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F.No.195/582/12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue: 25/2/16

ORDER NO. 35/2016-CX DATED 19.02.2016 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.Th-I/RKS/26/2012/306 dated 29.02.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-I.
Applicant	:	M/s Bhuwalika Steel Industries Ltd., Thane.
Respondent	:	Commissioner of Central Excise, Mumbai-I.

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ORDER

This Revision Application has been filed by M/s Bhuwalika Steel Industries Ltd., Thane against the Order-in-Appeal No.Th-I/RKS/26/2012/306 dated 29.2.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-I with respect to Order-in-Original No.R.619/08-09 dated 15.12009 passed by the Deputy Commissioner, Central Excise, Kalyan-I Division.

2. Briefly stated the facts of the case are that the applicant is engaged in the manufacture of rolled products including non-alloy steel angles, of different sizes falling under Chapter Sub-heading No.72161000 of the Schedule to the Central Excise Tariff Act,1985. The applicant filed a rebate claim for Rs.1346493/- in respect of duty paid on export goods, on 04.08.2008 with Kalyan-I Division Office. On scrutiny of the ARE-1 Nos. 13 & 14, both dated 08.01.2008, submitted by the Applicants with the subject rebate claim, it was noticed that the consignment of non-alloy steel angels claimed to have been cleared for export under the said ARE-1s, did not have a certification of the Central Excise Officer that the export goods were sealed with Central Excise seal before the Officers. The ARE-1s also did not bear a declaration of the exporter that the consignment has been packed and sealed in his presence by the seal, indicating that the goods claimed to have been cleared for export, had been cleared from the factory without any sealing. Accordingly, a Show Cause Notice dated 03.11.08 was issued to the applicants, as to why their rebate claim should not be rejected as the goods were cleared from the factory without any sealing and has been decided by the by the Deputy Commissioner, Central Excise Kalyan-I Division vide Order-in-Original No.R.619/08-09 dated 15.01.2009 rejecting the rebate claim of Rs.1346493/- filed by the applicant. The adjudicating authority in his Order has, inter alia, held that the goods cleared from the factory are not the same, which were exported and it is also not free from doubt that the duty paid goods were in fact exported. In absence of such nexus of export goods and duty paid goods removed from the factory, the rebate of duty on the goods cannot be considered.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act 1944 before Central Government on the following grounds:

4.1 That they have adopted the 2nd procedure as specified in Chapter 8 para 3.1 (ii), but forget to enclose a declaration to this effect along with the rebate application. In this connection, they made submissions in reply to the SCN dated

26.11.2008 & the submissions made before Commissioner (Appeals).

4.2 That the facts submitted themselves evidence that there are ample corroborative documents to the satisfaction of the jurisdictional Deputy Commissioner to arrive at a conclusion that whatever are cleared from the factory paying duty are exported, provided, we repeat, provided Deputy Commissioner/Commissioner (Appeals) has little inclination to perform the duty assigned to him/them under the CE Act, 1944. It is humbly submitted that, none of the lower authorities appear as understanding true purport of the scheme of rebate as enacted by the government or knows how to execute this being within the legal limit without causing undue harassment to the exporter when they pass such orders as in the instant case. As such these orders are bad in law, cannot be sustained & hence need to be set aside & quashed.

4.3 That ARE-1 format as provided in Notification No.19/2004-CE(NT) as an annexure does not contain declaration of self sealing to be ticked by the Exporter in either of its pages, front or back, as required by Deputy Commissioner. Chapter 8, para 8.3 of CBEC' Central Excise Manual of Supplementary Instructions lists the documents required to file the rebate claim allow documents require production of such declaration.

4.4 That the applicants state that when the customs authority endorsed on the face of the shipping bill stating 'the goods were not opened by the customs for examination' the statement itself ascertains the following facts;

- the goods were definitely under cover,
- Customs did not open it to examine.

