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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. 195/1105-1106/12-RA | ११४ . Date of Issue: 18.01.2018

ORDER NO. 12-03/2018-CX (WZ) /ASRA/Mumbai DATED 17.01.2018 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 THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Jai Ambe Manufacturers Ltd., Silvasa.

Respondent : Commissioner of Central Excise (Appeals-II), Mumbai-400051.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No.US/ 396 & 397/RGD/2012 dated 18.06.2012 passed by the Commissioner of Central Excise (Appeals-II).



ORDER

This revision application is filed by M/s. Jai Ambe Manufacturers, UT Silvassa (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/396-97/RGD/2012 dated 18.06.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone - II with respect to the Order-in-Original No. 1024/11-12/DC (Rebate)/Raigad dated 20.10.2011 passed by the Assistant Commissioner of Central Excise (Rebate), Raigad.

2. Brief facts of the case are that the applicant had filed 9 rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004 - C.E. (NT) dated 06.09.2004 amounting to Rs.8,33,752/-. The original authority viz. Assistant Commissioner, Central Excise (Rebate), Raigad sanctioned rebate of Rs.8,26,230/- vide Order in Original No. 1024/11-12/DC dated 20.10.2012.

3. Being aggrieved by the Order-in-Original, Department filed appeal before the Commissioner (Appeals) on the following grounds:

(i) Certificate given at Sr.No.3(c) of the ARE-1 is that the exported goods were manufactured availing facility under Notification No.43/2001-CE(NT) dated 26.06.2001 issued under Rule 19 of Central Excise (No,2) Rules,2001. Such claim is to be dealt with by jurisdictional Assistant or Deputy Commissioner and ARE-2 is to be filed.

(ii) The rebate sanctioning authority was mentioned in ARE-1 is Assistant /Deputy Commissioner of Central Excise, Sahkar Bhawan 1st floor , Opposite Hirwan garden, Piparia, Silvassa. Therefore, Rebate sanctioned was without jurisdiction.

The Commissioner (Appeals) vide Order in Appeal No. US/396-397/RGD/2012 dated 18.06.2012 observed as under :-

The mention of rebate claiming authority in ARE-1 as "Assistant /Deputy Commissioner of Central Excise, Sahkar Bhawan 1st floor, Opposite Hirawan garden, Piparia, Silvassa" is only a procedural



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infraction. The Notification No.19/2004. CE(NT) dated 6.9.2004 which grants rebate of duty paid on the goods, laid down the conditions and limitations in paragraph (2) and the procedure to be complied with in paragraph (3). The fact that the Notification has placed the requirement of "presentation of claim for rebate to Central Excise" in pan 3(b) under the heading "procedures" itself shows that this is a procedural requirement. This point is fully covered by the Order-in-Revision No.112/09 dated 06.05.2009 passed by the Joint Secretary to the Government of India in the case of Hemani International. Such procedural infractions can be condoned. Therefore appeal F.No.42/R/RGD/2012 has to be set aside and appeal filed by Revenue is rejected. The same plea is also taken in appeal F.No.32/R/RGD/2012 is also set aside.

- (ii) F.No.32/R/RGD/2012 - It is contended in the appeal that Certificate was given on ARE-1 at Sr.No.3(c) that the goods were exported availing facility under Notification No.43/2001-CE (NT) dated 26.6.2001 issued under Rule 19 of Central Excise (No.2) Rules, 2001 and therefore, the same were required to be exported under Bond. Para 2 of Chapter 8 of CBEC's Excise Manual of 4 Supplementary Instructions reads as under :

2. Forms to be used

2.1 ARE-I is the export document (see Annexure-14 in Part 7), which shall be prepared in quintuplicate (5 copies). This is similar to the erstwhile AR4. This document shall bear running serial number beginning from the first day of the financial year. On ARE-1, Certain declarations are required to be given by the exporter. They should be read carefully and signed by the exporter or his authorized agent. The different copies of ARE-1 forms should be of different colours as indicated below.

