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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.195/136 (I to V)/2015

1118

Date of Issue: 11.01.2022

ORDER NO. 04-08 /2022-CX (SZ) /ASRA/MUMBAI DATED 10.01.2022
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 John Crane Sealing Systems Pvt Ltd,
#11, 1st Phase, Peenya Industrial Estate,
Peenya, Bangalore 560 058

Respondent: Commissioner of CGST, Bangalore North West

Subject : Revision Applications filed under Section 35EE of Central
Excise Act, 1944 against the Order-in-Appeal No. 41/2015-CE
dated 30.01.2015, 42/2015-CE dated 30.01.2015, 43/2015
dated 30.01.2015 and 44 & 45/2015-CE dated 30.01.2015
passed by the Commissioner of Central Excise (Appeals-I),
Bangalore

ORDER

These five Revision Applications have been filed by M/s John Crane Sealing Systems Pvt Ltd, #11, 1st Phase, Peenya Industrial Estate, Peenya, Bangalore 560 058 (hereinafter referred to as the 'applicant') against the Orders-in-Appeal Nos 41/2015 dated 30.01.2015, 42/2015 dated 30.01.2015, 43/2015 dated 30.01.2015 and 44 & 45/2015 dated 30.01.2015 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.

2. The facts briefly stated are that the applicant, holders of Central Excise Registration No. AAACJ2131JXM003, are manufacturers of seals and associated products mainly for oil & gas, chemical, pharmaceuticals, pulp & paper and mining sectors falling under the Chapter 84, 73, 28, 39 and 40 etc. of Central Excise Tariff Act, 1985. The details of the instant cases are as under

2.1 Order-in-appeal No. 41/2015 dated 30.01.2015 passed by Commissioner of Central Excise (Appeals-I), Bangalore.

i) The applicant filed a rebate claim for Rs 3,42,408/- in respect of 3 ARE 1's. Out of the three ARE 1's, an amount of Rs. 92,812/- in respect of ARE 1 No. 90062755 dated 04.01.2012 was rejected by the rebate sanctioning authority on the grounds that the signature on the original and duplicate copies of the ARE 1 and shipping bills were not affixed with the seal of the name and designation of the customs officer who signed the documents

ii) Being aggrieved with the impugned order the applicant filed an appeal before the Commissioner of Central Excise (Appeals-I), Bangalore. The Appellate Authority vide Order-in-Appeal No. 41/2015 dated 30.01.2015 rejected the appeal filed by the applicants.

2.2 Order-in-Appeal No. 42/2015 dated 30.01.2015 passed by Commissioner of Central Excise (Appeals-I), Bangalore.

(i) The applicant had filed a rebate claim for Rs 2,30,723/- in respect of 3 ARE 1's. Out of the three ARE 1's, an amount of Rs. 74,378/- in respect of ARE 1 No 90062674 dated 23.12.2011 was rejected by the rebate sanctioning authority on the grounds that the signature on the original and duplicate copies of the ARE 1 and shipping bills were not affixed with the seal of the name and designation of the customs officer who signed the documents.

(ii) Being aggrieved with the impugned order, the applicant filed an appeal before the Commissioner of Central Excise (Appeals-I), Bangalore. The Appellate Authority vide Order-in-Appeal No. 42/2015 dated 30.01.2015 rejected the appeal filed by the applicants.

2.3 The Appellate Authority in the Orders-in-appeal Nos. 41/2015 dated 30.01.2015 and 42/2015 dated 30.02.2015 made the following observations

(i) The procedures for export clearly describe the manner in which the ARE-1's have to be disposed off. Customs endorsement on ARE 1 is an important prescription. Endorsements on shipping bill and ARE-1 are done at different stages of export clearance.

(ii) Absence of the seal of name and designation of the customs officer on the ARE-1 cast a serious doubt about the ultimate export of the goods cleared under the said ARE-1.

(iii) In order to sanction the rebate, it should be proved beyond all reasonable doubts that the goods have actually been exported. Customs endorsed original and duplicate copies of ARE-1 are important documents for admitting the proof of export and subsequently, for sanction of rebate. In the absence of appropriate Customs endorsement, the proof of export cannot be admitted and the rebate cannot be sanctioned.

