

REGISTERED
SPEED POST



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. 195/03(I to III)/15-RA /6654 Date of issue: 23.11.2022

ORDER NO. 1095-1097 /2022-CX (WZ)/ASRA/MUMBAI DATED 15.11.2022
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. Tavasya Venture Partners Pvt Ltd

Respondent : The Commissioner, Customs, Central Excise and Service
Tax, Raipur.

Subject : Revision Applications filed, under Section 35EE of the
Central Excise Act, 1944 against Orders-in-Appeal Nos.
64-66/RPR-II/2014 dated 30.07.2014 passed by the
Commissioner (Appeals), Central Excise, Raipur-I

ORDER

The Revision Application has been filed by M/s Tavasya Venture Partners Pvt. Ltd., Plot No. 30, Block No.42, Mother Teresa Nagar, Opp. Amrapali, Bhilai, Durg Chattisgarh (hereinafter referred to as "the applicant") against Orders-in-Appeal Nos. 64-66/RPR-II/2014 dated 30.07.2014 passed by the Commissioner (Appeals), Central Excise, Raipur-I.

2. The facts of the case in brief are that the applicant had filed three rebate claims for Rs. 7,20,759/-, Rs. 4,63,016/- and Rs. 2,87,578/- on the grounds that they had cleared excisable goods under CT-1 Certificate Nos. 2415/2012-13 dated 11.01.2013, 939/2012-13 dated 25.07.2012 and 938/2012-13 dated 25.07.2012, issued by the Deputy Commissioner, Central Excise, Delhi-II, to M/s Chemical Construction International Pvt. Ltd., a merchant exporter, who exported the said goods to M/s C.V. Artha Surya Anugrah, Jakarta, Indonesia under various ARE-1's.

2.1. The Adjudicating Authority rejected the rebate claims on the grounds that the rebate claims were filed under Rule 18 of the Central Excise Rules, 2002 were incorrect as the exports of the goods were permitted under Rule 19 of the Central Excise Rules, 2002, without payment of duty under the cover of CT-1 certificates and when the permissions were granted to the said merchant exporter for exporting the excisable goods specified in the CT-1 Certificates under Rule 19 ibid and moreover, when the entire procedure prescribed under the said Rule 19 was followed by them, then the question of granting rebate separately to the applicant under Rule 18 of the said Rules did not arise

3. Aggrieved by the impugned Orders-in-Original, the applicant filed appeals before the Commissioner, (Appeals), Central Excise, Raipur-I. The Appellate Authority vide Orders-in-Appeal Nos. 64-66/RPR-II2014 dated 30.07.2014 rejected the appeals filed by the applicant.

4.1. That the Form CT-1 i.e. Certificate of procurement of excisable goods for export, was inadvertently issued under Rule 19 of the Central Excise Rules, 2002 and contains the details of the applicant as a registered dealer, permitting the exporter to procure the material from the applicant, which was a rectifiable error at the part of issuing authority;

4.2. That the factum of export of goods in question was not disputed as the proper submission of acceptance of proof of export and document for release of bond for export of goods has already been accepted by the department;

4.3. That during the course of scrutiny of the application of rebate of duty of Central Excise, the specific deficiency in application submitted for export and the rebate claim was not defined;

4.4. That the bond executed by the exporter was to ensure and act as a surety on behalf of the applicant and if the export of goods could not take place, the exporter was legally liable to discharge the obligation, as a surety for the applicant;

4.5. That the goods in question were primarily cleared for home consumption after payment of duty of central excise;

4.6. That the Rule 18 and Rule 19 of the Central Excise Rules, 2002 are complimentary to each other and cover the same subject of payment of duty on the goods exported. While Rule 18 of the Central Excise Rule, 2002 provides for clearance of goods for export on payment of duty and claim of rebate of duty paid on the goods exported, Rule 19 permits the manufacturer to export the goods without payment of duty. If the Applicant has paid the duty on the goods exported, the question of option under Rule 19 does not arise and the only option was to claim rebate of the duty paid under Rule 18 of the Central Excise Rules, 2002 and as long as the conditions of duty paid character of the goods exported and proof of goods exported outside India were fulfilled, the claim of rebate could not be denied;

4.7 That if the export of goods could not take place, the exporter was legally liable to discharge the obligation, as a surety, which was not the issue under the facts circumstances of the case as in the instant case the goods were primarily cleared for home consumption on payment of duty of central excise on clearance from factory gate and the same has exported subsequently;