4.5 That ultimately the truth surfaced through the voice of Customs, which was long been denied by excise. The applicants were constantly submitting both in voice & writing before Deputy Commissioner, that they had adopted the procedure of self sealing & certification as stipulated under para 3.1 (ii) of Chapter 8 of Excise Manual of Supplementary Instructions 2005. Now, Customs evidence the fact, when exported the said goods were under cover, which were not opened by them for examination. It is the case of customs that its officer endorsed the exportation of the consignment without checking the same.

4.6 That in the instant case, original copy of the ARE-1s matches with the duplicate copy duly endorsed by the customs as 'goods were not opened by the customs for examination.' It is quite natural for an instant query to arose, like why customs did not open the goods for examination. But this does not prove goods are not exported, rather the way customs endorsed only affirms the fact of export of

goods and the condition of the goods at that point of time - covered. And that was what required to be established in order to grant the rebate claim. The facts established so far is that factory stuffed containers duly sealed by the applicants under self sealing process were exported without being examined by customs.

4.7 That then comes the point, how to confirm that the goods cleared from the factory are the same which are exported? By verifying all other export documents like Bill of Lading, Export Invoice, Mate Receipt, Shipping Bill & Packing List wherein the weight of the goods exported are mentioned it, and the export proceeds as realized by the BRC will evidence the required point.

4.8 That instead of doing this, Deputy Commissioner searched for any identification mark on consignment. When the consignment are packed in 154 bundles & kept inside 20 sealed containers & exported what is the use of identification marks? This only acknowledges how much factually the case is adjudged by him. Therefore, an order based on assumption & presumption is not tenable & need to be set aside & quashed.

4.9 The applicants relies on the followings case laws which are squarely applicable to the instant issue:

- Commissioner of C. Ex. New Delhi vs. Hari Chand Shri Gopal as reported in 2010 (260) ELT 3 (SC)
- Govt. of India Order No. 527-528/2005 dated 18.11.2005 in the matter of M/s Modem Process Printers Ltd 2006 (204 ELT 632 (GOI)]
- Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner - [1991 (55) E.L.T. 437 (SC)].
- 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 (Tri.)], 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

5. Personal hearing scheduled in this case on 08.07.2015 was attended by Shri Rajeev Agarwal, Advocate and Shri Dilip Patil, Account Manager on behalf of the applicant who reiterated the grounds of Revision Application. Shri Gurbaz Sandhu, Assistant Commissioner, Thane-I attended hearing on behalf of the Department and made the following submission to uphold the Order-in-Appeal:

5.1 In terms of Chapter 8 of the CBEC's Excise Manual of Supplementary Instructions 2005, titled "Export under claim for rebate", Para 3.1 thereof, the

exporter has the option to adopt any of the procedures regarding the manner in which he may clear the export consignments from the factory or warehouse, namely:-

i. Examination and sealing of goods at the place of dispatch by a Central Excise Officer.

ii. Under self sealing and self certification.

However, both these procedures have not followed by the claimant in respect of the exports for which the subject rebate claim has been filed.

5.2 In terms of Para 7.2 & 7.3 of Chapter 8 of the CBEC's Excise Manual of Supplementary Instructions 2005, the exporter is required to present the goods along with the copies of ARE-1 for examination by the customs for the purposes of Central Excise to establish the identity and quantity i.e. the goods brought in the customs area for export on ARE-1 are the same, which were cleared from the factory. The claimant knowing fully well that his consignments were neither sealed by central excise nor by himself under self certification should have at least followed this procedure. As evident from the specific remark made on the face of the shipping bill presented by the claimant, the goods were not opened by the customs for examination. Thus at no stage, the goods were subjected to any examination.

5.3 In terms of para 8.4 of the said manual, the rebate sanctioning authority has to satisfy himself that the goods cleared for export under relevant ARE-1 were actually exported and the goods have 'duty paid' character. Since in this case, the goods cleared from the factory were without any sealing, either of the Central Excise department or of the exporter himself, it is not evident that the goods cleared from the factory are the same which were exported. It is also not free from doubt that the 'duty paid' goods were in fact exported. In absence of any such evidence of export goods and duty paid goods removed from the factory, the rebate of duty on the goods cannot be considered.

