

F.No.195/9/14-RA

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. F.No.195/9/14-RA/606

Date of Issue: 18/01/2020

ORDER NO. 115 /2020-CX (WZ) /ASRA/Mumbai DATED 15.01.2020 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 Lanxess India Pvt. Ltd., Thane.

Respondent : Commissioner, Central Excise, Raigad.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. SDK/198/RGD(R)/2013-14 dated 08.10.2013 passed by the Commissioner (Appeals) of Central Excise, Mumbai-III.

ORDER

This Revision Application has been filed by M/s Lanxess India Pvt. Ltd., Thane (hereinafter referred to as "the applicant") against Order-in-Appeal No. SDK/198/RGD(R)/2013-14 dated 08.10.2013 passed by the Commissioner (Appeals) of Central Excise, Mumbai-III.

2. The brief facts of the case is that the applicant had filed rebate claim for Rs.3,80,628/- under Rule 18 of the said Rules read with Notification No. 19/2004 CE (NT) dated 06.09.2004 for the duty paid on goods exported. The rebate sanctioning authority vide Order in Original No.150/12-13/DC(Rebate)/Raigad dated 15.04.2013 rejected the said rebate claim as the applicant did not submit triplicate copy of ARE-1.

3. Being aggrieved by the above mentioned Order-in-Original the applicant filed an Appeal before the Commissioner (Appeals) of Central Excise, Mumbai-III who vide Order-in-Appeal No. SDK/198/RGD(R)/2013-14 dated 08.10.2013 upheld the Order in original dated 15.04.2013 and rejected the appeal filed by the applicant holding that the requirement of submission of the Triplicate copy of ARE-1 by the appellant is a mandatory requirement for verification of the duty paid nature of export goods and therefore, non-submission of Triplicate copy of ARE-1 is not technical or clerical lapse.

4. Being aggrieved by the afore mentioned Order in Appeal the applicant has filed the instant 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 Triplicate copy of ARE-1 is not produced. Proof of export of goods by way of collateral evidences such as original and duplicate ARE-1. Invoice, Bill of Lading and shipping Bill is sufficient even in absence of Triplicate ARE-1, therefore, rebate should be allowed to them.
- 4.2 In this case Triplicate copy of ARE-1 duly endorsed by the excise authority was lost / misplaced by appellant and therefore they could not produce the same.
- 4.3 Triplicate copy of ARE-1 was lost by them after export of consignments. They submitted the rebate claim on the basis of Original and Duplicate copy of ARE-1s as well as other documentary evidences of export consignments, i.e. self attested copies of Shipping bill, Bill of Lading, Mate receipt, Customs Invoice, Packing List. They also submitted copy of FIR receipt issued by Central Railway, CST-Mumbai. They rely on the following judgments :-

- Shreeji Colour Chem Vs CCE 2009(233) E.L.T.367 (CESTAT)
 - Barot Exports 2006 (203) E.L.T. 321 (G.O.I.)
 - Hebenkraft 2001(136) E.L.T. 979(G.O.I.) and
 - Cosmonaut Chemicals Vs UOI. 2009 (233) E.L.T. 46 (Guj.).
- 4.4 The law is settled that substantial benefits granted by the law cannot be denied to them on technical grounds.
- 4.5 The Bombay High Court in the case of U.M. Cables Limited [2013-TIOL-386-HC-Mum-Cx) has held that the rebate of excise duty granted under Rule 18 of Central Excise Rules cannot be denied merely on the ground of non – production of Original and Duplicate copies of ARE-1 Forms, provided it is otherwise satisfied that the condition for grant of rebate have been fulfilled.
- 4.6 There is no dispute with regard to duty paid nature and export of goods. The genuineness of duty paid nature of the export goods is duly certified by the respective Range Superintendent in respect of ARE-1 No. 530 dated 06.06.2012 for Rs.3,20,628/- They have also received the foreign exchange proceeds towards Banc Realisation Certificate.
- 4.7 To allow the rebate claim the primary condition is that the excisable goods have been exported. In the present case there is no dispute on the facts that the goods have been exported after payment of excise duty. The provision stated under Section 11 B of the Central Excise Act, 1944 are only procedural. They also rely on the following judgments:-
- Birla VXL Ltd. Vs CCE 1998(99) E.L.T.387(T)
 - Indo Euro Textiles, 1998 (97) E.L.T. 550 (G.O.I.)
 - CCE Vs. Binny Ltd. 1987(31) E.L.T. 722 (T).
- 4.8 It has been consistently held in the several judgments of GOI / Tribunal that claiming rebate is substantive right given to an exporter and it should not be denied merely on the ground of Technical mistake / lapse. They rely on Cotfab Exports 2006(205) E.L.T. 1027 (GOI). It is a settled law that substantive benefit should not be denied merely on the grounds of procedural lapses.

5. A personal hearing held in this case on 15.10.2019 was attended by Shri Nilesh Pathak, Advocate on behalf of the applicant. He reiterated the grounds of Revision Application and pleaded that the Order-in-Appeal be set aside and the revision application be allowed.

6. Government observes that the applicant's rebate claims were rejected primarily on the ground that the applicant did not produce the triplicate copy of ARE-1 and hence verification of the duty paid nature of the export goods could not be established. The applicant on the other hand has contended that triplicate copy of ARE-1 duly endorsed by the excise authority was lost / misplaced by them after export of

consignments. They submitted the rebate claim on the basis of Original and Duplicate copy of ARE-1s as well as other documentary evidences of export consignments, i.e. self attested copies of Shipping bill, Bill of Lading, Mate receipt, Customs Invoice, Packing List. They also submitted copy of FIR receipt issued by Central Railway, CST-Mumbai.