The ARE-1 is a statutory form prescribed under Notification No.19/2004 dated 26.6.2001 issued under Rule 18 of Central Excise Rules, 2002. The declaration given in the ARE-1's are required to be filled in so as to ascertain whether specified benefits have been availed by the exporter or not. This is a statutory requirement which has not been complied with by the respondents. The respondents contend that the declaration made on an ARE-1 may be rectified as a clerical error. I find that ARE-1 is an assessment document. After self-assessing the said document, the respondents presented the same to the proper officer. Once the said document is assessed by the respondents, it is not open for them to re-



assess it. Board has also clarified under Circular No.510/06/2000-CX dated 3.2.2000 that any scrutiny of the correctness of the assessment shall be done by the jurisdictional Assistant/Deputy Commissioner only. Therefore plea of the revenue is allowed.

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

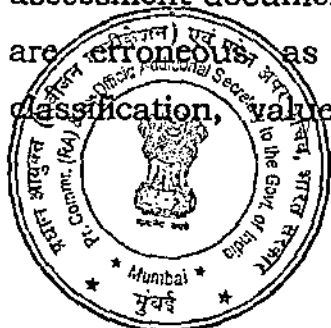
4.1 that the Ld. Commissioner (Appeals) has not considered detailed cross objections filed by the applicant and has failed to give any findings in respect of the submissions made by the applicant and thus the impugned order is a non speaking order,

4.2 that the Ld. Commissioner failed to appreciate that there was no allegation or evidence that the applicant had availed benefit of Notification 43/01-CE(NT) dated 26.06.01 and the documents placed on record by the applicant such as ER-1 Returns clearly establish that the benefit of Notification was not availed and thus the impugned order is merely based on a clerical error which was required to be condoned.

4.3 that the Ld. Commissioner failed to appreciate that due to oversight and due to clerical error of mentioning the words "without availing " were struck out in the printed form and thereby it was incorrectly read as if the applicant has been availing the benefit of the notification which is totally erroneous,

4.4. that they have not availed benefit of Notification 43/01-CE(NT) dated 26.06.01 and merely because the words "without availing " has been struck out against the correct deletion of word availing, the same in itself should not become the basis of denial of substantive benefit,

4.5 that the Ld. Commissioner's observation that the ARE-1 is an assessment documents and the same cannot be reassesses by the assessee are erroneous as the applicant has not changed the description, classification, value rate of duty or quantum of duty but merely is



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requesting for condonation of delay of a clerical error which has crept in due to oversight.;

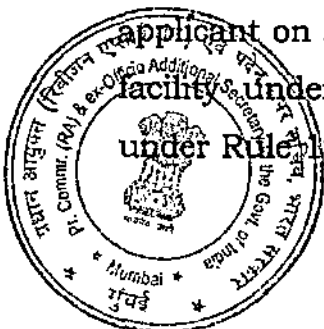
4.6 that they have exported the goods and have realized the sale proceeds and while exporting the goods and negotiating with the buyers the applicant have taken into consideration the rebate amount and thus any denial of the same shall cause undue losses to them,

4.7 that they have filed ARE-1 documents and not ARE-2 documents which itself proves that the applicant have not availed facilities under Notification No. 43/2001-CE (NT) dated 26.6.2001" and thus the Ld. Commissioner failed to appreciate that the mistake in ARE-1 was only clerical and required to be condoned.

5. A Personal hearing was held in this case on 21.12.2017 Shri Anil Balani, Advocate, duly authorized by the applicant appeared for hearing on and reiterated the submission filed through Revision Application. He submitted that there is no dispute that duty is paid and goods are exported. The only objection of the department was the error in scoring out Rule 18/19 in ARE-1 forms. However, ARE-1s clearly indicate that export were under rebate and not under bond. In view of this he pleaded that the instant RA be allowed and Order in Appeal be set aside. Application and also submitted synopsis dated 27.12.2017.

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

7. On perusal of records, Government observes that the applicant's rebate claim made under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 - C.E.(NT) dated 06.09.2004 was initially sanctioned by the original authority. Department filed appeal before the Commissioner (Appeals) on the ground that Certificate given by the applicant on ARE-1 at Sr.No.3(c) was that the goods were exported availing facility under Notification No.43/2001-CE (NT) dated 26.6.2001 issued under Rule 19 of Central Excise (No.2) Rules, 2001 and therefore, the same



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were required to be exported under Bond. Now, the applicant has filed this Revision Application on grounds mentioned in para (4) above.