2.4 Being aggrieved by the Order-in-Appeal, the applicant has filed separate revision applications on the following grounds:

(i) The impugned order has failed to appreciate the fact that the shipping bill is generated electronically only after satisfying about the genuineness of

the export documents. The shipping bill cannot be generated by anybody without any document or without actually exporting the goods.

(ii) The shipping bills are duly certified and contain the seal and signature of the customs authorities and also contains reference of the relevant ARE- 1.

(iii) When the linkage of documents are clearly established and there is no dispute about the fact of export, rejection of the rebate merely for the reason that seal of the customs authorities is missing is not proper.

The applicant has relied on the following cases

- Union of India vs Suksha Nutan Gems and International [1989(39) E.L.T 503(SC)].
- M/s Ace Hygenic Products vs UOI [2012(276)E.L.T 131(G.O.I)]
- M/s Ford India Ltd vs Assistant Commissioner of C.Ex, Chennai [2011(272)E.L.T 353(Mad)]

3. Order-in-appeal No. 43/2015 dated 30.01.2015 passed by Commissioner of Central Excise (Appeals-I), Bangalore.

3.1 The applicant had filed a rebate claim for Rs 1,48,856/- in respect of ARE1 No. 90061514 dated 26.08.2011, on 28.08.2012 through online mode without documents and filed the application alongwith documents on 29.08.2012. The rebate claim was sanctioned vide order in original No 130/2012-R dated 23.11.2012.

3.2 Being aggrieved with the impugned order, the department filed an appeal before the Commissioner of Central Excise (Appeals-I), Bangalore contending the date of the export to be 29.08.2011 and disputed the finding of the original authority that the claim is filed within year by taking consideration the date electronic filing the rebate claim i.e., 28.8.2011. The department contended that if claim is filed without requisite documents, it cannot legally considered as a valid claim; that per para 8.3 of Chapter 8 of the CBEC's Excise Manual read with notification No 19/2004 CE(NT) dated 06.09.2004, the relevant documents are required. The Appellate authority

vide Order-in-Appeal No. 43/2015 dated 30.01.2015 set aside the impugned order and allowed the appeal of the department.

4. Orders-in-Appeal No. 44 & 45/2015 dated 30.01.2015 passed by Commissioner of Central Excise (Appeals-I), Bangalore.

4.1 The applicant had filed a rebate claim for Rs. 4,55,190/- in respect of 3 ARE 1's. Out of the three ARE 1's, an amount of Rs. 1,22,368/- in respect of ARE 1 No. 90061777 dated 23.08.2011 was rejected as being time barred.

4.2 Being aggrieved with the impugned order, the applicant preferred an appeal before the Commissioner of Central Excise (Appeals-I), Bangalore. The Appellate authority vide Order-in-Appeal No. 44 & 45/2015 dated 30.01.2015 rejected the appeal filed by the applicants.

4.3 The Appellate Authority has in the above three Orders-in-Appeal has made the following observations:

(i) Judgment of Division Bench of the Hon'ble High Court of Judicature at Bombay in the matter of Everest Flavours Ltd., Vs. Union of India - 2012 (282) ELT 481 (Bom.), is squarely applicable to this case and the date of filing a claim complete with all the requisite documents has to be taken as the date of filing the rebate claim.

(ii) Mere presentation of an ARE-1 form does not constitute the filing of a valid application for rebate and that an application for refund has to be filed together with documentary material as required.

(iii) The claim has been filed after the period of one year from the date of let export order.

4.4 Aggrieved by the Order-in-Appeal No 43/2015 dated 30.01.2015, the applicant has filed Revision Application with the Central Government against the impugned order on the following grounds:

(i) 'Let export' order date is not the actual date of export. It is the date on which the ship leaves India that is the date of export. As per Section 2 (27)

of the Customs Act, India includes the territorial waters of India. Therefore, until the ship leaves territorial waters of India, it is still in India and only after crossing the territorial waters of India, it is said that the same is exported.

