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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. 195/629/12-RA &
195/70/2013/RA / 338

Date of Issue: 29/11/17

ORDER NO. 9-10 /2017/CX(WZ)/ASRA/MUMBAI DATED 28.11.2017 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER&EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT,1944.

Applicant : M/s. Jesons Industries Ltd., 904. Peninsula Tower I, Ganpatrao Kadam Marg, Lower Parel (W), Mumbai.

Respondent: Commissioner, Central Excise, (Appeals) -II, Mumbai.

Subject : Revision Applications filed under Section 35EE of Central Excise Act, 1944 against the Orders-in-Appeal No. (i) US/ 215/RGD/2012 dated 30.03.2012 & (ii) US / 737/ RGD / 2012 dated 30.10.2012 passed by the Commissioner, Central Excise, (Appeals) -II, 3rd Floor, GST Bhavan, BKC, Bandra (E), Mumbai-400051 respectively.

: ORDER:

These Revision Applications are filed by M/s. Jesons Industries Ltd., 904, Peninsula Tower I, Ganpatrao Kadam Marg, Lower Parel (W), Mumbai against the Orders-in-Appeal No. US/215/RGD/2012 dated 30.03.2012 & US/737/RGD/2012 dated 30.10.2012 passed by the Commissioner, Central Excise, (Appeals)-II, 3rd Floor, GST Bhavan, BKC, Bandra (E), Mumbai-400051, with regard to Order-in-Original No. 585/11-12 dated 20.07.2011 passed by the Deputy Commissioner, Central Excise, Rebate, Raigad and Order-in-Original No. Raigad/ADC/28/12-13 05 dated 5.06.2012 passed by the Additional Commissioner, Central Excise, Raigad.

2. The brief facts of the case are that the applicants have filed rebate claims under the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 06-09-2004 amounting to Rs.46,01,221/- (Rupees Forty Six Lakh One Thousand and Two Hundred and Twenty One only) and Rs.46,00,065/- (Rupees Forty Six Lakh and Sixty Five only) was sanctioned by the Deputy Commissioner, Central Excise,(Rebate), Raigad vide his Order in Original no.585/11-12 dated 20.07.2011 by restricting the same to F.O.B Value basis.

3. Being aggrieved by the aforementioned Orders-in-Original, the Department filed appeal before Commissioner (Appeals) contending that, out of Rs. 46,00,065/- an amount of Rs. 14,43,737/- covered in 10 shipping bills were wrongly sanctioned on the following grounds, who upheld the department appeal and the order of sanctioning rebate claims passed by the Deputy Commissioner, Central Excise, (Rebate), Raigad of Rs. 14,37,737/- was rejected.

3.1 The applicant had availed the benefit of Notification no. 41/2001 dated 26.06.2001 and thereby it was mandatory on the part of applicant to clear the goods for exports in form ARE-2,

3.2 And in case of Notification No. 43/2001 dated 26.06.2001 it was mandatory on the part of applicant to clear the goods for exports under Bond or Letter of Undertaking.

4. Being aggrieved by the impugned order-in-appeal, the applicant filed this revision application (Revision application no. 195/629/12-RA) under Section 35EE of Central Excise Act, 1944 before Central Government pleading for allowing rebate claims of Rs. 14,43,737/- which has been rejected by the Commissioner (Appeals) in the impugned order, mainly on the following grounds, that

- 4.1 they had fulfilled the substantial condition of the Rebate claim and there was only a procedural lapse and in the support of the same they relied upon various Judgments;
- 4.2 they had used duty paid inputs and the same were confirmed by the Range Officers, goods and the number;
- 4.3 they had neither availed benefit of Notification no. 41/2001 dated 26.06.2001 or Notification No. 43/2001 dated 26.06.2001 and therefore rejection of rebate claim on this count was not justifiable. The Additional Commissioner and Commissioner (Appeals) have not considered their submission;
- 4.4 the column Sr.no. 3(b) and (c) in ARE-1 were mistakenly struck out by their staff and they had substantially or rather complied with conditions except erroneously striking out the column 3(b) and (c) in ARE-1;
- 4.5 the goods exported were duty paid and there was no denial by department and for claiming the rebate on exported goods, they had submitted all the requisite documents viz. Original, Duplicate

and Triplicate copy of ARE-1s duly endorsed by the Departmental officers along with all other documents;

