F NO. 195/436/16-RA

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GOVERNMENT OF INDIA
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Mumbai- 400 005

F NO. 195/436/16-RA/6689 Date of Issue: 24/11/2022

ORDER NO. 1101 /2022-CEX (WZ)/ASRA/MUMBAI DATED 21.11.2022 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. Parakh Agro Indutries Ltd.

Respondent : Principal Commissioner of CGST Pune

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. -PUN-SVTAX-000-APP-240-15-16 dated 05.02.2016 passed by the Commissioner(Appeals),Service Tax ,Pune.

ORDER

This Revision Application has been filed by M/s. Parakh Agro Indutries Ltd. (hereinafter referred to as "Applicant") against the Order-in-Appeal No. –PUN-SVTAX-000-APP-240-15-16 dated 05.02.2016 passed by the Commissioner (Appeals), Service Tax, Pune.

2. The facts of the case are that the Applicant are holders of Central Excise Registration No. AABCP0314LXM001 and are engaged in the manufacture of Excisable goods. They had filed a claim for Rs. 2,35,315/- claiming rebate of duty paid on the goods manufactured and cleared for exports by them under Rule 18 of Central Excise Rules, 2002, read with Notification No. 19/2004-CE (NT) dated 06.09.2004. During scrutiny of the rebate claim, it was noticed that (i) The original copy of the ARE-1 was lost by the Applicant and they had lodged an FIR for the same in the jurisdictional police station, (ii) Duplicate copy of the ARE-1 was not received from the Customs authorities and it was not known whether the same was handed over to the Applicant in a tamper proof cover to be handed over to the rebate sanctioning authority, (iii) the relevant shipping bill, in the name of the merchant exporter did not contain the cross reference of the ARE-1 & (iv) Triplicate copy of the ARE-1, signed by the Customs authority did not contain the cross reference of relevant shipping bill. It was observed that the Applicant could not produce substantial evidence to prove that the goods cleared by them under the ARE-1 were actually exported, in terms of Rule 18 of the Rules read with Notification No. 19/2004 CE (NT) dated 06.09.2004. A show cause notice dated 08.4.2014 was issued to the Applicant asking them to show cause as to why the rebate claim should not be rejected, which was decided by the Adjudicating Authority and concluded that there was no doubt that the goods were exported; that as the Applicant could not produce the Original & duplicate copies of the relevant ARE-1,which is a mandatory requirement, they were not eligible for the rebate of the duty paid on the said export of goods.

3. Aggrieved by the OIO, the Applicant filed appeal with the Commissioner (Appeals), Service Tax, Pune who vide Order-in-Appeal No. –

PUN-SVTAX-000-APP-240-15-16 dated 05.02.2016 rejected their appeal and set aside the OIO. The Appellate authority before rejecting the appeal observed that

(i) The Shipment Certificate dated 21.01.2016 (supra) contains all the details regarding the said export of goods; that however, it does not match with one detail regarding the invoice number as given in the ARE-1.

(ii) Similarly, the Invoice Number mentioned in the Shipping Bill does not match with the invoice number mentioned in the ARE-1

Appellate Authority further observed that the waiver of the strict condition that the Original & Duplicate copies of the ARE-1 should be presented to the rebate sanctioning authority, could be granted, provided, the other details are perfectly matching with each other. It is not the case here. What is understood from the given set of documents, is that certain goods were cleared through the said ARE-1 and certain goods were exported. The prime condition about the certainty of the same goods being cleared were exported is not proved by the Applicant beyond any doubt.