(ii) The Board has issued a Circular No 354/70/97-CX dated 13.11.1997, wherein it is held that 'let export' order date is to be considered for granting the rebate.

(iii) Further, Notification No 42/2001-CE (NT) dated 26.6.2001 which governs the export of goods under rebate states that goods removed under ARE-1 should be exported within a period of 6 months from the date of removal. This clearly states that goods removed under ARE-1 can remain in India for a period of 6 months and within that period, it should be exported. The Appellate Authority has considered the date of ARE-1 and not examined the date of 'let export' order.

(iv) The 'let export' order date is 29.08.2011. As the refund claim is filed within the time limit specified in Section 11B, the same should be granted. as the refund claim has been filed electronically on 28.08.2011, which falls on a Sunday.

(v) The previous day being a public holiday, the manual claim along with requisite documents has been filed on the next working day i.e. on 29.08.2011.

(vi) The claim should be filed within one year from the date of export. The date of export should not be considered for computing the period and also the filing date should not be considered.

(vii) The applicant has relied on the following case laws:

1) Welspun Corporation Limited vs UOI [2012 (285) ELT 138 (GOI)]

- 2) Dorcas Market Makers Private Limited vs Commissioner of Central Excise [2012 (281) ELT 227 (Mad. HC)]
- 3) Caspro Exports vs UOI [2010 (261) ELT 790 (Commissioner Appeals)]
- 4) Balkrishna Industries Limited v/s UOI [2011 (271) ELT 148 (GOI)]

4.5 Aggrieved by the Orders in Appeal Nos 44 & 45/2015 dated 30.01.2015, the applicant has filed Revision Application with the Central Government against the impugned order on the following grounds:

(i) The order passed by the Appellate Authority is a no speaking order as the furtherance of the case has been made without proper discussion on the background thereof, reasons and clear findings and hence liable to be set aside.

(ii) The rebate claim pertaining to ARE 1 No. 90061777 dated 23.09.2011 was filed electronically on 24.09.2012 and the manual documents were filed on 25.09.2012. In respect of ARE 1 No. 90062167 dated 03.11.2011 the claim was filed electronically on 07.11.2012 and the manual documents were filed on 09.11.2012. The claims have been rejected by the sanctioning authority on the grounds that the date of filing a claim is complete with all the requisite documents has to be taken as date of filing the rebate claim and the Appellate authority has erred by not referring to the legal provisions regarding the relevant date.

(iii) 'Let export' order date is not the actual date of export. It is the date on which ship leaves India is the date of export. As per Section 2 (27) of the Customs Act, India includes the territorial waters of India and thus until the ship leaves territorial waters of India, it is still in India and only after crossing the territorial waters of India, it is said that the same is exported.

The applicant has relied upon the following case laws:

- i) Commissioner of Service Taxes vs Maa Communications Bozell Ltd [2010(19) S.T.R 490 (Kar)]

- ii) Nitish Kumar Kedia vs Commissioner of Customs, Import General [2012(284) ELT 321(Del)]
- iii) Ratlam Wires Pvt Ltd vs commissioner of CEx, Indore [2010(262) ELT. 1118 (Tri.Del)]
- iv) Jagannath Plastipack Ltd vs CCE, Bhubaneswar I [2010(261)ELT.76 (Ori)]
- v) Parnikka Harvest Floratech Ltd vs Commissioner of C.EX Hyderabad [2010(256) ELT.417(Tri Bang)]
- vi) Premier Plastics vs Cex Kanpur [2010(253) ELT 117(Tri Del)]
- vii) Thames Water Asia Pvt Ltd Vs Commissioner of Service Tax, Bangalore [2010(249) ELT 536(Tri-Bang)]
- viii) Goodyear South Asia Tyres Pvt ltd vs Commissioner of CEx Aurangabad [2009(248)ELT. 691 (Tri.Mumbai)]
- ix) Welspun Corporation Limited vs UOI [2012 (285) ELT 138 (GOI)]
- x) Dorcas Market Makers Private Limited Vs Commissioner of Central Excise [2012 (281) ELT 227 (Mad HC)]
- xi) Caspro Exports vs UOI [2010 (261) ELT 790 (Commissioner Appeals)]
- xii) Balkrishna Industries Limited v/s UOI [2011 (271) ELT 148 (GOI)]

5. Personal hearing was scheduled in this case on 14.09.2021. Shri Dayananda K, Consultant appeared for the hearing. He submitted that of the applications in respect of five appeals, in two applications, the claims were rejected on the grounds of delay of 1 day and in three cases it was rejected on some minor deficiency. He submitted that when considered from filing online, there was no delay. He further submitted that for minor deficiencies substantial right should not be denied when there is no doubt on duty payment and export.

