

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. 195/170/17-RA / 2420

Date of issue: 12/12/2022

ORDER NO. 1180/2022-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. Vishrambhai Gorasia Construction Pvt. Ltd.

Respondent: Commissioner, Central Excise & Service Tax, Gandhidham

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. KCH-EXCUS-
000-APP-067-16-17 dated 02.02.2017 passed by the
Commissioner (Appeals-III), Central Excise, Rajkot.

ORDER

The subject Revision Application has been filed by M/s. Vishrambhai Gorasia Construction Pvt. Ltd., Patel Nagar, At Post – Baladia, Dist. – Bhuj Kutch – 370 427 (here-in-after referred to as 'the Applicant') against the Order-in-Appeal (OIA) No. KCH-EXCUS-000-APP-067-16-17 dated 02.02.2017 passed by the Commissioner (Appeals-III), Central Excise, Rajkot.

2. Brief facts of the case are that the applicant is a merchant exporter. They had, vide their letter dated 05.10.2015, filed a Rebate Claim under Rule 18 of the Central Excise Rules, 2002 before the Maritime Commissioner, Central Excise, Kutch claiming rebate amounting to Rs. 13,36,834/- on the goods exported by them. The rebate sanctioning authority, vide Order-in-Original (OIO) No. R/146/2015-16 dated 22.01.16 rejected the claim on the grounds that ARE-1 had not been submitted. Aggrieved, the applicant filed an appeal which was rejected by the Commissioner (Appeals) vide impugned Order-in-Appeal.

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

- a) It is submitted that substantive benefit granted by the law cannot be denied to the applicant on merely non-fulfillment of a condition which is procedural in nature. In order to qualify for the grant of rebate under Rule 18, the mandatory conditions which are required to be fulfilled are that (a) the goods have been exported; and (b) duty had been paid on the goods. The production of the ARE-1 form is a matter of procedure and where the exporter contends that the ARE-1 form has not been prepared that 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. The Bombay High Court in the case of UM Cables Limited (2013-TIOL-386-HCMUM-CX) has held that, the rebate of excise duty granted under Rule 18 of the Central Excise Rules, 2002 cannot be denied merely on the ground of nonproduction of Original and Duplicate copies of ARE-1 Forms, provided it is otherwise satisfied that the conditions for grant of rebate have been fulfilled.

- b) It is submitted that claimant has procured the duty paid goods from various manufacturers and exported the same from their own premises. The department has contended in the show cause notice that claimant has not exported the goods directly from the factory / warehouse and therefore breached the condition of Notification No.19/2004-C.E.(N.T.) dated 06.09.2004. The relevant portion of conditions which reads as under:-

"that the excisable goods shall be exported after payment of duty directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order."

However, the CBEC's Board has waived / relaxed the condition of direct export from the factory / warehouse, vide their Circular No.294/10/97-CX dated 30.01.1997. The Circular No.294/10/94-CX dated 30.01.1997 delineates the procedure to be followed by the merchant exporters desiring to export duty paid excisable goods, capable of being clearly identified which are in original factory packed condition / not processed in any manner after being cleared from factory stored outside the place of manufacturer. The relevant extracts of the para 6 reads as under:

"6. It has, therefore been decided that the cases where exporters submit the proof that goods have actually been exported to the satisfaction of the sanctioning authority, and that where goods are clearly identifiable and co-relatable with the goods cleared

from factory on payment of duty, the condition of exports being made directly from factory / warehouse should be deemed to have been waived. Other technical deviations not having revenue implications, may also be condoned."

The above Board's Circular clearly states that if the goods exported are corelatable the condition of direct export should be waived. The claimant has submitted the sheet in tabular format co-relating goods exported right from Invoice to Shipping Bill and therefore actual exportability of goods cannot be contested.

