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F. NO. 195/798/13-RA

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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. 195/798/13-RA

Date of Issue:

ORDER NO. 05/2019-CX (WZ) /ASRA/Mumbai, DATED 27.08.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Umedica Laboratories Pvt. Ltd.,
302, Dalamal House,
J. Bajaj Road, Nariman Point,
Mumbai 400 021.

Respondent : Commissioner of Central Excise, Raigad.

Subject : Revision Applications filed under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BC/79/RGD/R/2013-14 dated 23.05.2013 passed by the Commissioner of Central Excise (Appeals) Mumbai-III.

ORDER

This revision application is filed by M/s. Umedica Laboratories Pvt. Ltd., (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BC/79/RGD/R/2013-14 dated 23.05.2013 passed by the Commissioner (Appeals) of Central Excise, Mumbai - III.

2. The brief facts of the case are that the applicant had filed three rebate claims for Rs. 3,31,871/- for duty paid on goods exported. The applicant had exported consignments of their products on payment of duty under ARE-1 and filed rebate claim under Rule 18 of Central Excise Rules 2002 read with Notification No.19/2001-CE (NT) dated 06.09.2004 as amended. The Deputy Commissioner, (Rebate), Central Excise, Raigad, observed that the original, duplicate and triplicate copies of the ARE-1 and the relevant invoices were not submitted along with the claims. Accordingly a deficiency memo dated 11.02.2012 was issued to the applicant. The Applicants averred that the loss of the original documents cannot extinguish the statutory right of rebate and rebate is admissible even if original ARE-1s are not produced and proof of export by way of invoice, bill of lading and shipping bill is sufficient. The Deputy Commissioner (Rebate) Central Excise, Raigad vide his order No. 3006/12-13/DC(Rebate)Raigad dated 04.03.2013 rejected the rebate claim holding that the original, duplicate and triplicate copies of the ARE-1 and the relevant invoices are mandatory documents to be submitted along with the claim as per the procedure laid down under Notification No.19/2001-CE (NT) dated 06.09.2004 as amended, and rejected the claim of the applicant.

3. Being aggrieved, the applicant filed an appeal before the Commissioner (Appeals) of Central Excise, Mumbai-III. The Commissioner (Appeals) vide Order in Appeal No. BC/79/RGD/R/2013-14 dated 23.05.2013 rejected the rebate claims holding that the appellant should have followed the conditions laid down in the said notification and

that, when such a condition is imposed and is substantial in nature, it needs to be followed rather than deviating the same, claiming procedural lapses.

4. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application mainly on the following grounds :

- 4.1. The loss of documents cannot extinguish the statutory right of rebate, Rebate is admissible, even if original ARE-1 is not produced, Proof of export of goods be way of invoice, bill of lading, and shipping bill sufficient even in absence of original ARE-1s and excise invoice.
- 4.2 There is no dispute with regard to duty paid, nature and export of the goods, therefore, rebate should be allowed to the Applicant.
- 4.3 If the duty payment has been made and goods has been exported then rebate should not be denied.
- 4.4 The procedural infraction of Notification/ Circulars etc. are to be condoned if exports have really taken place, and the law is settled that substantive benefit cannot be denied for procedural lapses and hence rebate should be granted.

In view of the averments made above, the applicant submitted that the fundamental requirement for rebate is manufacture of goods and subsequent export. Once the substantive condition of export has been complied, the rebate claim should not be denied merely on ground of technical or procedural lapses. The applicants therefore prayed that the rebate claims should be allowed.

5. A Personal hearing was held in this case on 19.08.2019 and Shri Pradip Patel, Assistant Manager duly authorized by the applicant, appeared for hearing and reiterated the submission filed through the Revision Application and earlier written submissions and requested that the pending rebate claims be released on the basis of the appeal memorandum and written submissions.

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. Government observes that rebate claims filed by the applicant totally amounting to Rs. 3,31,871/- (Rupees Three Lakh Thirty one thousand Eight hundred Seventy One only) were rejected by the original authority for non-submission of original, duplicate and triplicate copies of ARE-1 Nos. 174 dated 15.03.2012, 176 dated 22.03.2012, 181 dated 27.03.2012 and invoices nos. 207 dated 15.03.2012, 213 dated 22.03.2012 and 219 dated 27.03.2012 by the applicant. The Commissioner (Appeals) vide the impugned Order in Appeal No. BC/79/RGD/R/2013-14 dated 23.05.2013 while rejecting the appeal filed by the applicant held that condition of compulsory requirement of submitting the ARE-1 copies is a statutory and of substantial nature and the appellant should have followed the conditions laid down in the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 rather than deviating the same and later claiming as procedural lapses.

8. Government in the instant case notes that both the above orders have dwelt on the absence or non-submission of the Original, duplicate and triplicate copies of the ARE-1s and Invoices which are mandatory documents to be submitted alongwith the claim as per procedure laid down under Notification No. 19/2004-CE(NT) dated 06.09.2004. Government further notes that the applicant had filed complaint with the Azad Maidan Police Station for the loss of ARE-1s and Invoices for which the said Police Station issued lost Certificate dated 08-11-2012.

9. 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 2013 (293) E.L.T. 641 (Bom.), has held that rebate sanctioning authority shall not reject the rebate claim on the ground of non-submission of original and duplicate copies of ARE-1 forms if it is otherwise satisfied that conditions for grant of rebate have been fulfilled.

