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. 195/17/2019-RA /7209 Date of issue: 08/12/2022

ORDER NO. 1179/2022-CX (WZ)/ASRA/MUMBAI DATED 08.12.2022 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. SRF Limited

Respondent: Commissioner of CGST & Central Excise Vadodara-II

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. VAD-EXCUS-002-APP-474-2018-19 dated 30.11.2018 passed by the Commissioner (Appeals), CGST & Central Excise, Vadodara.

ORDER

This Revision Application has been filed by M/s. SRF Limited, Plot No. D-2/1, GIDC Phase II, PCPIR, Dahej, Taluka-Vagra, Dist.- Bharuch – 392 130 (hereinafter referred to as "the Applicant") against the Order-in-Appeal (OIA) No. VAD-EXCUS-002-APP-474-2018-19 dated 30.11.2018 passed by the Commissioner (Appeals), CGST & Central Excise, Vadodara.

2. Brief facts of the case are that the applicant is engaged in manufacturing of excisable goods falling under Ch.29. The applicant had filed a rebate claim application on 11.10.2017 for Rs.1,90,66,591/- in respect of Central Excise duty paid on for the export or excisable goods in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004. The adjudicating authority, vide Order-in-Original (OIO) No. Div-VII/BRH/172/R/18-19 dated 31.05.2018, sanctioned the partial rebate claim Rs.1,84,61,342/- while rejecting rebate claim amounting to Rs. 6,05,249/- in respect of 2 ARE-1s on the grounds that value of Bank Realisation Certificate (BRC) is less than that the value shown in the Shipping Bill and that BRC has not been submitted. Aggrieved, the applicant filed an appeal against the said OIO which was rejected by the Appellate authority vide the impugned Order-in-Appeal.

3. Hence, the applicant has filed the impugned Revision Application mainly on the grounds that:

(a) the Appellate Commissioner has not at all appreciated the fact that the scheme of claiming rebate of duty is based on the premise that exports should not suffer duty, therefore, whatever duty was paid either in excess or by error that has to be given effect to by way of rebate. Therefore, when admittedly higher duty has been paid at the time of clearance for export, the same requires to be allowed claim for rebate.

(b) Further the above logic is perfectly fitting into the legislative scheme whereby exports can be exported without payment of duty

under bond or on payment of duty under rebate claim. When export is made under bond, no excise is paid and only proof of exports is to be provided. This logic will equally apply when exports are made under claim for rebate also. Where for instance export is made under bond, any price reduction subsequent to the export does not have any impact on the duty element as duty was not paid at the time of clearance of goods under Rule 19. Mutatis Mutandis, when exports are made under claim for rebate, then also, the rebate claim shall not get affected due to any price reduction. Therefore, the findings of the Commissioner are totally perverse and capricious without appreciating the fundamental policy of the Government that export should not be laden with any duty or tax — whether paid erroneously or at a higher rate etc.

(c) It is further submitted that the situation where the transaction value shown in the BRC is less than the value declared in ARE-1 Form, was considered by the Revisionary Authority in RE: Jindal Stainless Limited — 2014 — 314 — ELT — 961. The Learned Adjudicating Authority has held that duty has to be paid as per the transaction value under Section 4 of the Central Excise Act, 1944 and if for any reason the export proceeds realized are less than the transaction value then rebate claim is admissible to the extent of the export proceeds realized. At the same time, duty deposited in excess by the exporter should be treated as voluntary deposit with the Government which is required to be returned to the exporter in the manner in which it was paid in as much as the said amount cannot be retained by the Government without any authority of law.