5.4 The Commissioner (Appeals) has also held that the claimant has failed to substantiate that the goods exported vide shipping bill No. 5915366 dated 05.01.2008, are the same which were cleared from the factory vide ARE-1 Nos. 13 & 14 both dated 08.01.08. Further, at para 14 of the Order in Appeal No. Th-I/RKS/26/2012 dated 28.02.2012, there are two tables which shows the details/quantity of the goods cleared for export as per ARE-1s & shipping bill. On perusal of the both tables, it can be seen that the goods cleared from the factory vide aforesaid ARE-1s and the goods exported vide aforesaid shipping bill are not matching.

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

7. Government observes that the original authority rejected the rebate claim on the ground that no relation between duty paid goods cleared from the factory and goods finally exported exists and as such, rebate claim is not admissible. Commissioner (Appeals) upheld the impugned Order-in-Original. Now, the applicant has filed this Revision Application on grounds mentioned in para(4) above.

8. Government notes that the original authority held that the goods should have been cleared from the factory either following self sealing procedure or examination under central excise supervision. In this case, neither of the options were exercised. As such, export of duty paid goods is in question. The applicant stated that they have opted for the self sealing procedure, however, failed to declare the same. They also contended that export of duty paid goods established on the basis of available documents. Government now proceeds to examine the issue in light of rival contentions.

8.1 Government notes that Rule 18 of Central Excise Rules, 2002 read with Notification No.19/2004-CE(NT) dated 06.09.2004 deals with the provisions for export on payment of duty under claim for rebate.

8.1.1 As per procedure prescribed in the above said Notification for sealing of goods at place of dispatch, the exporter shall present the goods along with four copies of application in Form ARE-1 to the Superintendent or Inspector of Central Excise who will verify the identity of goods mentioned in the application and the particulars of the duty paid or payable, and if found in order, he shall seal each package or container in the specified manner and endorse each copy of the ARE-1 in token of having done such examination. The original and duplicate copies of ARE-1 shall be returned to the exporter, he shall retain the quadruplicate copy and send the triplicate copy to officer from whom goods are cleared.

8.1.2 Where the exporter desires self-sealing, the authorized person shall certify on all copies of ARE-1 that goods have been sealed in his presence and shall send the original and duplicate copies along with the goods to place of export and the triplicate and quadruplicate copies to the jurisdictional Superintendent or Inspector of Central Excise within 24 hours of the removal of the goods.

8.1.3 At the place of export, the goods shall be presented along with the original and duplicate copies of ARE-1. Then Customs authorities upon examination of the goods shall allow export thereof and certify on the original and duplicate copies of ARE-1 that the goods have been duly exported citing the shipping bill number and

date and return the original copy to the exporter and forward the duplicate copy to the officer specified in the application.

9. In light of the above stated position, Government observes that any export clearance, intended to be made for claiming duty rebate, will be subject to Rule 18 ibid read with Notification No.19/2004-CE (NT) dated 06.09.2004. ARE-1 is the principle document under the said notification that establishes that the applicant has either followed the procedure for sealing of goods and examination of goods at place of dispatch either by Central Excise Officer or by self-sealing. If the clearances have been made without following the procedure described above, it cannot be established that goods which were cleared from factory were the ones actually exported or that goods exported cannot be correlated with goods cleared from the factory. Leniencies in the sealing procedure could lead to possible fraud of claiming an alternatively available benefit which may lead to additional/double benefits. Therefore, Government notes that requirement and procedure of sealing either by Central Excise Officers or by self sealing is both a statutory condition and mandatory in substance for removal of goods for exports under claim for rebate of duty in the present case the applicant has admittedly failed to comply with the provisions by neither following the provision for scaling of goods at place of dispatch under excise supervision nor the self sealing procedure.

