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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, Cuffe Parade,  
Mumbai- 400 005

F.No.195/617/13-RA / 6029

Date of issue: 27.10.22

ORDER NO. 990 /2022-CX (WZ)/ASRA/MUMBAI DATED 20.10.2022  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL  
EXCISE ACT, 1944.

Applicant : M/s. Shalimar Rexine India Ltd.

Respondent : Commissioner, Central Excise, Pune-III

Subject : Revision Application filed, under Section 35EE of the  
Central Excise Act, 1944 against the Order-in-Appeal No.  
PIII/RS/37/2012 dated 20.04.2012 passed by the  
Commissioner (Appeals-III), Central Excise, Pune.

## ORDER

This Revision Application is filed by the M/s. Shalimar Rexine India Ltd., Gat No. 1284, Sanaswadi Industrial Zone, Nagar Road, Tal-Shirur, Dist.-Pune - 412 208 (hereinafter referred to as "the Applicant") against the Order-in-Appeal (OIA) No. PIII/RS/37/2012 dated 20.04.2012 passed by the Commissioner (Appeals-III), Central Excise, Pune.

2. Brief facts of the case are that the applicant had filed an appeal against Order-in-Original No. PUN/CEX/002-Adj-Addl-31 to 32-2011 (OIO) dated 23.12.2011 passed by the Additional Commissioner of Central Excise, Pune-III Commissionerate, wherein the original authority had confirmed the demand amounting to Rs.24,91,308/- and Rs.15,84,531/-, being erroneously sanctioned refunds, under the provisions of Section 11A of the Central Excise Act, 1944 (CEA). Interest at appropriate rate on the confirmed demand was also ordered to be recovered under the provisions of Section 11AB of the Act in the said OIO. However, the Commissioner (Appeals) upheld the OIO and rejected the appeal vide the impugned OIA.

3. Hence, the applicant has filed the impugned Revision Application mainly on the grounds that:

- a) Commissioner (Appeals) has erred in deciding the appeal in a hurried way without waiting for the outcome of the 'Revision Appeal' filed by the applicant. It was submitted to the Original Appellate Authority that the applicant has preferred an appeal against the OIA dated 01.10.10, and the same was yet to be decided by the J.S. (Revision), C.B.E.C, New Delhi. However the Ld. Commissioner (A) Pune-III, had decided the case in hurry without examining the vital points of the case. The applicant has to fight twice for the one case which is nothing but the 'Double Jeopardy'. Despite repeated requests and the submissions made by the applicant, neither Original Authority nor Appellate Authority appraised the submission. Since Applicant is being

suffered twice mentally, physically and financially, Applicant requests to set aside the impugned OIA and direct Original/Appellate Authority not to decide the present appeal/ case until the outcome of the order from the Revisionary Authority, New Delhi.

- b) The instant OIA has denied the opportunity of being heard and the request made by the applicant vide letter dated 27.3.2012. The request of the applicant was for adjournment of the P.H. fixed on 28.3.2012. The P.H. was not adjourned, but without referring the request and without appreciating the difficulties being faced and submitted vide letter dtd. 17.4.2012, the Ld. Commissioner (A) has issued OIA and rejected the appeal for non-compliance of the provisions contained in Section 35 F of CEA, which is totally unjustified.
- c) Commissioner (Appeals) has erred while issuing above OIA by not taking the cognizance of the submission made by the applicant. It was submitted that the goods have been exported as per the Quantity Based Advance License on payment of Central Excise Duty and the Rebate Claims were filed for such exports under Rule 18 of the Central Excise Rules by following all the conditions of the Notification No. 19/2004 (NT) dtd.6.9.2004. It was not appreciated that the applicant deserves the incentives being given by the Govt. of India for the exports made and after the realization of the export proceeds. The applicant's case is simple but has been made complicated and applicant is being punished unnecessarily for the exports made in fulfillment of the Export Obligations. The Ld. Commissioner has agreed the same in his finding but rejected the appeal on the allegations contained in the S.C.N. issued by the Commissioner of Export JNPT.
- d) Applicant further states and submits that the appeal has been out rightly rejected by
  - o Ignoring the hardship and present status of appellant who is in very bad shape financially and incurring loss for last five years.