(d) With reference to the other ARE-1, the Learned Commissioner (Appeals) has in Para 5.4 observed that even though BRC may not be insisted upon at the time of filing the rebate claim but the same has to be filed within the stipulated time before the proper sanctioning authority and that in the absence of the BRC it cannot be ascertained that the country had been benefited by the export carried

out by an assessee. This reasoning is totally again flawed because Notification No. 19/2004-CE (NT), dated 06.09.2004 does not envisage submission of BRC as one of the conditions for grant of Rebate. It was explained that the export covered by ARE-1 No. 309 was made to Syria and the billing was done in US$. However, the transaction could not be done in US$ because of some prevailing US sanctions at the material point of time and therefore, applicants were not able to get the BRC. The fact of the matter is that Notification No. 19/2004-CE (NT) dated 06.09.2004 does not envisage production of BRC which means realization of export proceeds. This very precise issue was considered by the Hon'ble Tribunal in Jindal Stainless Steel Limited V. CCE — 2013 — 289 — EL T— 321 (T) in which it was held that since there is no condition in Notification No. 19/2004-CE (NT), dated 06.09.2004 that grant of rebate is subject to realization of export proceeds, the rebate claim cannot prima facie be rejected.

On the above grounds the applicant prayed to set aside the impugned Order-in-Appeal and grant consequential relief.

4. Personal hearing in the case was fixed for 09.11.2022. Shri R. Krishnan, Advocate attended the online hearing and submitted that rebate in respect of two Shipping Bills was incorrectly denied as in one case foreign exchange was fully realized and BRC submitted and in second case reduced realization due to downward revision of price should not affect their rebate claim as rebate is claimed of duty paid amount only.

4.1 The applicant in its additional submissions has inter alia contended as follows:

a) In respect of ARE-1 the rejection due to the reason that export proceeds have not been realized is not justified in law as it has been held consistently in the following cases that submission of BRC is not a pre- condition for grant of rebate:-

   - IN Re coral Drugs- 2021 378 ELT78 (GOI)

- IN Re Torrent Pharmaceuticals Ltd. 2019 370 ELT 1479 (GOI)

b) In respect of ARE-1, where less proceeds were realized due to issue of credit note again the rejection is not correct in law as was held in IN RE Sesa International Ltd. 2019 369 1682 (GOI). Also in Jindal Stainless Steel Ltd. v. 2013 289 ELT 321 (Tri) it was held by the tribunal that less realization of the price is no ground to reduce the rebate of duty paid at the time of export.

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

6. Government observes that the applicant is a manufacturer-exporter. They had filed a rebate claim under Notification No. 19/2004-CE (NT) dated 06.09.2004 which was allowed by the original adjudicating authority except for two ARE-1s for the reasons as detailed hereunder:

i. ARE-1 No. 309 dated 25.11.2016 - claim for Rs.3,94,805/- for the reason that BRC had not been submitted;

ii. ARE-1 No. 1034 dated 25.04.2017 - proportionate claim disallowed amounting to Rs.2,10,437/- as the proceeds realised were less than the export value.

Hence, the applicant has filed the instant revision application.

7. Government observes that as per procedure laid down in Paras 8.1 to 8.5 of Chapter 8 of the C.B.E. & C. Manual of Supplementary Instructions, rebate claims are to be submitted along with relevant documents. This list of documents does not prescribe submission of BRCs as one of the pre-conditions for claiming rebate. As such, a rebate claim under Rule 18 which is required to be filed within one year from the date of export is not required to be filed along with BRCs as the period for receipt of remittance is one year or as extended. Further as per Reserve Bank of India's Circular AP (DIR Series) No. 37, dated 20-11-2014 the period of realization and repatriation to India of the amount representing the full export value of goods has been laid down as nine months from the date of export. Therefore, for any export

done, exchange proceeds are to be received within nine months or extended period as permitted by the RBI.

8. Government notes that as per condition at Para 2(g) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, rebate of duty paid on those excisable goods export of which is prohibited under any law for the time being in force, shall not be made. Regulation 3 of Foreign Exchange Management Act (Goods & Services) Regulations, 2000 requires that a declaration in form GR/SDF is to be submitted to the Customs, *inter alia*, affirming that the full export value of the goods or software has been or will be realized within the specified period (under Regulation 9, ibid) be paid in specified manner. As per Section 8 of Foreign Exchange Management Act, 1999, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all steps to realize and repatriate to India, such foreign exchange within time period prescribed by the RBI. Further, Section 13 of Foreign Exchange Management Act stipulates penalty provision for non-realization of foreign exchange. The provisions of Foreign Exchange Management Act make it clear that the export of goods without realization of export proceeds is not permitted. Therefore, in such cases, condition of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 cannot be said to be complied with and rebate can therefore, not be allowed under Rule 18 ibid.

