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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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. 195/01/16-RA /7911
195/31/16-RA

Date of Issue: 20/12/2022

ORDER NO. 1211 - 1212/2022-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. Simplex Infrastructure Ltd.

Respondent : Principal Commissioner of CGST, Belapur Commissionerate

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No.- CD/668/RGD/2015 dated 07.08.2015 and CD/1/RGD/2016 dated 01.12.2015 passed by the Commissioner(Appeals),Central Excise, Mumbai-II.

ORDER

These Revision Application have been filed by M/s. Simplex Infrastructure Ltd (hereinafter referred to as "Applicant") against Orders-in-Appeal No.– CD/668/RGD/2015 dated 07.08.2015 and CD/1/RGD/2016 dated 01.12.2015 passed by the Commissioner (Appeals), Central Excise, Mumbai-II.

2. The facts of the case are that the Applicant, a merchant exporter, had filed rebate claims under rule 18 of CER, 2002 read with Notification No. 19/2004-CE dated 06.09.2004. In respect of F.No. 195/01/16-RA, adjudicating authority vide OIO No. 1713/14-15/DC(Rebate)/Raigad dated 16.09.2014 rejected the rebate claim on grounds that applicant had not submitted original, duplicate and triplicate copies of ARE-1 and the goods exported are not co-relatable and identifiable with the goods cleared form the factory of manufacturer and the goods are not proved to be duty paid goods. In respect of F.No. 195/31/16-RA, adjudicating authority vide OIO No. 3674/14-15/AC(Rebate)/Raigad dated 13.03.2015 rejected the rebate claim on the aforesaid similar grounds along with the ground of time limitation. Aggrieved by the OIOs, the Applicant filed appeal with the Commissioner (Appeals), Central Excise, Mumbai-II who vide Orders-in-Appeal No. –CD/668/RGD/2015 dated 07.08.2015 and CD/1/RGD/2016 dated 01.12.2015 rejected their appeals and upheld the OIO.

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

i. The initial objection of Adjudicating Authority of not filing complete application through online relating to other manufacturer's supply and sale to the Applicant was got rectified. The copies of the shipping bills were also brought on record. The objection that the Rule 11 invoices cannot be considered as proof of payment of duty is not correct in as much as, the consolidated duty is paid at the end of the month for all clearances by a manufacturer. The invoices where all

particulars of goods cleared i.e. weight, value, classification, amount of duty including cesses, the name of consignees with their address, etc. appears on the body of such invoices, therefore, the same cannot be rejected by saying that the invoices are not duty paying documents. The debit of duty through PLA or through RG23 account is carried out only at the end of the month. Such entries are not reflected on each invoices issued in the course of month on every day. The Adjudicating Authority ought to have got verified from the Superintendent of Central Excise, in charge of such manufacturer, who cleared the goods meant for export to the Applicant. Taking lightly and accordingly rejecting that the goods were not duty paid, was uncalled for. The Applicant had brought on record before the Commissioner (Appeal) about the disclaimer certificate issued by both manufacturer and supplier to the Applicant about the MS Angles of various sizes and the steel structures which were sold to the Applicant and which were meant for the export. The original authority as well as the Appellate Authority, did not discharge the burden caste on them while examining the rebate claim of the Applicant correctly and truthfully, which was otherwise admissible and payable.

ii. The procedure prescribed for carrying out certain process are meant to achieve certain ends. The burden of excise duty to a foreign purchaser/consumer cannot and should not be passed on by an exporter. The descriptions of items shown in the body of invoices produced by the applicant were the same, which were available on the body of the shipping bills as well as on the packing lists and on the export invoices. For all sales of exports to a foreign buyer the entire sale proceeds had been received in the account of the Applicant, through Bank Realization Certificates. The IEC code of the Applicant, the container number, the Container Loading Plan and the records maintained at the customs bonded export house from where the goods were stuffed and sealed in supervision of the customs authorities, were exported under specific Bill of Lading and Mate Receipts, amply demonstrates and establishes the proof of export. It has already been

established that the goods were duly duty paid. The identity of the goods already stands established through various other documents. The manufacturers make declaration that, they have manufactured and supplied the goods through their invoices to the Applicant at CFS, Dronagiri through LR receipts, where is the doubt that those goods have not been exported to Ethiopia? One should not be called on to establish a fact, which is otherwise impossible to establish.