- c) It has been consistently held in the several judgments of Government of India / 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.
- d) In order to qualify for the grant of rebate under Rule 18, the mandatory conditions which are required to be fulfilled are that (a) the goods have been exported; and (b) duty had been paid on the goods. The production of the ARE-I form in the triplicate is a matter of procedure and where the exporter contends that the ARE-I form has been lost or misplaced, that 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. Further, the Bombay High Court in the case of UM Cables Limited (2013-TIOL-386-HC-MUM-CX) has held that, the rebate of excise duty granted under Rule 18 of the Central Excise Rules, 2002 cannot be denied merely on the ground of non-production of Original and Duplicate copies of ARE-I Forms, provided it is otherwise satisfied that the conditions for grant of rebate have been fulfilled. Further, it is held in the aforesaid judgment of the Hon'ble High Court that the procedure which has been laid down in the notification dated 6 September 2004 and in CBEC's Manual of Supplementary

Instructions of 2005 is to facilitate the processing of an application for rebate and to enable the authority to be duly satisfied that the two-fold requirement of the goods having been exported and of the goods bearing a duty paid character is fulfilled. The procedure cannot be raised to the level of a mandatory requirement. Rule 18, itself makes a distinction between conditions and limitations on the one hand subject to which a rebate can be granted and the procedure governing the grant of a rebate on the other hand. While the conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory.

- e) Without prejudice to the above, the applicant further submit that in judgment dated 20/08/2010 in WAP No.10 of 2010 in case of M/s. Tablets India Ltd Vs. Joint Secretary, reported in 2010-TIOL-652-HC-MAD-CX, the hon'ble High Court of Madras has held "when factum of export is not doubted, rebate cannot be denied even if all the conditions of the notification are not complied with"; the lower authority ought to have appreciated that all the judgments referred to by the claimant were appropriate and squarely applicable to their case and should not discarded them as irrelevant without any cogent reason; the claimant referred and relied upon following judgments:

- i. In Re: Sanket Industries Ltd. 2011 (268) ELT 125 (GOI)
- ii. Gujarat High Court in case of Cosmonaut Chemicals 2009 (233) ELT 46 (GUJ.)
- iii. Barot Exports 2006 (203) ELT 321(GOI)
- iv. Upkar International 2004(169) ELT 240
- v. Krishna Filaments 2001(131) ELT 726(GOI)

In the several case laws / judgments as cited above, wherein it is held that the fundamental requirement for rebate is manufacture and export, and procedural infraction of notification / circulars to be condoned if exports have taken place. It is settled law that substantive benefit not deniable for procedural lapses. In case of

Barot Exports reported at 2006 (203) ELT 321 (GOI), it is held that core aspect of in determination of rebate claim is the fact of manufacture and payment of duty thereon and its subsequent export. If this fundamental requirement is met, other attendant procedural requirements can be condoned.

In the present case, the payment of duty has not been doubted and the subject goods were exported under statutory documentation with Customs authorities who also scrutinized the documents and supervised the export of the goods, hence, procedural lapses as reasoned by the Maritime Commissioner (Rebate), Gandhidham, can be condoned and rebate claim should be allowed to the applicant.

4. Personal hearing in the case was fixed for 09.11.2022. Shri Mehul Jivani, CA, representing the respondent, attended the online hearing and submitted that rebate was rejected on non-preparation of ARE-1s. He submitted that goods were purchased directly and exported. He further submitted that there is no doubt regarding export of duty paid goods and documents submitted establish the same.

4.1 In their additional submission, the applicant submitted a compilation of relied upon case laws:

Non- production ARE-1 not a ground to deny rebate

- a) Mangalore Chemicals & Fertilizers Ltd. 1991 (55) E.L.T. 437 (S.C.)
- b) UM Cables Ltd. 2013-TIOL-386-HC-MUM-CX
- c) Aarti Industries Ltd. 2014 (305) E.L.T. 196 (Bom.)
- d) Kaizen Plastomould Pvt. Ltd. 2015 (330) E.L.T. 40 (Bom.)
- e) Zandu Chemicals Ltd. 2015 (315) E.L.T. 520 (Bom.)
- f) United Phosphorus Ltd., 2014 (12) TMI 818 - Government of India
- g) Narendra Plastic Pvt. Ltd., 2015 (1) TMI 942 - Government of India

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 main issue in the instant case is whether the non-preparation of Form ARE-1 can be a reason for denying rebate under Rule 18 of Central Excise Rules, 2002.

