001.
3. Deputy Commissioner of Central Excise & Customs, Pritam Chambers, Opp. M.P.Shah Medical College, Jamnagar.
4. Shri Shri Manav Purohit, Adviser, Room No.42, 3<sup>rd</sup> Floor, 20/24, Morarji Velji Building, Mumbai-400002
5. Shri Shri Ashok Aggarwal, Consultant, Flat No.2, Ground Floor, Kanta Niwas, 1<sup>st</sup> Road, Khar (W), Mumbai-400052
- ✓ 6. PS to JS(RA)
7. Guard File.
8. Spare Copy

ATTESTED



(B.P.Sharma)  
OSD (RA)