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

6.1 Discussions for Revision Applications filed in respect of Order-In-Appeal Nos. 41/2015 and 42/2015 both dated 30.01.2015.

6.3 As per the impugned orders-in-original the applicant has filed the following documents

- i) Original & duplicate copies of the ARE-1's duly endorsed by the Customs Authorities:
- ii) Self attested copies of the related invoices & packing lists.
- iii) Self attested copies of shipping bills along with relevant copy of Air Way Bill.
- iv) Photocopies of remittance advice from the buyer & bank a/c statement issued.
- v) ER-1 monthly return for the month of December 2011.
- vi) Copy of statement showing cenvat credit of service tax for December 2011.
- vii) Purchase Order.
- viii) Letter stating that rebate claimed is not under any advance licenses scheme such as DEBP/DFRC or any other scheme, also not claiming DBK from Customs and stating that this export is made towards fulfilment of export obligation under EPCG Authorisation.

6.4 The only ground for the rejection of the claims was that there was no seal of the customs authority on the original and duplicate copies of the ARE 1's and the shipping bills

6.5 The Government opines that the collateral documents submitted by the applicant are sufficient to check whether the goods cleared under said ARE-1 had been exported or otherwise. Further, in case of any doubt arising with respect to the genuineness of the endorsements, the genuineness of the document could have been referred to the Customs Authorities and could have been verified.

6.6. The Government notes that the Manual of Instructions that have been issued by the CBEC specifies the documents which are required for filing a claim for rebate. Among them is the original copy of the ARE-1, the invoice and self-attested copy of shipping bill and bill of lading. Further paragraph 8.4 of Chapter 8 the said Manual specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported as evident from the original and duplicate copies of the ARE-1 form duly certified by customs. The second is

that the goods are of a duty paid character as certified on the triplicate copy of the ARE-1 form received from the jurisdictional Superintendent of Central Excise. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

8.5 In this regard, for proper understanding of issue, the relevant provisions of Notification and instructions regarding filing of rebate claim along with requisite documents are extracted below:-

Para 8.2, 8.3 and 8.4 of part I of Chapter 8 of C.B.E. & C. Excise Manual of Supplementary Instructions stipulates as under :-

"8.2 It shall be essential for the exporter to indicate on the A.R.E. 1 at the time of removal of export goods the office and its complete address with which they intend to file claim of rebate.

8.3 The following documents shall be required for filing claim of rebate :

- (i) A request on the letterhead of the exporter containing claim of rebate, A.R.E. 1 numbers and dates, corresponding invoice numbers and dates amount of rebate on each A.R.E. 1 and its calculations,*
- (ii) Original copy of the A.R.E. 1,*
- (iii) Invoice issued under rule 11,*
- (iv) Self attested copy of shipping bill, and*
- (v) Self attested copy of Bill of Lading.*
- (vi) Disclaimer Certificate [in case where claimant is other than exporter]*

8.4 After satisfying himself that the goods cleared for export under the relevant A.R.E.1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of A.R.E. 1 duly certified by Customs, and that the goods are of 'duty-paid' character as certified on the triplicate copy of A.R.E. 1 received from the jurisdictional Superintendent of Central Excise (Range Office), the rebate sanctioning authority shall sanction the rebate, in part or full. In case of any reduction or rejection of the claim, an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued."