7. Government first proceeds to examine the statutory position with regard to the documents required for sanction of a rebate claim.

7.1 Rule 18 provides that Central Government may by notification grant rebate of duty on goods exported subject to conditions and limitations if any and subject to fulfilment of procedure as specified. Notification 19/2004-C.E. (N.T.), dated 6-9-2004 as amended issued under Rule 18 provides that the rebate sanctioning authority will compare the original copy of ARE-1 submitted by exporter with the duplicate copy received from Customs authorities and triplicate from the Excise authorities.

7.2 Also the provisions specified in Chapters 8 (8.3) & (8.4) of CBEC Basic Excise Manual as Supplementary Instructions are applicable in this case, which reads as under:-

"8. Sanction of claim for rebate by Central Excise

8.3 The following documents shall be required for filing claim of rebate:-

(i) A request on the letterhead of the exporter containing claim of rebate, ARE-1 nos. dates, corresponding invoice numbers and dates amount of rebate on each ARE-1 and its calculations.

(ii) Original copy of ARE-1.

(iii) invoice issued under Rule 11.

(iv) self-attested copy of shipping bill and

(v) self-attested copy of Bill of Lading

(vi) Disclaimer Certificate [in case where claimant is other than exporter]

8.4. After satisfying himself that the goods cleared for export under the relevant ARE-1 application 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 of 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."

From the above, Government notes that original copy of ARE-1 and Excise invoice among other documents are essential documents for claiming rebate. Any non-submission of documents in the manner prescribed thus imparts a character of invalidity to the rebate claim. Also in the absence of the original copies of ARE-1 duly endorsed by the Customs, the export of the same duty paid goods which were cleared from the factory cannot be established, which is a fundamental requirement for sanctioning the rebate under Rule 18 read with Notification 19/2004-C.E. (N.T.), dated 6-9-2004.

8. Government notes that the applicant has relied on the various judgments/Orders regarding procedural relaxation on technical grounds. Government observes that in all these case-laws the exporter had prepared the prescribed documents and complied with the laid down procedure. However, while filing rebate claim they could not submit original and duplicate copy of ARE-1 for various reasons such as:

- o Documents lost by CHA. FIR filed.
- o Documents lost in transit.
- o Documents lost/misplaced.

Therefore, on the basis of triplicate/extra copy of ARE-1 and other related documents, authenticity of export and other verifications were possible, which is the main emphasis in these case laws. However, in the instant case the applicant had not prepared ARE-1 at all and had not informed the Central Excise authorities about the export being carried out by them, though it was a requirement for claiming rebate. They have also not assigned any reason for not preparing ARE-1s in respect of the impugned exports. It therefore implies that they have simply skipped the procedure

and want the Department to overlook it in the light of relied upon case laws. In other words, the point which needs to be emphasized is that when the applicant seeks rebate under Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, which prescribes compliance of certain conditions, the same cannot be ignored.

9. Government place reliance on the judgment by Hon'ble High Court of Chhattisgarh in the case of Triputi Steel Traders [2019 (365) E.L.T. 497 (Chhattisgarh)] wherein at para 24 it is held that:-

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.

10. In view of the findings recorded above, Government upholds the Order-in-Appeal No. KCH-EXCUS-000-APP-067-16-17 dated 02.02.2017 passed by the Commissioner (Appeals-III), Central Excise, Rajkot and rejects the impugned Revision Application.


(SHRAWAN KUMAR)

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

ORDER No. 1180 /2022-CX (WZ)/ASRA/Mumbai dated 08.12.2022

To,
M/s. Vishrambhai Gorasia Construction Pvt. Ltd.,
Patel Nagar, At Post – Baladia,
Dist. – Bhuj Kutch – 370 427.

Copy to:

1. Commissioner of CGST & CX,
Kutch, Gandhidham,
GST Bhavan, Plot No.82, Sector-8,
Kutch, Gandhidham – 370 201.
2. Shri Mehul Jivani,
1009-1015, 10th Floor,
Topiwala Centre,
Goregaon (West),
Mumbai – 400 104.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.