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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.195/90-95/2014-RA / 688

Date of Issue: 08.01.2021

ORDER NO.09 - 14 /2021-CX (SZ)/ASRA/MUMBAI DATED 08 .01.2021  
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.

Applicants : M/s Grundfos Pumps India Pvt. Ltd.  
118, Old Mahabalipuram Road,  
Thoraipakkam, Chennai – 600 097.

Respondents : 1.Commissioner of CGST, Chennai South.

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No 257 to  
262/2013 (M-IV) dated 02.12.2013 passed by the  
Commissioner (Appeals), Central Excise, Chennai.

ORDER

These Revision Applications are filed by M/s Grundfos Pumps India Pvt. Ltd. 118, Old Mahabalipuram Road, Thoraipakkam, Chennai – 600 097 (hereinafter referred to as “the Applicants”) against the Order-in-Appeal No 257 to 262/2013 (M-IV) dated 02.12.2013 passed by the Commissioner (Appeals), Central Excise, Chennai.

2. The issue in brief is that the applicant are engaged in manufacturing of ‘Submersible Pumps’ falling under Chapter 84 of the Central Excise Tariff Act, 1985. The applicant had filed rebate claims under Rule 18 of the Central Excise Rules, 2002 in respect of the duty paid on the goods cleared to SEZ located at various places in India. The Rebate Sanctioning Authority, after following due process of law, partly sanctioned rebate and rejected the amounts mentioned in the table below :-

Sr. No.	OIO No. / Date	Rebate Sanctioned	Rebate Rejected	Reasons for rejection
1	2	3	4	5
1.	155/2011 dt. 02.09.2011	2,40,933/-	2,24,654/-	Non production of Duplicate copies of ARE-1
2.	156/2011 dt. 02.09.2011	4,60,863/-	18,787/-	Original / Duplicate copies of ARE-1 not available
3.	158/2011 dt. 05.09.2011	3,60,368/-	1,13,477/-	Duplicate ARE-1 not available
4.	159/2011 dt. 05.09.2011	1,68,495/-	2,98,122/-	Original ARE-1 not available
5.	160/2011 dt. 05.09.2011	2,94,449/-	2,00,139/-	-do-
6.	161/2011 dt. 05.09.2011	2,00,287/-	2,53,269/-	Duplicate ARE-1 not available

Since the applicant had not produced Original/ Duplicate copies of ARE-1 as required under Section 11B read with Clause 8.3 & 8.4 of CBEC Supplementary Instructions, the rebate sanctioning authority rejected the

part of the rebate amount as detailed above for the reasons mentioned in column (5) of the above table.

3. Being aggrieved, the Applicant filed an appeal before Commissioner (Appeals), Chennai against the impugned Orders in Original. The applicants also filed petition to condone the delay of 25 days occurred in filing the appeal in terms of Section 35(1) of the Central Excise Act, 1944. The Appellate Authority vide common Order in Appeal No. 257 to 262/2013 (M-IV) dated 02.12.2013 dismissed the appeal on limitation as well as on merits. The Appellate Authority while passing the order had drawn following observations :-

(i) On merits of the case, Sub clause 8.4 to clause 8 (Sanction of claim for rebate by Central Excise) of the CBEC's Supplementary Instructions read as follows :

"8.4 After satisfying himself that the goods cleared for export under the relevant ARE-1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of ARE-1 duly certified by Customs, and that the goods are 'duty-paid' character as certified on the triplicate copy of ARE-1 received from the jurisdictional Superintendent of Central Excise (Range Office), the rebate sanctioning authority will 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."

(ii) The export made is evident only when the Original copy of ARE-1 (Exporter's Copy) and Duplicate Copy of ARE-1 duly certified by Customs and Triplicate copy of ARE-1 certified by the jurisdictional Superintendent of Central Excise (Range Office) for proving that the goods are of 'duty-paid' character are produced and after verifying the same, the rebate can be sanctioned by the competent authority.

(ii) The non-production of the Original / Duplicate copies of ARE-1 has not been disputed by the applicant. Hence the rejection of refund by the Original Authority on this count is correct and hence appeal is liable for rejection on merit.

(iv) Further on perusal of the records, it was noticed that the date of impugned Orders in Original were received by the applicant on 15.09.2011 and all appeals were filed on 09.12.2011 after a delay of 25 days from the prescribed time limit of sixty days. The applicant had stated that the said orders were misplaced by the Manager who had left the service and after efforts they got the orders and took steps to file the subject appeals.