- 4.6 the clerical mistake cannot be ground for denying substantial benefit and they relied on the judgment viz. the Hon'ble tribunal in case of CC, Delhi III Vs OmPrakash Rahul Kumar reported in 2009 (248) ELT 289 held that a substantial benefit shall not be denied merely on the ground of certain clerical lapses;
- 4.7 there staff, who struck off column no.3 (b) and (c), thinking that it would interpret that they had not availed notification 41 and 43 of 2001;
- 4.8 the procedural Infractions of Notifications / Circulars should be condoned if exports have really taken place, and they relied on the cases, UOI V/s Suksha International and Nutron Gems & others appeared at 1989(39) E.L.T. 503 (SC) and Mangalore Chemicals and Fertilizers Ltd. V/s DCCE -1991 (55)437 (SC) ;
- 4.9 the Substantive right cannot be denied on minor lapses and for this applicant relied upon in case of Akansha Metals Pvt. Ltd. Vs Commissioner of Customs, ACC, Mumbai appeared at 2003(158) ELT 797 (G.O.I.);
- 4.10 the core aspect or fundamental requirement for rebate was its manufacture and subsequent export. As long as these requirements are met other procedural deviation can be condoned.

5. Further, being aggrieved by Order-in-Original No. 585/11-12 passed by the DC (Rebate) Raigad dated 20.07.2011, sanctioning the rebate claim of Rs.46,00,065/- (Rupees Forty Six Lakh and Sixty Five only) to the applicant.

- 5.1 the Department reviewed the case and Additional Commissioner, Raigad had issued Show cause notice no. V/15-273/Reb/ JesonsInd/ Appeal/ Rgd/11-12 dated 16.03.2012 for recovery of entire amount of Rs. 46,00,065/-as erroneously refunded to Applicant and also proposed interest and penalty.
- 5.2 The above Show Cause Notice dated 16.03.2012 was adjudicated by the Additional Commissioner, Raigad vide his Order-in-Original No. Raigad/ADC/28/12-13 dated 5.06.2012 and an amount of Rs. 14,43,737/- (Rupees Fourteen Lakhs Forty Three Thousand Seven Hundred Thirty Seven) was only confirmed for recovery on the basis of OIA no. US/215/RGD/2012 dated 30.03.2012 (Vide this OIA, the revenue appeal against Order in Original dt 20.07.2011of Deputy Commissioner, was upheld), and interest and penalty of Rs. 5,000/- was imposed.
- 5.3 Being aggrieved by the above Order-in-Original dtd. 05.06.2012 of the Additional Commissioner, the applicant filed appeal before Commissioner (Appeals), who vide his Order-in-Appeal no. US/737/RGD/2012 dated 30.10.2012 up held the order passed by the Additional Commissioner, Raigad and rejected the Applicants appeal.
6. Being aggrieved by the impugned Order-in-Appeal dated 30.10.2012, the applicant filed this revision application (Revision application no. 195/70/2013-RA) under Section 35EE of Central Excise Act, 1944 before Central Government and pleaded that Order in Appeal may be set aside wherein recovery of rebate claims of Rs. 14,43,737/- (Rupees Fourteen Lakh Forty Three Thousand Seven Hundred Thirty Seven only)was confirmed and penalty of Rs. 5,000/- (Rupees Five Thousand only) was imposed.
7. A Personal hearing was held in this case on 22.11.2017 and Shri Rajesh Dangayach, V.P.(Finance & Accounts) and Shri Ajay Kaul, (Export



Manager) of M/s Jesons Industries Ltd., appeared for hearing on behalf of the Applicant, reiterated the grounds of revision applications and submitted written brief on 22.11.2017.

8. Government has taken up both Revision applications for decision together as both are related to one and same issue. Government has carefully gone through the relevant case records and perused the impugned Orders-in-original and Orders-in-Appeal.

9. Government observes that the original adjudicating authority viz. the Deputy Commissioner, Central Excise, Rebate, Raigad had sanctioned the rebated claims and subsequently Department filed appeal with Commissioner of Central Excise (Appeals)-II, Mumbai. The Commissioner (Appeals)-II, Mumbai allowed the appeal of the Department and had rejected rebate claim in respect of 10 ARE-1s amounting to Rs. 14,43,737/- The applicant filed this revision application on grounds mentioned in para (4) above. Simultaneously, the department also reviewed the rebate claimed sanctioned vide Order-in-Original dated 20.07.2011 and issued Show cause notice 16.3.2012 for erroneous sanction of rebate claim and the same was confirmed by Additional Commissioner to the extent of 14,43,737/- and subsequently, the same was also up held by the Commissioner (Appeals) vide order dated 30.10.2012. The applicant also filed Revision Application against this Order-in-Appeal.

