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**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. 195/134/2018-RA / 2005

Date of Issue: 20/12/2022

ORDER NO. 1210 /2022-CEX (WZ)/ASRA/MUMBAI
DATED 16.12.2022 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. Anar Mcat Advanced Electronic Chemicals Pvt. Ltd.

Respondent : Principal Commissioner of CGST, Ahmedabad South

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. -Ahm-
excus-001-App-458-17-18 dated 27.03.2018 passed by the
Commissioner(Appeals),Central Tax ,Ahmedabad.

ORDER

This Revision Application has been filed by M/s. Anar Mcat Advanced Electronic Chemicals Pvt. Ltd. (hereinafter referred to as "Applicant") against the Order-in-Appeal No. – Ahm-excuse-001-App-458-17-18 dated 27.03.2018 passed by the Commissioner(Appeals),Central Tax ,Ahmedabad.

2. The facts of the case are that the Applicant had filed rebate claim of Rs. 1,52,522/- on 28.08.2017 in respect of ARE-1 No. 04/28.06.2017 under rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE dated 06.09.2004. Adjudicating authority vide OIO No. MP/3570/AC/2017-Reb dated 28.11.2017 rejected the rebate claim on ground that original and duplicate ARE-1 was not signed by Customs Authority. Aggrieved by the OIO, the Applicant filed appeal with the Commissioner(Appeals),Central Tax ,Ahmedabad who vide Order-in-Appeal No. – Ahm-excuse-001-App-458-17-18 dated 27.03.2018 rejected their appeal and upheld the OIO.

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

- i. the rebate sanctioning authority has not granted sufficient time/opportunity to justify their case by the applicant before him as he has rejected the claim in very hasty manner and the same is also noted by the Ld Commissioner (Appeals) at Para 6 of impugned OIA.
- ii. the applicant has produced, extra copy of the relevant ARE-1 (fifth copy) before the Ld. Commissioner (Appeals) by certify the relevant part i.e. Part-B of ARE-1 by Customs officer, which proves that the goods were actually exported out of India.
- iii. additionally the applicant has also produced a certificate dt. 17.03.2018 issued by concerned Customs Officer towards proof of export certifying that the goods covered under ARE-1 No.4/17-18 dt. 28.06.2017 was actually exported through Shipping Bill No. 7060975 dt. 30.06.2017.
- iv. additionally, the applicant submitting herewith copy of following documents to substantiate that the goods cleared on payment of duty

under ARE-1 No.4/17-18 dt. 28.06.2017 was actually exported out of India.

- a) Legible Copy of Relevant Shipping Bill No. 7060975 dt. 30.06.2017.
 - b) Triplicate Copy of ARE-1 duly certified by Central Excise officer at Part-A
 - c) Relevant Bill of Lading.
 - d) Relevant BRC, showing realisation of the Forex.
- v. the applicant further submit that reason of non-certification on Part-B of Original and Duplicate copy of relevant ARE-1 is not known to the applicant as the product has been exported through Merchant Exporter. However, it is important to note that ARE-1 No.4 dt. 28.06.2017 is already mentioned in the Shipping Bills which substantiate the fact that the copy of ARE-1 is being produced while processing of the export consignment before the Customs officer. Subsequently, the certificate dt. 17.03.2018 also supports the endorsement of relevant ARE-1 on the relevant Shipping Bill.
- vi. the description, quantity of export goods, Net weight, Gross weight, HS code etc. mentioned in the relevant ARE-1 No.4 dt. 28.06.2017 is fully matched with the Shipping Bills which confirms that the goods cleared under the said ARE-1 were exported under the Shipping Bill No. 7060975 dt. 30.06.2017.
- vii. the commissioner (Appeals) has travelled beyond the grounds in impugned SCN and the OIO.
- viii. it is important to note that there is no finding by both the lower authorities that goods were diverted in the domestic market instead of export.
- ix. Applicant has placed reliance on certain case laws.
- x. In view of above, Applicant requested to allow the refund amount and set aside the impugned OIA.
4. Personal hearing in this case was fixed for 14.10.2022, Mr. Dharmendra Kumar Singh, Advocate appeared online and submitted that their claim was rejected because ARE-1 was not submitted. He submitted

that there is no doubt on export of duty paid goods. He requested to allow this application.