(v) The reason put forth by the applicant is not convincing. A liberal view adopted in condoning the delay is one of the guiding principles in the realm of belated appeals, but liberal approach cannot be equated with a licence to file appeals at will-disregarding the time limit fixed by the statutes. The causes shown must establish that the delay was because of some event or circumstances beyond control. In this case, except for the inaction and negligence of the worker, there was no other reason for filing a belated appeal. The delay was total lack of prudence. Hence, on the aspect of time bar also, the appeal was not maintainable.

4. Being aggrieved by the impugned Order in Appeal, the applicant filed the instant Revision Application on following grounds :-

4.1 The supply of goods to SEZ and the receipt of the same in the SEZ was not denied by the lower authority.

4.2 In spite of their best efforts, they were unable to get the duplicate copies which were misplaced at the SEZ end.

4.3 Unlike physical exports where the ARE-1 are endorsed by the Customs authorities immediately at the time of export and duplicate are sent / handed over to the jurisdictional authorities, in case of the SEZ supplies duplicate copies of ARE1 were returned after much delay and at

times in respect of several clearances the duplicate is not received by the manufacturer. The exporter/manufacturer has no role in this and the non receipt of duplicate is beyond the control of the claimant of rebate.

4.4 The export of goods, realization of proceeds, are not at all in dispute. Mere procedural laps of non production should not deny the substantial benefit of export.

4.5 The applicant have relied upon various case laws in support of their claim that the substantial benefit under law should not be denied on procedural / technical infractions. Some of the case laws relied upon by the applicant are as below :-

- a) CC Vs. M. Ambalal & Co. (2010)(260) ELT 487 (SC)
- b) Mangalore Chemicals and fertilizers Ltd. V. Dy. Commr.- 1991 (55) ELT 437 (SC)
- c) Tablets India Ltd. Vs. Jt. Secy, GOI (2010)(259) ELT 191(Mad.)
- d) UOI Vs. Bharat Aluminum Co (2011)(263) ELT 48 (Chhattisgarh)
- e) GOI Vs. Indian Tobacco Association (2005)(187) ELT 162 (SC)
- f) Doon Polymicrons Pvt. Ltd. Vs. CCE (2001)(137) ELT 809 (Tri. Delhi)
- g) Sanket Industries Ltd. (2011) (268) ELT 125 (GOI)

4.6 They had sought for condonation of delay of 25 days in presenting the appeal which is well within the 30 days period in terms of powers vested under Proviso to Section 35(1) of the Central Excise Act, 1944. The Appellate Authority even after denying the condonation of delay and dismissing the appeal, examined the merits of case and dismissed the appeal on merits also. When the lower authority has examined the case on merits, it amounts to admission of appeal (after condonation) and hence the rejection of delay petition is bad in law.

4.7 The delay in filing appeal was neither willful nor wanton. The issue relates to refund / rebate which is due to the applicant and they would be put to hardship if the delay is not condoned. They are not stand to gain by filing the appeal belatedly. In the interest of justice, the appellate authority

ought to have condoned the delay, admitted the appeal and decided the matter on merits. The applicant relied on following case laws in support of their arguments.

- a) P.C. Velayudhan Vs. CC (2009) (247) ELT 609 (Tri. Bangalore)
- b) Kripal Export Vs. CCE (2009) (246) ELT 308 (Tri. Del.)
- c) ARK Enterprises Pvt. Ltd. Vs. CCE (2009) (238) ELT 460 (Tri. Chennai)

4.8 The applicant have prayed to set aside the Common Order in Appeal.

5. A personal hearing in the case was held on 05.12.2019 and 12.12.2019. The Applicant vide letter dated 10.12.2019 submitted that the due to personal inconvenience, their counsel was not able to attend the hearing at Mumbai. They have enclosed a brief written submissions on the matter and requested to decide the revision application on merit waiving the personal hearing.

6. It is observed that the Appellate Authority has dismissed the appeal filed by the applicant on two grounds. They are as follows :-

- a) The appeal filed was time barred and hence not maintainable.
- b) The Original / Duplicate copies of ARE-1 were not submitted by the applicant along with the claims of rebate.

7. As regards the time limitation, the Government observes that as per Section 35(1) of the Central Excise Act, an appeal before Commissioner (Appeals) has to be filed within 60 days from the date of communication of the order of the adjudicating authority. This period of 60 days can be extended by the Commissioner (Appeals) by 30 days. In the instant case, there was a delay of only 25 days in filing appeal which is condonable in terms of the provisions of Section 35(1) of the Central Excise Act, 1944. However, the Commissioner (Appeals) has dismissed the appeal on the ground that the appeal has been filed beyond 60 days of the adjudication

order and the reason put forth by the applicant for delay in filing the appeal was not convincing.