4.8. That the application for claim of rebate of duty of central excise on goods exported, having duty paid character, is distinct from the credit in running bond account of the exporter;

4.9. That the application for claim of rebate of duty of central excise on goods exported had duty paid character was established by way of the chain of transaction in the form of invoices received from the manufacturer/first stage dealer and subsequent invoices raised by the applicant as per the purchase order and also the disclaimer certificate issued by the exporter that no claim has been made by them;

4.10. That rebate and other export promotion schemes were incentive oriented beneficial legislation intended to boost export and earn foreign exchange for the country and if the substantive fact of export of goods was not in dispute and the duty paid on the said goods and was accepted by the department, the applicant as an exporter was entitled to the rebate of the duty paid on the goods exported and technical or procedural deviation could not come in the way of rebate of duty. The applicant has relied upon the following case laws in support of their contention:-

- (i) UOI vs. Suksha International and others [1989(39) E.L.T.503 (S.C.)]
- (ii) RE: Modern Process Printers [2006 (204) E.L.T. 632 (G.O.I.)]
- (iii) RE Cotfab Exports [2006 (205) E.L.T. 1027
- (iv) RE: Sanket Industries [2011 (268) E.L.T. 125 (G.O.I.)]

5. Personal hearing in the case was scheduled for 21.09.2021, 24.08.2021, 22.03.2022 or 29.03.2022. However, no one appeared before the Revisionary Authority either in person or online on the on any of the dates fixed for hearing. Since sufficient opportunity for personal hearing

has been given in the matter, the case is taken up for decision on the basis of the available records.

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

7. Government observes that the issue involved is whether the applicant was eligible for rebate of duty paid on goods cleared to a merchant exporter, particularly in view of the goods having been procured by the merchant exporter from the applicant on the strength of 'certificate of procurement of excisable goods for export without payment of duty' in Form CT-1

9. Government notes that in the instant case the merchant exporter, on the strength of Form CT-1 issued in favour of the applicant procured the goods and exported the goods. It is also on record that the proof of exports filed by the merchant exporter in respect of the goods procured from the applicant and exported has been accepted by the department. Also the ARE-1's bearing the signature of the applicant, under which the goods were exported by the merchant exporter has been endorsed by the officers as having been cleared under CT-1's.

8. Government notes that Sr No 2 of condition in Notification No 42/2001-CE (NT) dated 28.06.2001 states as under:

"2. that goods shall be exported within six months from the date on which these were cleared for export from the factory of the production or the manufacture or warehouse or other approved premises within such extended period as the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise or Maritime Commissioner may in any particular case allow;"

8.1. The condition at Sr. No 2 states that the goods have to be cleared for export from the factory of production or the manufacture or warehouse or other approved premises but in the instant case the applicant is a dealer.

The applicant has after clearing the goods to the merchant exporter under CT-1's and following the procedures under the said Notification, has now raised the issue of validity of the CT-1's issued in their favour which appears to be an attempt to side step the issue of rejection of the rebate claims.

9. Be that as it may, Government notes that despite the goods having been exported by the merchant exporter without payment of duty by procuring goods from the applicant under CT-1's, the applicant has filed for rebate of duty on the clearances of the same goods. For better appreciation of the legality of the actions of the applicant from the prism of the central excise law, Rule 18 and Rule 19 of the Central Excise Rules, 2002 are reproduced below

“19. Export without payment of duty.-

(1) Any excisable goods may be exported without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, as may be approved by the Commissioner.

(2) Any material may be removed without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, for use in the manufacture or processing of goods which are exported, as may be approved by the Commissioner.

(3) The export under sub-rule (1) or sub-rule (2) shall be subject to such conditions, safeguards and procedure as may be notified by the Board. “

9.1. Government observes that Notification No.42/2001-Central Excise (N.T.) notifies the conditions and procedures for export of all excisable goods, except to Nepal and Bhutan without payment of duty from the factory of the production or the manufacture or warehouse or any other premises as may be approved by the Commissioner of Central Excise

“Rule 18. Rebate of duty. -

Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods

and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.

Explanation. - *"Export" includes goods shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft."*

9.2 Government observes that the detailed conditions and procedures relating to export of goods under claims of rebate has been provided under Notification No 19/2004-CE(NT) dated 06.09.2004 and export under claim of rebate are subject to compliance of certain sets of conditions and procedures as envisaged in the rule/notification.