7. The first and foremost condition for getting rebate of duty under Rule 18, read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, is that the goods cleared for export under ARE-1 are actually exported on payment of duty and this condition would undisputedly be satisfied in this case as per payment of duty shown in invoice No.09BSI00530 dated 06.06.2012 issued under Rule 11 of the Central Excise Rules, and export certificates of the Custom Authorities on the original & duplicate copies of the ARE-1, enclosed by the applicant alongwith the rebate claim. Further, the export of the goods on payment of duty is also not doubted by the lower authorities in their respective Orders.

8. Government observes that the Hon'ble High Court of Chhattisgarh in the case of M/s. Triputi Steel Traders v. Assistant Commr - [2019 (365) E.L.T. 497 (Chhattisgarh)] while examining the legal position with regard to the requirement of submission of ARE-1 document, observed as under:-

22. It would thus be seen that the purpose and object of requirement of submission of ARE-1 document is that the authority before whom claim of rebate is made, has an authentic certified information relating to duty paid goods and its export in the form of certification of the excise officer as well as customs officer and in case of export by post, by certification of postmaster. This is intended to put in place an effective machinery of disposal of rebate claims. It is with the object of prompt decision of rebate claims and at the same time, to ensure that fabricated or forged claims are not allowed to percolate to avoid payment of duty. We thus, find that there is considerable force in the submission of Learned Counsel for the Revenue that ordinarily the procedure prescribed for seeking rebate must be followed. We hold that ordinarily the procedure prescribed for seeking rebate must be followed which includes submission of various documents/certificates in prescribed forms including ARE-1 document.

23. It is only in appropriate cases where it is found that for such reasons which are satisfactory in the opinion of the authority due to which the assessee for reasons beyond his control could not submit ARE-1 document that he could be allowed to lead collateral documentary evidence in support of its claim for rebate. However, this procedure would only be an exception to the general rule. If we

hold that despite all pre-conditions in the law, assessee will always have a choice either to submit ARE-1 document or to submit in collateral document for rebate, it would virtually render otiose the entire scheme and would in that process be doing violence to the requirement of law. Not only that, the process of evaluation and enquiry into verification of documentary evidence other than those required under the law may not only make the procedure of verification cumbersome but may also adversely affect efficiency of the working of the whole mechanism of decision on rebate applications.

24. Upon such consideration we are, therefore, inclined to hold that ordinarily, the requirements of fulfilment of pre-conditions as stated in Rule 18 read with relevant notification, as mandated are required to be fulfilled to avail rebate. However, in exceptional cases it is open for the assessee to prove claim of rebate by leading other collateral documentary evidence in support of entitlement of rebate. As we have noticed, it would only be an exception to the general rule and not a choice of the assessee to either submit ARE-1 document or to lead collateral documentary evidence. We would further hold that where an assessee seeks to establish claim for rebate without ARE-1 document or for that matter without submission of those documents which are specified in relevant notifications he is required to clearly state as to what was that reason beyond his control due to which he could not obtain ARE-1 document. In cases of the nature as was noticed in the decision of *U.M. Cables Limited*, the assessee would be required to file at least affidavit of having lost the document required to be submitted to claim rebate. It will then be a matter of enquiry by the authorities as to whether the reason assigned by the assessee are acceptable to allow him to lead collateral documentary evidence in support of its claim of rebate. But we wish to make it clear that under no circumstances, it can be treated as parallel system as it is not established procedure under the law.

9. Government in this regard also relies on GOI Order Nos. 612-666/2011-CX., dated 31-5-2011 in *In Re: Vinergy International Pvt. Ltd.*, wherein GOI observed as under:

9.9The 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

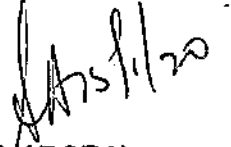
interpretation is to be given in case of any technical breaches. In Suksha International v. UOI - 1989 (39) E.L.T. 503 (S.C.), the Hon'ble Supreme Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand 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.

10. Applying the rationale of the aforesaid cases and also in view of the fact that the triplicate copy of ARE-1 was lost by the applicant for which they submitted copy of FIR receipt issued by Central Railway, CST-Mumbai / indemnity bond etc., Government sets aside the impugned orders and remands the case back to the original adjudicating authority to decide the case afresh after giving proper opportunity to the applicant who may submit all requisite collateral evidences/documents to prove the export of duty paid goods as per provisions of Notification No. 19/2004-C.E. (N.T.), dated 6-9-04 read with Rule 18 of Central Excise Rules, 2002. However, the sanction of rebate will be subject to verification of the duty paid nature of the goods as evidenced by collateral documents.

11. Accordingly, Order-in-appeal No. SDK/198/RGD(R)/2013-14 dated 08.10.2013 and Order-in-original No. 150/12-13/DC(Rebate)/Raigad dated 15.04.2013 are set aside.

12. Revision application is disposed off in the above terms.

13. So ordered.



(SEEMA/ARORA)

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

ORDER No. 115/2020-CX (WZ)/ASRA/Mumbai DATED 15.1.2020

To,

M/s Lanxess India Pvt. Ltd.,
Lanxess House, Plot No. A 162-164,
Room No. 27, Wagle Estate, MIDC,
Thane (W)- 400 604.

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5th Floor, CGO Complex, Belapur, Navi Mumbai, Thane..
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Belapur Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.