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

i. The Applicant would like to mention at the outset that there is no dispute about the above documents having been provided and also the correctness of the same but the only objection raised is that the Shipment Certificate dated 21.01.2016 (supra) contains all the details regarding the said export of goods; that however, it does not match with one detail regarding the invoice number as given in the ARE-1 and Similarly, the Invoice Number mentioned in the Shipping Bill does not match with the invoice number mentioned in the ARE-1

ii. The applicant would like to mention that evidencing documents has been submitted before the learned Respondent which proves the fact that the applicant have exported goods physically out of country and

shipping bill and mate receipt stands submitted in support and a specific certificate issued by Customs have also been submitted giving all the relevant details to prove that the goods which has been cleared under ARE 1 against CT1 which got issued by Merchant Exporter, are the very same goods exported.

iii. The applicant also submitted FIR copy of Yawat Police station stating that they had lost original and duplicate copies of ARE 1 and also informed the department by submitting letter to department and in such situation the Applicant is entitled to get the eligible refund and thus refund cannot be denied only for non-submission of ARE 1.

iv. When it can be proved that there is sufficient supporting documents to establish that the said goods have indeed been exported physically outside India and hence the said goods have not been diverted for Home consumption, the denial of refund/rebate is unjustifiable in law.

v. During the hearing the applicant had submitted all supporting documents such as Shipping Bill, Mate Receipt, Bill of Lading, FIR Copy, customers invoice copy along with packing list and proof of Foreign inward remittance certificate (FIRC) and certificate issued by customs. The same has been attached once again as Exhibit C.

vi. It is also the legal position that unless there is a concrete proof of the said goods cleared for export having been diverted for home consumption excise duty cannot be demanded nor the excise duty paid for which rebate has been claimed can be retained by the exchequer.

vii. The department if need be, could have also counter checked with Customs authorities who has signed on the shipping bill and mate receipt and also issued a specific certificate giving details of said goods exported, as the Central Excise department is part and parcel of the same coming under the same board.

viii. Hence, once the said evidencing documents are produced by the Applicant, the burden to establish the same shift to the officers and if the officers have not checked the same, then such a mistake cannot be a reason to deny the legitimate rebate claimed, when they have produced sufficient proof in the form of bill of lading, shipping bill and mate receipt and mate receipt is the documents which conclusively prove that the said goods have been physically exported out of the Country.

ix. The applicant produced a copy of Shipping Bill, Mate Receipt, Bill of Lading, FIR Copy in this regard establishing physical export of goods to foreign customer which is covered by ARE 1 no. 38 dated 11.01.13 and the same has also been supported by certificate issued by Customs, which the learned Respondent has failed to take cognizance of. Hence in view of what is stated above, it is requested that the rebate claim may be allowed.

x. The Applicant also state and submit that in an identical situation the learned Respondent in the subsequent appeal (before the new appellate authority), by Order in Appeal No. PUN-SVTAX-000-APP 240-15-16 DTD. 05.02.2016 has allowed the appeal based on certificate issued by the Customs authorities, which also supports the case of the Applicant.

xi. The Applicant submit that the reference of Commercial invoice No. 33/2012-13 dated 11.01.2013 of Merchant Exporter appears in Shipping Bill, Bill of Lading and as ARE 1 reference is on the shipping bill which bears commercial invoice details of merchant exporter. Hence, the aspect that Applicant invoice number is mentioned on ARE 1 No. 38 dated 11.01.2013 and that Merchant Exporter's Commercial export invoice do not appear on said ARE 1, cannot be a singular reason for denial of said legitimate refund, when there is sufficient correlation established by the Applicant in the documents produced and more so in particular when specific customs certificate dated

21.01.2016 (copy attached) has been obtained and submitted to the learned Respondent.

xii. The Applicant submit that there is common thread in the form of container number which appears on ARE 1 as well as shipping bill and there is sufficient evidence to prove that goods exported under the ARE 1 document and the shipping bill and bill of lading are the same goods, since the quantity and description of the goods are same and hence the certificate issued by customs which has all the common details substantiates physical export of goods.

xiii. As the goods were exported by the merchant exporter under his commercial invoice number referred above, which is very much linked to the various others shipping documents (containing the details of container number, ARE 1 number, Mate receipt number, etc.), the non mention of shipping bill number on ARE 1 and/or non-mention of merchant exporter invoice on ARE 1, cannot be the reason to deny export of goods, when all the linking details have been provided.