9.3 Government notes that export of goods without payment of duty is covered by different set of rule and notification on compliance of conditions and procedures prescribed therein

9.4 Government observes that for the purpose of export of excisable goods, Central Excise Rules 2002 provide for the facility of export under claim of rebate under Rule 18 or for export under bond under Rule 19. These two provisions are two different sets of Rules which provide export benefits to the exporters and apply in different circumstances. The exporter is free to opt for any one of these and once any one of the options is exercised it attains finality and cannot be reverted back subsequently. In this case it is an undisputed fact that the applicant cleared the goods on the strength of CT-1's issued in their favour by the department and hence exercised the option to export goods under Rule 19 and in no way can now claim benefit of Rule 18 of the Central Excise Rules, 2002.

9.5 Government further observes from the case records that in the instant case the applicant has cleared the goods under the CT-1's provided by the exporter as prescribed in Notification No 42/2001-CE (NT) dated 26.06.2001, and the exporter has followed the procedure prescribed under Rule 19 of the Central Excise Rules, 2002. It is also evident that the on the ARE-1's, invoices and also the purchase orders from the merchant exporter to the applicant, it has been prominently mentioned that the goods are

cleared under CT-1 without payment of duty. In the instant cases, the applicant has despite clearing the goods under CT-1's, has also debited the duty in respect of the clearances of the same on his own volition.

10. As regards the applicants' contention of the lapse being procedural, Government relies upon the order No 27/2016-CX dated 29.01.2016 in the case of Revision Application filed by M/s Radiall India Pvt Ltd. Para 9 of the said order is reproduced as under

9. Government notes that it is a settled issued that benefit under a conditional notification cannot be extended in case of non-fulfillment of conditions and/or non compliance of procedure prescribed therein as held by the Apex Court in the case of Government of India vs. Indian Tobacco Association [2005 (187) E.L.T. 162(SC)] and Union of India vs. Dharmendra Textile Processors [2008(231) E.L.T. (SC). Also it is a settled that a notification has to be treated as part of the statute and it should be read along with the Act as held in case of CCE vs. Parle Exports (Pvt) Ltd [1998938) E.L.T 741(SC) and Orient Weaving Mills Pvt Ltd vs. UOI [197892) E.L.T. 311(SC). Government also finds support from the observations of Hon'ble Supreme Court in the case of M/s ITC Ltd vs. CCE [2004(171) E.L.T 433(SC) and M/s Paper Products vs. CCE [1999 (112) E.L.T (SC)] that simple and meaning of the wording of the stature are to be strictly adhered to. As such there is no force in the plea of the applicant that the lapse should be considered as a procedural one which is condonable in nature. As such, as the applicant did not follow the requirements of the Notification No 19/2004 -CE (NT) , the rebate claims are rightly held as inadmissible."

11. In view of the above Government holds that the Appellate Authority has rightly held the rebate claims to be inadmissible as the duty was not required to be paid by them. The duty paid without authority of law cannot be treated as duty paid on the exported goods. However, as held in many Government of India Revision Orders, Government is of opinion that the duty paid in this instant case is to be treated as voluntary deposit made by

the applicants at their own volition which is required to be returned to them in the manner it was initially paid, as the Government cannot retain the same without any authority of law.

12. Since, Government cannot retain any amount which is not due to it, as has been held in aforesaid orders, Government allows the applicant to take re-credit of amount held to be inadmissible. The impugned order-in-appeal is modified to this extent.

13. The Revision Application is disposed of in terms of above.


(SHRAWAN KUMAR)

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

1095-1097
ORDER No. /2022-CX (WZ)/ASRA/Mumbai dated 15.11.2022

To,
M/s Tavasya Venture Partners Pvt. Ltd.,
Plot No. 30, Block No.42, Mother Teresa Nagar,
Opp. Amrapali, Bhilai, Durg
Chattisgarh

Copy to:

1. The Principal Commissioner of CGST, Raipur, GST Bhavan, Dhamtari Road, Tikrapara, Raipur 492 001
2. The Commissioner of CGST, Appeals Raipur, GST Bhavan, Dhamtari Road, Tikrapara, Raipur 492 001
3. Sr. P.S. to AS (RA), Mumbai
4. Notice Board.
5. Spare copy