8.6 The Government finds that the department has not alleged non-compliance of the procedure, as laid down above, on the part of the

respondent at any point of time. This evidently implies that the respondent had followed the necessary procedure required under Rule 18 of the Central Excise Rules, 2002 and Notifications issued thereunder. Further, it is found that the discrepancies noticed by the department such as no seal of the customs authority on the original and duplicate copies of the ARE 1 and the shipping bills were errors, more or less clerical in nature on the part of Customs officials while endorsing the relevant documents. In the event, it would be incongruous to hold the respondents accountable for an act beyond their control.

8.7 Further, Government opines that the queries noticed by the rebate sanctioning authority, apparently clerical errors could have been sorted out by requesting verification report from the Customs Officials. However, no such efforts appear to have been initiated by the lower adjudicating / departmental authorities. As such, Government holds that rejection of the rebate claim on assumptions and presumptions without authentic verification would be unmerited and unlawful.

8.8 Hence, the deficiency i.e. no seal of the customs authority on the original and duplicate copies of the ARE 1 and the shipping bills as stated by the sanctioning authority, while rejecting the rebate claims pertaining to the two ARE1's amounting to Rs. 92,812/- and Rs. 74,378/-, are merely procedural infractions and the same should not result in the deprivation of the statutory right to claim a rebate particularly when the substantial compliance has been done by the applicant with respect to conditions and procedure laid down under relevant notifications/instructions issued under Rule 18 of the Central Excise Rules, 2002. The Government finds that the sanctioning authority has already recorded facts that the impugned goods removed from the factory premises of the applicant were duty paid and the same were duly exported. In the event, the rejection of the impugned rebate claims on solitary ground of that there was no seal of the customs authority on the original and duplicate copies of the ARE 1's and the shipping bills is

not just and proper particularly when the facts regarding the export of duty paid goods have been recorded by the Original Authority in the Order.

9. In several decisions of the Union Government in the revisional jurisdiction as well as in the decisions of the CESTAT, the production of the relevant forms has been held to be a procedural requirement and hence directory as a result of which, the mere non- production of such a forms would not result in an invalidation of a claim for rebate where the exporter is able to satisfy through the production of cogent documentary evidence that the relevant requirements for the grant of rebate have been fulfilled. In the present case, no doubt has been expressed whatsoever that the goods were not exported goods.

9.1 The Government further observes that a distinction between those regulatory provisions which are of a substantive character and those which are merely procedural or technical has been made in a judgment of the Supreme Court in "Mangalore Chemicals & Fertilizers Ltd. vs. Deputy Commissioner-1991 (55) E.L.T. 437 (S.C.)". The Supreme Court held that the mere fact that a provision is contained in a statutory instruction "does not matter one way or the other". The Supreme Court held that non-compliance of a condition which is substantive and fundamental to the policy underlying the grant of an exemption would result in an invalidation of the claim. On the other hand, other requirements may merely belong to the area of procedure and it would be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes which they were intended to serve. The Supreme Court held as follows:

"The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some other may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."

9.2 In this regard Government observes that while deciding the identical issue, Hon'ble High Court of Bombay in its judgment dated 24-4-2013 in the case of M/s. U.M. Cables v. UOI (WP No. 3102/2013 & 3103/2013) reported as TIOL 386 HC MUM CX. = 2013 (293) E.L.T. 641 (Bom.), at para 16 and 17 of its Order observed as under :-

16. *However, it is evident from the record that the second claim dated 20 March, 2009 in the amount of Rs. 2.45 lacs which forms the subject matter of the first writ petition and the three claims dated 20 March, 2009 in the total amount of Rs. 42.97 lacs which form the subject matter of the second writ petition were rejected only on the ground that the Petitioner had not produced the original and the duplicate copy of the ARE-1 form. For the reasons that we have indicated earlier, we hold that the mere non-production of the ARE-1 form would not ipso facto result in the invalidation of the rebate claim. In such a case, it is open to the exporter to demonstrate by the production of cogent evidence to the satisfaction of the rebate sanctioning authority that the requirements of Rule 18 of the Central Excise Rules, 2002 read together with the notification dated 6 September, 2004 have been fulfilled. As we have noted, the primary requirements which have to be established by the exporter are that the claim for rebate relates to goods which were exported and that the goods which were exported were of a duty paid character. We may also note at this stage that the attention of the Court has been drawn to an order dated 23 December, 2010 passed by the revisional authority in the case of the Petitioner itself by which the non-production of the ARE-1 form was not regarded as invalidating the rebate claim and the proceedings were remitted back to the adjudicating authority to decide the case afresh after allowing to the Petitioner an opportunity to produce documents to prove the export of duty paid goods in accordance with the provisions of Rule 18 read with notification dated 6 September, 2004 [Order*