10. Further, in this case, the applicant exported 'Non-Alloy Steel Angle' having specific size and weight. The department's contention as clearly brought out in the impugned Order-in-Appeal that the quantity as given in export and excise documents are not matching, has not been controverted by the applicant. So it cannot further be clearly established that goods cleared on ARE-1 were the same as those presented for export. Therefore, Government finds force in the order of Commissioner (Appeals) that goods cleared under ARE-1 which are neither certified by Central Excise officers nor self certified in addition to not matching in quantity and weight were not actually exported.

11. 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 the mandatory bindings. The Hon'ble Supreme Court in the case of Sharif-ud-Din, Abdul Gani AIR 1980 SC 3403 has held that when non-compliance of a requirement leads to any specific / odd consequences, then it would be difficult to hold the requirement as non-mandatory. Government also 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) and Paper Products

Ltd. Vs Commissioner of Central Excise 1999(112)ELT 765(SC)in which the Apex Court has held that 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. It is a settled issue that benefit under a conditional notification cannot be extended in case of non-fulfillment of conditions and/or non-compliance of procedure prescribed therein as held by the Apex Court in the case of Government of India vs Indian Tobacco Association 2005 (187) ELT 162 (SC); Union of India vs Dharmendra Textile Processors 2008 (231) ELT 3 (SC). Also it is settled that a notification has to be treated as part of the statute as held by the Hon'ble Supreme Court in the case of Collector of Central Excise vs Parle Exports (P) Ltd 1998 (38) ELT 741 (SC) and Orient Weaving Mills Pvt. Ltd vs Union of India 1978 (2) ELT J 311 (SC) (Constitution Bench). Further the decision in the case of M/s VEE Excel Drugs & Pharmaceuticals Pvt. Ltd. vs Union of India 2014(1)ECS(15)HC-All is squarely applicable in the present case in as much as the Hon'ble Allahabad High Court very clearly mentioned that procedures laid down in notifications have to be strictly followed and are mandatory in nature. In the judgment of Mihir Textiles Ltd vs Collector of Customs Bombay 1997 (92) ELT 9 (SC), it is held that concessional relief of duty which is made dependent on satisfaction of certain conditions cannot be granted without its compliance even if the conditions are only directory. Further, the case laws relied upon by the applicant in their support are not applicable to the facts and circumstances of the present case.

12. In view of above, Government finds no infirmity in order of Commissioner (Appeals) and hence upholds the same.

13. The revision application is thus rejected as devoid of merit.

14. So ordered.

(**RIMJHIM PRASAD**)
Joint Secretary to the Government of India

M/s Bhuwalika Steel Industries Ltd.
Gut No.204, Khupri Village
Taluka-WADA
Distt. Thane

ATTESTED

(सागरवत शर्मा/Sagarvat Sharma)
सहायक आयुक्त/Assistant Commissioner
C.E.E.O.-O.S.D (Revision Application)
वित्त मंत्रालय (वित्त विभाग)
Ministry of Finance (Dept. of Revenue)
भारत सरकार/Govt. of India
(वित्त)/ New Delhi

ORDER NO. 35/2016-CX DATED 19.02.2016

Copy to:-

1. Commissioner of Central Excise, Mumbai-I, Mehar Building Dadi Seth Lane, Chowpatty, Mumbai-4000 007.

2. Commissioner of Central Excise (Appeals), Mumbai-I, Mehar Building Dadi Seth Lane, Chowpatty, Mumbai-4000 007.

3. Deputy Commissioner of Central Excise, Kalyan Division-I, 3rd Floor, Chandrama Building, Valipeer Road, Kalyan (W)-421301.

4. Shri Rajeev Agarwal, Advocate, 609 High Court Churchgate Chambers, 5 New Marine Lines, Churchgate, Mumbai-400020

5. PA to JS(RA)

6. Guard File.

7. Spare Copy.

ATTESTED

(**B.P.Sharma**)
OSD (RA)