10. In his Revision Application, the applicant stated that the employee of the Assessee by mistake struck out column 3 (b) and (c) of 10 ARE-I under the belief that by striking out means they have not availed benefit of Notification No.43/2001 both are dated 26.06.2001. The rebate claim amount against these 10 ARE-Is was Rs.14,43,737 (Rupees Fourteen Lakh Forty Three Thousand Seven Hundred Thirty Seven only). Applicant further stated that they neither availed benefit of Notification No.41/2001 nor availed benefit of Notification No.43/2001 both are dated 26.06.2001. They

further submitted that the input used by them was duty paid, the verification of genuineness of duty paying documents in respect of M/s Jisons Industries is duly signed by the Superintendent of Central Excise, Range-III, South Daman Division and sealed by the Office of the Assistant Commissioner of Central Excise, South Daman Division. Applicant also stated that the contention or submission of the Department is baseless without verifying that it was an error in striking out in ARE1 respective Lines. Therefore rejection of the claim is not sustainable.

11. Government notes that, the applicant, in this case had filed the ARE-1s and cleared the goods on payment of Central Excise duty and claimed the rebate of Central Excise Duties by filing all requisite documents as required under provisions of Rule 18 of Central Excise Rules, 2002. At none of the places, i.e. at Range level, Division level or at the port, any objection was raised regarding any wrong mentioned of certificate on the body of ARE-1s. There was no doubt regarding duty payment on exported Goods and genuineness of export of Goods.

12. Government observes that there are some procedural shortcomings in the form that, in the column of some pre printed certificate, relevant column were struck off by the Applicant. These lapses should have been corrected during the verification of documents submitted by the Applicant, by the Range Office/Division Officer and/ or Customs Officers at the Port of Export. Moreover, the Government does not find any Mala fide on the part of Applicant for struck off the relevant column as it is merely a human procedural error. The Government also notes that as there was no mens-rea on the part of the applicant and all documents had been submitted for verification of the contents mentioned therein, hence, imposition of penalty is not warranted.

13. Government notes that the Applicant neither availed benefit of Notification No.41/2001 nor availed benefit of Notification No.43/2001 both

dated 26.06.2001. Therefore, rejection of Rebate claim on duty paid input is not justifiable. Further, the Applicant used duty paid inputs for manufacturing of the goods and the same goods have been exported which have been certified by the Officers of the Department. There is no issue or two opinions about the duty paid goods exported, therefore, Government upholds the Order in Original and set aside the impugned Order in Appeal.

14. It is now a trite law while sanctioning the rebate claim that the procedural infraction of Notification/Circulars etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacturer and subsequent export. As long as this requirement is met, other procedural deviations can be condoned. Such a view has been taken in *Birla VXL* - 1998 (99) E.L.T. 387 (Tri.), *Alfa Garments* - 1996 (86) E.L.T. 600 (Tri), *Alma Tube* - 1998 (103) E.L.T. 270, *Creative Mobous* - 2003 (58) RLT 111 (GOI), *Ikea Trading India Ltd.* - 2003 (157) E.L.T. 359 (GOI), and a host of other decisions on this issue.

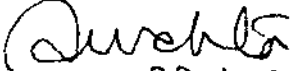
15. In view of the discussions above and keeping in mind the observations of Hon'ble Supreme Court in judgments cited supra and catena of decisions of Hon'ble CESTAT/Govt. of India that when substantive fact of actual export is not disputed. The Government feels that denial of export relief in this case on the sole ground of technical lapses is not justified and the imposition of penalty is also not warranted.

16. Government of India, accordingly, sets aside the impugned both Orders-in-Appeal and restores the Orders-in-Original passed by the original/rebate sanctioning authority and rebate claim of Rs.14,37,737/- are allowed. The Penalty of Rs.5000/- (Rupees Five Thousand) imposed by

the original authority and upheld by the Commissioner (Appeals) is also set aside.

17. The aforementioned impugned two Revision Applications succeed and accordingly allowed.

18. So ordered.


28.11.2017

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 9-10/2017-CX (WZ) /ASRA/MUMBAI DATED 28. 11.2017

To,
M/s. Jesons Industries Ltd.,
904. Peninsula Tower I,
Ganpatrao Kadam Marg,
Lower Parel (W), Mumbai.

Copy to:

1. The Commissioner of GST & CX, Raigad Commissionerate.
2. The Commissioner, Central Excise, (Appeals)-II, 3rd Floor, GST Bhavan, BKC, Bandra (E), Mumbai-400051.
3. The Deputy / Assistant Commissioner (Rebate), Central Excise building, Plot no. 1, Sector-17, Khandeshwar, Navi-Mumbai -410206.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