10. 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”.*

11. Government further observes that relying on the Hon'ble High Court of Bombay's judgment dated 24-4-2013 in the case of M/s. U.M. Cables v. UOI (referred above), GOI in its orders in RE : United Phosphorus Ltd. [2015(321)ELT 148(GOI)] and RE :Tricon Enterprises Pvt. Ltd. [2015(320)ELT 667(GOI)] have held that even if copy of original and duplicate copies of ARE-1s /Excise invoices are not submitted, the export of duty paid goods may be ascertained on the basis of other collateral documents. Government, therefore, applying the ratio of aforesaid judgments is of the view that the proof of export may be examined on the basis of collateral evidences where original and duplicate ARE-1 forms were not submitted.

12. From the Revision Application filed by the applicant, Government observes that the applicant has submitted self attested copies of the following documents to the rebate sanctioning authority along with his claims :

1. Original, duplicate, triplicate and Quintuplicate ARE-1s
2. Excise Invoice
3. Shipping Bill

4. Bill of Lading
5. Customs Invoice.
6. Packing List
7. Customs Invoice.

Further, it is also on record (para 4 of Order-in-Original No.3006/12-13/DC (Rebate)/Raigad dated 04.03.2013) that original authority found the description of goods, its quantity & weight tallying with the ARE-1 vis-à-vis Shipping Bill and Bill of Lading and were found in order.

13. The applicant has produced copy of jurisdictional Range Superintendent's letter dated 18.01.2013 addressed to Superintendent of Central Excise (Rebate), Central Excise Raigad Commissionerate (Annexure-5) verifying the duty payment particulars in respect of goods covered under the invoices mentioned in ARE-1 Nos.174 dated 15.03.2012, 176 dated 22.03.2012, 181 dated 27.03.2012.

14. While setting aside Orders in appeal rejecting the rebate on account of procedural lapse that the ARE-1s were not signed by the jurisdictional Central Excise Officers and the Triplicate copies thereof were not sent in sealed cover to the Division Office, GOI vide Order Nos. 612-666/2011-CX., dated 31-5-2011 in In Re : Vinergy International Pvt. Ltd., observed as under:

9.9 Regarding certification of duty payment on the goods, Government notes the furnace oil cleared on payment of duty on Central Excise Invoices by M/s. BPCL Refinery Mahul and stored in their own installation BPCL Sewree Terminal whose Central Excise Invoice contain the reference of corresponding Central Excise Invoice issued by BPCL Refinery. The Asstt. Commissioner Central Excise has mentioned that the applicant had received said goods from M/s. BPCL Sewree Terminal and duty of said goods was originally paid by M/s. BPCL (Refinery) Mahul. This factual position as stated in the order-in-original is not denied by the department. Further, M/s. BPCL Mahul has given Disclaimer Certificate in each case to the applicant certifying the duty payment on the said goods and stating that they have no objection to M/s. Vinergy International Pvt. Ltd. claiming Excise refund/rebate of duty paid on furnace oil supplied to foreign going vessels. The triplicate copy of ARE-I was required to be certified by Range Superintendent regarding duty payment and forwarded to Asstt. Commissioner Central Excise. The factual position has not been brought on record regarding certification by Central Excise Range Superintendent.

10. *In this regard, Govt. further observes that rebate/drawback etc. are export-oriented schemes and unduly restricted and technical interpretation of procedure etc. is to be avoided in order not to defeat the very purpose of such schemes which serve as export incentive to boost export and earn foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical breaches. In Suksha International v. UOI - 1989 (39) E.L.T. 503 (S.C.), the Hon'ble Supreme Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In the Union of India v. A.V. Narasimhalu - 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. Similar observation was made by the Apex Court in the Formica India v. Collector of Central Excise - 1995 (77) E.L.T. 511 (S.C.) in observing that once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so, had elapsed. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner - 1991 (55) E.L.T. 437 (S.C.). In fact, as regards rebate specifically, it is now a title law that the procedural infraction of Notification, circular, 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 requirement. The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned. This view of condoning procedural infractions in favour of actual export having been established has been taken by Tribunal/Govt. of India in a catena of orders, including Birla VXL Ltd., 1998 (99) E.L.T. 387 (Tri), Alfa Garments - 1996 (86) E.L.T. 600 (Tri.), T.I. Cycles - 1993 (66) E.L.T. 497 (Tri), Atma Tube Products - 1998 (103) E.L.T. 207 (Tri.), Creative Mobus - 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. Relying on all the cases cited supra, Government observes that the bonafides of duty payment of goods and export thereof by the applicant in the instant case can be established / correlated on the basis of documents submitted by the applicant mentioned at para 12 & 13 above and therefore rebate claim should not be denied for non-production of original, duplicate & triplicate copies of ARE-1 which had been certified as lost.

16. In view of the above, Government remands the matter back to the original authority for the purpose of verification of the rebate claims with directions that he shall reconsider the claims for rebate on the basis of the aforesaid documents submitted by the applicant after satisfying itself 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.

17. In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. BC/79/RGD/R/2013-14 dated 23.05.2013.

18. The revision application is disposed off in terms of above.

19. So ordered.


(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 05/2018-CX (WZ) /ASRA/Mumbai DATED 27.08.2019

To,

M/s. Umedica Laboratories Pvt. Ltd.,
302, Dalamal House,
J. Bajaj Road,
Nariman Point, Mumbai 400 021.

Copy to:

1. The Commissioner of Central Goods & Service Tax, Belapur, CGO Complex, Sector 10, C.B.D. Belapur, Navi Mumbai -400 614.
2. The Commissioner (Appeals) of Central Goods & Service Tax, 5th Floor, CGO Complex, Belapur, Navi Mumbai -400 614.
3. The Deputy / Assistant Commissioner (Rebate), Belapur, CGO Complex, Sector 10, C.B.D. Belapur, Navi Mumbai -400 614
4. Sr. P.S. to AS (RA), Mumbai
- ✓ 5. Guard file,
6. Spare Copy.