- o Denying the natural justice.
  - o By rejecting the rightful claim of the applicant of getting rebate after the realization of the export proceeds with respect to the exported goods.
  - o The applicant's unit is a closed since 2008-09 and hence the applicant is financially in very bad shape.
  - o The Ld. Commissioner (Appeal), even after submissions that the present appeal may be kept in 'Call Book' Register till the decision of the Revision Appeal filed by the applicant is decided
- e) Applicant relies upon the following case laws:
- o Flemingo Duty Free Shop Pvt. Ltd. vs. Commr. of Customs, Goa 2011 (272) ELT 547 (Tri- Mumbai) - Appellate Authority, while passing stay Order directing appellant to make predeposit of Rs. 30 L, neither found feasible to go into the merits nor considered financial hardships Commissioner (Appeal) discussed the appeal and nothing on the record to show that any opportunity of being heard as given to appellant before the stay order was issued — Order set aside.
  - o New Empire Textile Vs. Commissioner of Central Excise, Mumbai 2004(176) ELT 190 (Tri Mumbai) Considering the status of the applicant Hon'ble Tribunal may please direct Commr (Appeals) to decide the case on merits without insisting on " Pre-Deposits ".
  - o Sendoz Impmex Ltd. Vs. Commissioner of S.T. Kolkatta (23) STR.520 ( Tri- Kol )
  - o PNC Infratech Ltd. Vs. Commissioner of C. Ex. Ludhiana 2010 (19) STR 819 (Tri. Delhi)

In the light of the above submissions, the applicant prayed to remand the case to Lower Authority for decision vide for fresh adjudication/ any other benefits as deemed fit.

4. Several personal hearing opportunities were given to the applicant viz. 29.12.2017, 27.08.2019, 17.09.2019, 02.02.2021, 06.07.2021 and 02.02.2022. However, the applicant did not attend on any date nor have they sent any written communication.

4.1 Since sufficient opportunities have already been given in the matter, the same is therefore taken up for decision based on available records.

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

6. Government observes that the instant case can be summarized as follows:

- i. The applicant had exported PVC Leather cloth and filed two rebate claims for the amount of Rs.20,02,747/- and Rs.12,98,504/- on 16.11.2005 and 10.04.2006.
- ii. Both the rebate claims were sanctioned alongwith interest and a total payment of Rs.40,79,839/- was made to the applicant.
- iii. The Department filed an appeal against the Order of rebate sanctioning authority, which was allowed by the Commissioner (Appeals) vide Order-in-Appeal No. PIII/VM/242 to 243/2010 dated 01.10.2010 (here in after referred as 'OIA-2').
- iv. Consequently, two SCNs for recovery of erroneously sanctioned rebate were issued on 29.10.2010 which were confirmed vide Order-in-Original No. PUN/CEX/002-Adj-Addl-31 to 32-2011 dated 23.12.2011 by the Original adjudicating authority.
- v. The applicant filed an appeal against the said OIO which was rejected by the Appellate authority vide impugned OIA. Hence the applicant has filed the instant Revision Application (RA).
- vi. The applicant had also filed a Revision Application (here in after referred as 'RA-2') against OIA-2 mentioned hereinabove at S.No.6(iii), which was pending for decision at the time of filing the instant RA.

vii. The main contention of the applicant in the instant RA is that the Adjudicating/Appellate authority should have kept the matter pending till disposal of RA-2.

7.1 Government observes that the RA-2 was decided vide Order No. 506-507/2013/2013-Cx dated 03.06.2013. In the said order the matter was remanded back to Original authority for denovo adjudication. The relevant para 11 of the said Order is reproduced hereunder:

*In view of above circumstances, Government sets aside the impugned orders and remands the case back to the original adjudicating authority for denovo adjudication taking into account the observations in the preceding paras and the final outcome of show cause notice dated 17.01.2008 pending adjudication before Commissioner of Customs Nhava Sheva. A reasonable opportunity of hearing will be afforded to the applicants before deciding the case.*

7.2 Government observes that the decision of denovo adjudication would have a direct impact on the instant matter. To revisit the matter in hand, an appeal by the Department against rebate sanctioned to the applicant was allowed by the Appellate authority vide OIA-2. Against it, the applicant filed RA-2 and got decision of denovo adjudication, thereby the OIA-2 losing its effectiveness. Similarly the two SCNs issued for recovering erroneous rebate and consequent impugned OIO & OIA also become redundant as the rebate sanctioning Order, which is the root cause for their origin, is to be re-adjudicated.

8. In view of the discussions and findings recorded above, Government sets aside the impugned Order-in-Appeal No. PIII/RS/37/2012 dated 20.04.2012 passed by the Commissioner (Appeals-III), Central Excise, Pune and remands the case back to the original adjudicating authority for re-deciding the two SCNs dated 29.10.2010 on the basis of denovo adjudication order of the rebate sanctioning authority and pass appropriate orders. The

applicant should be given reasonable opportunity before deciding the matter.

9. The Revision Application is disposed of on the above terms.

  
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

ORDER No. 990/2022-CX (WZ)/ASRA/Mumbai dated 20.10.2022

To,  
M/s. Shalimar Rexine India Ltd.,  
Gat No. 1284, Sanaswadi Industrial Zone,  
Nagar Road, Tal-Shirur, Dist.-Pune - 412 208.

Copy to:

1. Pr. Commissioner of CGST,  
Pune-I Commissionerate,  
GST Bhavan, ICE House,  
Opp. Wadia College, Pune - 411 001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.