8. Government in this case places its reliance on Hon'ble Gujarat High Court Order Special Civil Application No. 14988 of 2005, decided on 30-9-2005 [reported as 2006(199) ELT 404(Guj.)]. In this case,- although appeal was filed within stipulated period, application for condonation of delay was not filed along with it and accordingly, appeal was dismissed by Commissioner (Appeals). Hon'ble Gujarat High Court observed that Appeal not to be dismissed on technical ground when petitioner is pursuing statutory remedy and not inclined to give up his right of appeal and accordingly directed the petitioner to file application seeking condonation of delay before Commissioner (Appeals) and Commissioner (Appeals) was directed to condone the delay.

9. Applying the ratio of the above decision to the facts of the present case, the Government condones the delay in filing the appeal before Appellate Authority and takes up the matter for decision on its merits.

10. The Government in the instant case notes that the rebate claims filed by the applicant were rejected by the Original Authority for non production of Original / Duplicate copy of ARE-1s as required under provisions of Section 11B of the Central Excise Act, 1944 read with clause 8.3 & 8.4 of the Supplementary Instructions issued by CBEC. The applicant submitted that in spite of best efforts they were unable to get the original / duplicate copies of ARE-1 which were misplaced at the SEZ end. They also submitted that they had made sincere attempts by visiting the Customs premises and contacting the customs authorities in the SEZ. The applicant have also submitted that the realization of export proceeds are not at all in dispute.

10. 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 / duplicate copy of the ARE-1,

the invoice and self-attested copy of shipping bill and bill of lading. Further paragraph 8.4 of 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.

11. The Government in the instant case observes that sufficient documentary evidence has been produced by the applicant consisting of the bill of lading; Shipping bill; the triplicate copies of the ARE-1 and BRCs from which would establish that the goods were exported and had a duty paid character. In order to qualify for the grant of a rebate under Rule 18, the mandatory conditions required to be fulfilled are that the goods have been exported and duty had been paid on the goods.

Hence, the production of the ARE-1 form in the original and duplicate is a matter of procedural omission and non-submission of Original & Duplicate copies of ARE-1 form by the applicant should not result in the deprivation of the statutory right to claim a rebate subject to the satisfaction of the authority on the production of sufficient documentary material that would establish the identity of the goods exported and the duty paid character of the goods.

12. 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 form



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.

13. Thus, 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. v. 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."*

14. 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.

15. 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".*

16. Government finds that rationale of aforesaid Hon'ble High Court orders are squarely applicable to this case also. Further, from the impugned Orders-in-Original, Government observes that applicant had submitted the following documents to the rebate sanctioning authority along with his claims:

1. Original / Duplicate copies ARE-1 (one of them as the case may be),
2. Triplicate copy of ARE-1,
3. Excise Invoices issued under Rule 11,
4. Self attested copies of Shipping Bills /Bills of Lading,
5. Disclaimer certificates wherever required.
6. Bank Realisation Certificate,
7. Disclaimer Certificate,

Therefore, Government holds that as the bonafides of export are proved and BRC has been received, the rebate claim should not be withheld for non-production of Duplicate copy of ARE-1:

17. In view of the above discussion and findings, the Government sets aside the Commissioner (Appeals) order and directs the Original authority for verification of impugned rebate claims filed by the applicant with directions that he shall reconsider the claim for rebate on the basis of the collateral documents submitted by the applicant after satisfying itself in regard to the authenticity of those documents. However, the rebate sanctioning authority shall not reject the claims merely on the ground of the non-production of the Duplicate copy of the ARE-1 form, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

18. Revision Application is allowed on above terms.

*Shrawan*  
8/1/2021  
(SHRAWAN KUMAR)

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

ORDER No. 09-14/2021-CX (SZ)/ASRA/Mumbai DATED 08.01.2021.

To,  
M/s Grundfos Pumps India Pvt. Ltd.  
118, Old Mahabalipuram Road,  
Thoraipakkam, Chennai - 600 097

Copy to:

1. The Commissioner of Goods & Service Tax, Chennai South Commissionerate, 5<sup>th</sup> floor, 692, M.H.U. Complex, Anna Salai, Nandanam, Chennai - 600 035.
2. The Commissioner of Goods & Service Tax, (Appeals-II), Newry Towers, No.2054, I Block, II Avenue, 12<sup>th</sup> Main Road, Anna Nagar, Chennai - 600 040.
3. The Deputy Commissioner, CGST, Thuraipakkam Division, Chennai South Commissionerate, 5<sup>th</sup> floor, 692, M.H.U. Complex, Anna Salai, Nandanam, Chennai - 600 035.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file.