5. 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.

6. On perusal of the records, adjudicating authority denied the rebate to the applicant on the ground that the original and duplicate copies of ARE-1 was unsigned and unstamped by the custom authorities.

7. 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.

8. 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. In the present case there is no dispute in respect of the duty payment against the exports of goods.

9. With regard to the argument that Applicant have not submitted the original and duplicate copies of the ARE-1 duly endorsed by the custom authorities, Government, holds that non-submission of duly endorsed copy of ARE-1 form by the Applicant 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.

10. Further, as a matter of fact, in several decisions of the Union Government in the revisional jurisdiction as well as in the decisions of the CESTAT, the production of the relevant forms has been held to be a procedural requirement and hence directory as a result of which, the mere non- production of such a form would not result in an invalidation of a claim for rebate where the exporter is able to satisfy through the production of cogent documentary evidence that the relevant requirements for the grant of rebate have been fulfilled. It is also observed that, in the present case, no doubt has been expressed whatsoever that the goods were exported goods.

11. Also, it is observed that a distinction between those regulatory provisions which are of a substantive character and those which are merely procedural or technical has been made in a judgment of the Supreme Court in *Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner*. The Supreme Court held that the mere fact that a provision is contained in a statutory instruction "does not matter one way or the other". The Supreme Court held that non-compliance of a condition which is substantive and fundamental to the policy underlying the grant of an exemption would result in an invalidation of the claim. On the other hand, other requirements may merely belong to the area of procedure and it would be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes which they were intended to serve. The Supreme Court held as follows :

"The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some other may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance"

12. In their judgment of Bombay High Court in case of *UM Cables Ltd v/s Union of India-2013 (290) ELT 641 (HC-Bom)* as relied upon by the applicant held that:

'non production of original and duplicate ARE-I ipso facto cannot invalidate the rebate claim. In such a case the exporter can demonstrate by cogent evidence that goods were exported and duty paid, satisfying the requirement of Notification No. 19/2004 CE (NT). On facts claim directed be considered on the basis of bill of lading, bankers certificate and inward remittance of export proceeds and certification from Customs authorities on ARE-I'

In the above said case, the exporter had failed to submit original and duplicate copy of ARE-1 while other export documents evidencing the "facts of exports" were submitted under rebate under Notification No. 19/2004 CE (NT). However, the lower authorities rejected the rebate claim for non-submission of Original and Duplicate copy of ARE-1 duly signed by the Central Excise officers for verification of goods exported. The ratio of the said judgment is squarely applicable in the instant case.

13. With regards to the objection raised by the Appellate Authority that the goods were not examined before the export, Government notes that applicant has adduced a certificate bearing F.No. VIII/48-79/ICD/MISC/2017/Pt. II dated 17.03.2018 issued by the custom authorities wherein it is categorically stated that the export in the present case was materialized. Furthermore, the certificate clearly indicates ARE-1 and the shipping bill through which the export has been materialized. Therefore, no other reason left to believe that the goods have not been exported.

14. In view of above, 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. Government therefore set asides the impugned Order-in-Appeal No. -Ahm-excuse-001-App-458-17-18 dated 27.03.2018. Adjudicating Authority is directed to disburse the same within 8 weeks of the receipt of this order.

15. Revision application is disposed off in above terms.


(SHRAWAN KUMAR)

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

ORDER No. \ 210/2022-CEX (WZ) /ASRA/Mumbai Dated 16-12-2022

To,

1. M/s. Anar Mcat Advanced Electronic Chemicals Pvt. Ltd., Plot No. 12 B GIDC Estate, Phase -I, Vatva, Ahmedabad -382445.
2. The Principal Commissioner CGST Ahmedabad South, 2nd Floor, Central GST Bhavan, Ambawadi, Ahmedabad-380015.

Copy to:

1. The Commissioner of Central Tax (Appeals), 7th Floor, Gst Building, Near Polytechnic, Amabavadi, Ahmedabad- 380015.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.