No. 1754/2010-CX, dated 20 December, 2010 of D.P. Singh, Joint Secretary, Government of India under Section 35EE of the Central Excise Act, 1944]. Counsel appearing on behalf of the Petitioner has also placed on the record other orders passed by the revisional authority of the Government of India taking a similar view [Garg Tex-O-Fab Pvt. Ltd. - 2011 (271) E.L.T. 449] and Hebenkraft - 2001 (136) E.L.T. 979. The CESTAT has also taken the same view in its decisions in Shreeji Colour Chem Industries v. Commissioner of Central Excise - 2009 (233) E.L.T. 367, Model Buckets & Attachments (P) Ltd. v. Commissioner of Central Excise - 2007 (217) E.L.T. 264 and Commissioner of Central Excise v. TISCO - 2003 (156) E.L.T. 777.

17. We may only note that in the present case the Petitioner has inter alia relied upon the bills of lading, banker's certificate in regard to the inward remittance of export proceeds and the certification by the customs authorities on the triplicate copy of the ARE-1 form. We direct that the rebate sanctioning authority shall reconsider the claim for rebate on the basis of the documents which have been submitted by the Petitioner. We clarify that we have not dealt with the authenticity or the sufficiency of the documents on the basis of which the claim for rebate has been filed and the adjudicating authority shall reconsider the claim on the basis of those documents after satisfying itself in regard to the authenticity of those documents. However, the rebate sanctioning authority shall not upon remand reject the claim on the ground of the non-production of the original and the duplicate copies of the ARE-1 forms, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled. For the aforesaid reasons, we allow the Petitions by quashing and setting aside the impugned order of the revisional authority dated 22 May, 2012 and remand the proceedings back to the adjudicating authority for a fresh consideration. The rejection of the rebate claim dated 8 April,

2009 in the first writ petition is, however, for the reasons indicated earlier confirmed. Rule is made absolute in the aforesaid terms.

9.3 Government also observes that Hon'ble High Court, Gujarat in Raj Petro Specialities Vs Union of India [2017(345) ELT 496(Guj)] also while deciding the identical issue, relying on aforesaid order of Hon'ble High Court of Bombay, vide its order dated 12.06.2013 observed as under:

7. "Considering the aforesaid facts and circumstances, more particularly, the finding given by the Commissioner (Appeals), it is not in dispute that all other conditions and limitations mentioned in Clause (2) of the notifications are satisfied and the rebate claim have been rejected solely on the ground of non-submission of the original and duplicate ARE1s, the impugned order passed by the Revisional Authority rejecting the rebate claim of the respective petitioners are hereby quashed and set aside and it is held that the respective petitioners shall be entitled to the rebate of duty claimed for the excisable goods which are in fact exported on payment of excise duty from their respective factories. Rule is made absolute accordingly in both the petitions".

9.4 Government finds that ratio of aforesaid Hon'ble High Court orders are squarely applicable to the instant case in so far as the matter of sanction of the rebate claims pertaining to the two ARE1's amounting to Rs. 92,812/- and Rs. 74,378/-, which were rejected by the sanctioning authority.

9.5 In view of discussions and findings elaborated above, Government holds that impugned claims for Rs. 92,812/- and Rs. 74,378/- are admissible in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/04-CE (N.T.) dated 06.09.04.