9. It cannot be denied that one of the main reasons for allowing any export incentive including rebate is to encourage export-generated foreign exchange earnings for the country. From a harmonious reading of Rule 18 of Central Excise Rules, Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, relevant provisions of Foreign Exchange Management Act, Foreign Trade Policy and RBI guidelines as applicable, Government concludes that exports are entitled for rebate benefit only if export proceeds are received, which has not happened in the present case. Government observes that in the instant case it is a fact on record that till date the applicant has failed to submit the BRC in respect of ARE-1 No. 309 dated 25.11.2016 to the department. Even in

their submissions in the instant revision application, the applicant has not mentioned anything regarding receipt of remittance leave alone producing any evidence to that effect.

10. Government notes that the applicant has placed reliance upon Hon'ble Allahabad High Court's Order dated 28-4-2014 with respect to Writ Tax No. 1165 of 2012 in case of *M/s. Polyplex Corporation Ltd.* v. *Joint Secretary, Finance,* against Government of India Order No. 1184/2011-CX, dated 7-9-2011 in F. No. 198/134/2009-R.A. Government observes that in the said Revision Order, the main issue was whether settlement in rupees by ECGC in place of export proceeds in foreign exchange would qualify for rebate benefit. The second case relied upon by the applicant is of *Coral Drugs.* Government observes that in the said Revision Order, the main issue was whether the rebate of Central Excise duty paid in respect of exported goods would be admissible when the goods were exported before advent of CGST regime but rebate claimed after it. The third case relied upon by the applicant is *Torrent Pharmaceuticals Ltd.* wherein the main issue was rebate of inputs used in the export of free samples for the pharmaceutical products for which the governing Notification No. is 21/2004-C.E. (N.T.), dated 6-9-2004. As such, the facts in these cases are different from the facts of the present case.

11. As regards the other issue, Government observes that proportionate claim was disallowed as the proceeds realized were less than the export value. In this regard, the applicant has contended that *'At the same time, duty deposited in excess by the exporter should be treated as voluntary deposit with the Government which is required to be returned to the exporter in the manner in which it was paid in as much as the said amount cannot be retained by the Government without any authority of law.'* Government agrees with this argument of the applicant. As per Notification No. 19/2004-CE(NT) dated 06.09.2004, rebate of the whole of the duty paid on goods exported is to be granted. Here, 'whole duty of excise' would mean duty payable under Central Excise Act,1944. Any amount paid in excess of duty.

liability cannot be treated as central excise duty. But it has to be treated as a voluntary deposit with the Government which is to be returned in the manner in which it was paid as has been held in a catena of judgments.

12. In view of above discussion, Government upholds the impugned Order-in-Appeal as far as requirement of realization of export proceeds for sanction of rebate claims is concerned. However, as regards proportionately disallowed rebate claim, the amount of Rs.2,10,437/-, should be returned to the applicant in the manner it was paid.

13. The Revision Application is disposed of on the above terms.

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

ORDER No. 1179 /2022-CX (WZ)/ASRA/Mumbai dated 08.12.2022

To,
M/s. SRF Limited,
Plot No. D-2/1, GIDC Phase II,
PCPIR, Dahej, Taluka-Vagra,
Dist.- Bharuch – 392 130.

Copy to:

1. Commissioner of CGST & CX,
   Vadodara-II, GST Bhavan,
   Subhanpura, Vadodara – 390 023.

2. Shri R. Krishnan,
   297-E, Pocket-II,
   Mayur Vihar Phase-I,
   New Delhi – 110 091.

3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.