xiv. Further, in the ARE 1 format at column no. 10, there is no such reference mandate to provide or indicate commercial invoice details also of the Merchant exporter and the impugned goods cleared under excise invoice contains details of goods cleared for export from the factory and ARE 1 bears the signature of merchant exporter and it has container number details Further, packing List in support of Commercial invoice no. 33/2012-13 dated 11.01.2013 of M/s ISF Industries Pvt. Ltd. (Merchant Exporter) also gives the details.

xv. Further, Bank Realization Certificate dtd. 07.02.2013 contains exporter name, shipping bill number and date and date of realization of money. Thus, the shipping bill stands linked to ARE 1 in the certificate issued by customs, BRC also stands linked to exports effected by the applicant. FIR filed at NRI Police Station, Navi Mumbai dtd. 10.06.2015 also stands attached.

xvi. The Applicant placed reliance on certain case laws in this regard where it has been held that procedural infractions cannot come in way of denying rebate when substantive compliance is affected and the corroborating documents such as shipping bill, bill of lading, mate receipts have been produced and thus this case law is squarely applicable.

xvii. In view of above, Applicant requested to allow the refund amount and set aside the impugned OIA.

5. Personal hearing in the matter was fixed on 28.06.2022, Sh. S. Narayanan, Advocate and Sh. Deepak Tapse appeared online on behalf of the Applicant. They submitted that fact of duty paid goods have been exported being not in doubt, non submission of ARE-1& ARE-2 should not take away their substantive claim of rebate.

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

7. On perusal of the records, adjudicating authority denied the rebate to the Applicant on the ground that identity of duty paid goods exported have not been established due to mismatch in invoice no. in the documents. Therefore, the issue to be decided in the Instant case is whether the rebate can be allowed to the Applicant if the identity of goods exported is in question.

8. With regards to the claim of rebate, the Government notes paragraph 8.4 of the Manual of Instructions issued by the CBEC 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. The second is that the goods are of a duty paid character. 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.

9. The Government holds that 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. Government notes that the duty payment character as well as the export of the goods are not in dispute. The only contention of the Department is that the certainty of the same goods being exported is not proved by the Applicant as there is mismatch in invoice number in ARE-1 and Shipping Bill. Applicant argued that this mismatch is due to the fact that they have inadvertently missed to mention the commercial invoice of merchant exporter in the ARE-1. Government observes that reference of ARE 1 i.e. 38 dated 11.01.2013 is on the shipping bill which bears commercial invoice details of merchant exporter. Furthermore, Shipping Bill contains the same quantity, description of the goods and container number as mentioned in the ARE-1 which has been duly signed and verified by Central Excise Authorities. Additionally, the Shipment certificate issued by customs which has all the common details substantiates physical export of the same goods. In view of above, Government observes that non mentioning of commercial invoice number of the Merchant Exporter in the ARE-1 is just a technical mistake. Therefore, the rebate cannot be denied merely due to mismatch in invoice number when all other particulars have been corelated.

10. In view of above discussion, the Government holds that since the export of duty paid goods is not in dispute, the rebate claim in question cannot be denied merely on technical/procedural lapses. As such, Government holds that in the instant case the rebate claim is admissible to the applicant under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. Government therefore sets aside the impugned Order-in-Appeal No. –PUN-SVTAX-000-APP-240-15-16 dated 05.02.2016 passed by the Commissioner (Appeals), Service Tax, Pune.

11. Revision application is disposed off in above terms.

21/11/22

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

ORDER No. 1101 /2022-CEX (WZ) /ASRA/Mumbai Dated 21.11.2022

To,

1. M/s. Parakh Agro Indutries Ltd. Situated at GAT No. 45/1,2,3 BhandgaonYawat, Tal. Daund, Pune-412214.
2. S.Narayanan(Advocate), Flat No. 5, 2nd Floor, Balaji Complex, Above Panasonic Show Room, Opp Yashwantrao Auditorium, Koithrud, Pune-411038.
3. The Principal Commissioner CGST & CX, Pune III , 41/A, ICE House, Opp Wadia College, Sassoon Road, Pune-411001.

Copy to:

1. The Commissioner of Service Tax (Appeals), Pune, F-wing, 3rd Floor, ICE-House, Sassoon Road, Pune-411001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.