10. Discussions for Revision Applications filed in respect of Order in Appeal Nos 43/2015 dated 30.01.2015 and 44 & 45/2015 dated 30.01.2015

10.1 On perusal of records, Government observes that the applicants that of the various rebate claims filed under Notification No. 19/2004 C. Ex. (NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules 2002 read with Section 11 B of Central Excise Act, 1944, the rebate claims in respect of the ARE1's mentioned at Sr. No 1 below was sanctioned by the sanctioning authority and the ARE 1's mentioned at Sr. No 2,3 and 4 were rejected as being time barred, the details of which are as under:

Sr No	ARE No and date	Amount	Order in original	Order in Appeal No and date
1	90061514 dated 26.08.2011	1,48,856/-	130/2012-R dated 23.11.2012	43/2015 dated 30.01.2015
2	90061777 dated 23.09.2011	1,22,368/-	159/2012-R dated 20.12.2012	44 & 45/2015 dated 30.01.2015
3	90062167 dated 03.11.2011	82,051/-	33/2013-R dated 08.02.2013	44 & 45/2015 dated 30.01.2015
4	90062191 dated 04.11.2011	1,66,202/-	33/2013-R dated 08.02.2013	44 & 45/2015 dated 30.01.2015

10.2 The filing details in respect of the above ARE 1 are as under

Sr No	ARE1 No and date	Relevant date	Date of filing online	Date of filing in the office with documents
1	90061514 dated 26.08.2011	29.08.2011	28.08.2012	29.08.2012
2	90061777 dated 23.09.2011	25.09.2011	24.09.2012	25.09.2012
3	90062167 dated 03.11.2011	08.11.2011	07.11.2012	09.11.2012
4	90062191 dated 04.11.2011	08.11.2011	07.11.2012	09.11.2012

10.3 The rebate claim mentioned at Sr No 1 above was sanctioned vide order-in-original No. 130/2012-R dated 23.11.2012. The department filed an appeal before the Commissioner (Appeals-I), Bangalore on the grounds that the same was hit by limitation of time under the provisions of Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002. The Appellate Authority had allowed the appeal filed by the department and set aside the order in original No 130/2012-R dated 23.11.2012.

10.4 The impugned rebate claims mentioned at Sr. No 2,3 and 4 above were rejected vide Orders-in-Original as mentioned in the table above, on the grounds that the same were hit by the limitation of time under the provisions of Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002. Aggrieved by the order of the sanctioning authority, the applicant in the case of Sr. No 2,3, and 4 above filed an appeal before the Commissioner (Appeals -I), Bangalore. The Appellate authority rejected the appeal and upheld the order in original No 159/2012-R dated 20.12.2012 and 33/2013-R dated 08.02.2013.

10.5 The Government observes that the respondent had filed the rebate claims electronically on 28.08.2012, 24.09.2012, and 07.11.2012 (for 2 ARE's) in respect of duty paid on goods exported under impugned ARE-1's. These facts have not been refuted by the department. The Government finds that the department has rejected the impugned rebate claims on the ground that the same were filed on the said dates without enclosing relevant documents. And, being incomplete claims, the department deduced that the date of filing the rebate claims cannot be taken as 28.08.2012, 24.09.2012, and 07.11.2012 (for 2 ARE1's) as per the provisions of Notification No. 19/2004-CE(NT) dated 06.09.2004. Further, the adjudicating authority observed that the respondent filed the rebate claims physically together with relevant documents on 29.08.2012, 25.09.2012 and 09.12.2012 (in respect of 2 ARE1's) i.e. beyond stipulated period of one year from the date of

shipment as envisaged under Section 11B of the Central Excise Act, 1944 and as such the same were hit by time limitation.

10.6 In this regard, Government observes that there are a catena of judgments wherein it has been held that time-limit to be computed from the date on which refund/rebate claim was originally filed. The High Court, Tribunal and GOI, have held in following cases that original refund/rebate claim filed within prescribed time-limit laid down in Section 11 B of Central Excise Act, 1944 and the claim resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held time-barred as the time limit should be computed from the date on which rebate claim was initially filed.

(a) In a case of M/s. IOC Ltd. reported as 2007 (220) E.L.T. 609 (GOI) as well as in a case of M/s Polydrug Laboratories (P) Ltd., Mumbai (Order No. 1256/2013-CX dated 13.09.2013) GOI has held as under :-

“Rebate limitation-Relevant date-time Limit to be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after removing defects was submitted under section 11B of Central Excise Act, 1944.”