8. Government notes that in impugned Order-in-Original, it has been observed by the original authority that the goods were exported under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 - C.E. (NT) dated 06.09.2004. Government further notes that the fact of duty payment and export of such duty paid goods was established in Order-in-Original in unambiguous terms.

9. Government observes that the applicant exported the goods and filed rebate claim under Rule 18 of the Central Excise Rules, 2002 read with the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. The applicant has contended that due to oversight and due to clerical error of mentioning the words "without availing" were struck out in the printed form and thereby it was incorrectly read as if the applicant has been availing the benefit of the notification which is totally erroneous.

10. Government finds that the applicant prepared the ARE-1 under claim of rebate and paid applicable duty at the time of removal of goods. The original authority in rebate sanctioning orders have categorically held that applicants have exported the goods under claim of rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 and also that range Superintendent confirmed the verification of duty payment.

11. In this regard Government places its reliance on GOI in Revision Order No. 32/2016 - CX Dated 04.02.2016 in the case of M/s Mahavir Synthesis Pvt Ltd. Vs Commissioner of Central Excise, Raigad, wherein while allowing application of the applicant the Revisionary authority observed as under :-

On perusal of copy of relevant ARE-1, Government finds that the applicant prepared the ARE-1 under claim of rebate and paid applicable duty at the time of removal of goods. The original authority in rebate sanctioning orders have categorically held that applicant has exported

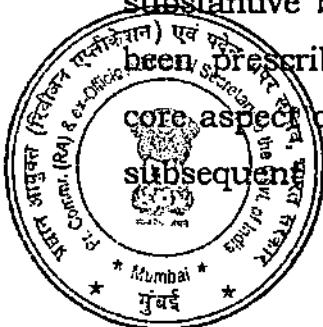


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the goods under claim of rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE/(NT) dated 06.09.2004 and also observed that triplicate copy of ARE-1 has been endorsed by the Central Excise officer which confirmed the verification of duty payment. As such, the exported goods are duty paid goods. Once, it has been certified that exported goods have suffered duty at the time of removal, it can be logically implied that provisions of Notification 21/04-CE(NT) dated 06.09.04 and Notification 43/01-CE(NT) dated 26.06.01 cannot be applied in such cases. There is no independent evidences on record to show that the applicant have exported the goods without payment of duty under ARE-2 or under Bond. Under such circumstances, Government finds force in contention of applicant that they have by mistake ticked in ARE-1 form declaration and they have not availed benefit of Notification 21/04-CE(NT) dated 06.09.2004 and Notification 43/01-CE(NT) dated 26.06.2001. In this case, there is no dispute regarding export of duty paid goods. Simply ticking a wrong declaration in ARE-1 form cannot be a basis for rejecting the substantial benefit of rebate claim. Under such circumstances, the rebate claims cannot be rejected for procedural lapses of wrong ticking. In catena of judgments, the Government of India has held that benefit of rebate claim cannot be denied for minor procedural infraction when substantial compliance of provisions of notification and rules is made by claimant.

12. Government notes that identical issue of ticking wrong declaration in case of M/s. Socomed Pharma Ltd. decided by GOI in Revision Order No. 154-157/2014-CX dated 21.04.2014 (reported in 2014 (314) ELT 949 (GOI)) wherein it has been observed that mere ticking of wrong declaration may not be a reason for rejection of rebate claim especially when substantial condition of export of duty paid goods established. Government finds that ratio of aforesaid GOI orders is squarely applicable to this case also.

13. Further, it is now a well settled 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.

14. In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. US/396-397/RGD/2012 dated 18.06.2012 and restores the initial Order-in-Original No. 1024/11-12/DC (Rebate)/Raigad dated 20.10.2011.

15. Revision Application thus succeeds in above terms.

16. So ordered.

Ashok Kumar Mehta
17.1.2018

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

ORDER No. 02-03/2018-CX (WZ) /ASRA/Mumbai DATED 18.01.2018

To,
M/s. Jai Ambe Manufacturers,
Plot No.265/13, Demni Road,
Dadar, Vill-Dadra & Nagar,
Haveli, UT Silvassa-396230

True Copy Attested

S. R. Hirulkar
17.1.18

एस. आर. हिरुलकर
S. R. HIRULKAR

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5th Floor, CGO Complex, Belapur, Navi Mumbai, Thane..
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Belapur Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