(b) Similarly in case of Goodyear India Ltd. v. Commissioner of Customs, Delhi, 2002 (150) E.L.T. 331 (Tri. Del.), it is held that

“claim filed within six months initially but due to certain deficiency resubmitted after period of limitation. Time limit should be computed from the date on which refund claim was initially filed and not from the date on which refund claim after removing defects was resubmitted. Appeal allowed. Sections 3A and 27 of Customs Act, 1962.”

(c) In a case of Apar Industries (Polymer Division) Vs Union of India [Special Civil Application No. 7815 of 2014 {2016 (333) E.L.T. 246 (Guj.)}], wherein the petitioner had submitted the rebate claim in time although, in wrong format and the said claim was returned to the petitioner upon which the petitioner represented the same claims along with necessary supporting documents later on and these applications were treated by the Department as time barred and

claims were rejected. While disposing the petition, the Hon'ble High Court of Gujarat in its Order dated 17.12.2015, observed that

“Thus, making of the declarations by the petitioner in format of Annexure-19 was purely oversight. In any case, neither Rule 18 nor notification of Government of India prescribe any procedure for claiming rebate and provide for any specific format for making such rebate applications. The Department, therefore, should have treated the original applications/declarations of the petitioner as rebate claims. Whatever defect, could have been asked to be cured. When the petitioner represented such rebate applications in correct form, backed by necessary documents, the same should have been seen as a continuous attempt on part of the petitioner to seek rebate. Thus seen, it would relate back to the original filing of the rebate applications, though in wrong format. These rebate applications were thus made within period of one year, even applying the limitation envisaged under Section 27 of the Customs Act.....”

Government also observes that the aforesaid decision of High Court of Gujarat has been accepted by the department as communicated vide Board Circular No.1063/2/2018-CX dated 16.02.2018.

10.7 Hon'ble High Court of Delhi in the case of C.C.E. Vs Arya Exports and Industries [2005(192) ELT 89] has also held that date of filing claim is the date on which claim was filed initially in form not prescribed or without documents.

10.8 It is found that in the instant case the respondent had filed the rebate claims electronically on 28.08.2012, 24.09.2012, and 07.11.2012 (for 2 ARE 1's), as facilitated under CBEC Circular No. 956/17/2011-CX dated 28.09.2011. The Government, therefore, holds that the date of filing of the impugned rebate claims, though incomplete, was 28.08.2012, 24.09.2012, and 07.11.2012 (for 2 ARE1's).

10.9 In view of foregoing discussions, Government is of the considered view that the rebate claims filed by the respondent are to be treated as filed

within stipulated time limit since they were initially filed within stipulated time limit i.e. electronically on 28.08.2012, 24.09.2012, and 07.11.2012 (for 2 ARE1's).

11. Accordingly, Government sets aside Orders-in-Appeal Nos. 41/2015 dated 30.01.2015, 42/2015 dated 30.01.2015, 43/2015 dated 30.01.2015 and 44 & 45/2015 dated 30.01.2015 passed by the Commissioner of Central Excise (Appeals-I), Bangalore. In view of the above discussions, Government remands the matter back to the original authority for the limited purpose of verification of the claim with directions that the claims may be reconsidered for rebate after verifying documents submitted by the applicant in regard to the authenticity of those documents. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

12. The Revision Application is disposed off on the above terms.


(SHRAWAN KUMAR)

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

ORDER NO. 04-08/2022-CX (SZ) /ASRA/MUMBAI DATED 10.01.2022

To,

M/s John Crane Sealing Systems Pvt Ltd,
#11, 1st Phase, Peenya Industrial Estate,
Peenya, Bangalore 560 058

Copy to :

- 1) The Commissioner of CGST, Bengaluru North West, 2nd Floor, BMTC Bus Stand Complex, Shivaji Nagar, Bengaluru-560 051
- 2) The Commissioner of CGST, Bengaluru Appeals-II), Traffic and Transit Management Centre, BMTC Bus Stand, HAL Airport Road, Dommalur, Bengaluru 560 071
- ~~3) Guard File.~~
- 4) Spare copy.