iii. Where there are no direct evidence or documents, things are settled and complied with through indirect means and through circumstantial evidence, conduct and behaviour. The procedure earlier prescribed under CBEC circular no. 294/10/94-CX dtd. 30.01.1997 issued from F. no. 209/2/97-CX.6 were further changed in view of coming in the provisions of rule 18 of CER, 2002, as thereafter new notification no. 19/2004-CE(NT) dtd. 06.09.2004 had been issued. Certain conditions and limitations which are spelled at para 2 of the said notification dtd. 06.09.2004 could be considered as mandatory whereas, certain provisions of a notification could be considered as regulatory/procedural. Non filing of ARE-1 cannot be considered as fatal as the claim of rebate itself could be denied which could be established by other indirect and circumstantial evidence. When the applicant has established the matching of description and quantities in the manufacturer's invoices and the export invoices vis-à-vis the packing list and the shipping bill, there remains no doubt that 'co-relation did exist. Therefore, the observations of the Deputy Commissioner, that there is no co-relation is not acceptable. The Ld. Commissioner (Appeal) ought to have distinguished between a mandatory condition and a technical requirement.

iv. The Govt. of India provides all sorts of incentives and benefits for export. To meet the end of justice, the substantial claim of the Applicant, therefore, should not have been rejected. The CBEC in its earlier circular dtd. 30.01.1997, had observed at para 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

rebate 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 the factory/warehouse should be deemed to have been waived. Other technical deviation not having revenue implication may also be condoned." Therefore, the non-making of ARE-1 at the manufacturer's end should not be considered as fatal, warranting the rejection of the substantial claim of the Applicant itself.

v. The ratios of the case laws referred and relied on, by both lower authorities were relevant to the facts and circumstances of those cases which were before them. There is no 'precedence' like precedence. Every case stands on its own facts and circumstances and on its own legs. The Central Govt. through JS (RA) is the final authority in the scheme of Central Excise law and procedure as far as it relates to rebate claims are concerned. The Applicant expects and is confident that, having regard to facts and circumstances of the case, no injustice would be done from the hands of the JS (RA).

vi. The Applicant will like to refer and rely on the Hon. Supreme Court's judgement rendered in the case of UOI v/s Suksha International 1989 (39) ELT 503, wherein it had been held that an interpretation unduly restricting the scope of the beneficial provisions is to be avoided so that it may not take away with one hand what the policy gives with the other. Not only that, the Hon. Supreme Court again repeated that very ratio in its judgement rendered in case of Mangalore Chemicals and Fertilizers Ltd. V/s DCCE 1991 (55) ELT 437 (SC), while drawing distinctions between procedural conditions of a technical nature and substantial condition in interpreting statute. The Applicant will bring all other documents, papers and materials at the stage of his application, including new grounds, if any.

vii. As regards , the rejection of rebate claim on the ground of limitation , Applicant has placed reliance on some case laws.

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

4. Personal hearing in this case was scheduled on 15.06.2022, 19.07.2022, 26.07.2022, 13.09.2022 and 27.09.2022. However, neither the applicant nor respondent appeared for the personal hearing on the appointed dates, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

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. Government observes that the main issues 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 and whether claims filed after one year can be entertained.

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:

- Documents lost by CHA. FIR filed.
- Documents lost in transit.
- 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. 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 altogether.

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. Government notes that the Applicant had filed their rebate claims beyond one year from the date of export in respect of F.No. 195/31/16-RA, which was one of the grounds for rejection of rebate claim before the original authority and for rejection of their appeal by the Commissioner (Appeals). The Government finds that the Hon'ble High Court Madras while dismissing writ petition filed by Hyundai Motors India Ltd., [reported in 2017 (355) E.L.T. 342 (Mad.)] upheld the rejection of rebate claim filed beyond one year of export by citing the judgment of In Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai reported in 2015 (324) E.L.T. 270 (Mad.) and held that Rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. The relevant Paragraph of the order is extracted hereunder: -

"29. In Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai, reported in 2015 (324) E.L.T. 270 (Mad.), it has been held as follows :

5. The claim for refund made by the Applicant was in terms of Section 11B. Under sub-section (1) of Section 11B, any person claiming refund of any duty of excise, should make an application before the expiry of six months from the relevant date in such form and manner as may be prescribed. The expression "relevant date" is explained in Explanation (B). Explanation (B) reads as follows :-

"(B) "relevant date" means, -

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of dispatch of goods by the Post Office concerned to a place outside India;.....

8. For examining the question, it has to be taken note of that if a substantial provision of the statutory enactment contains both the period of limitation as well as the date of commencement of the period of limitation, the rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. In this case, sub-section (1) of Section 11B stipulates a period of limitation of six months only from the relevant date. The expression "relevant date" is also defined in Explanation (B)(b) to mean the date of entry into the factory for the purpose of remake, refinement or reconditioning. Therefore, it is clear that Section 11B prescribes not only a period of limitation, but also prescribes the date of commencement of the period of limitation. Once the statutory enactment prescribes something of this nature, the rules being a subordinate legislation cannot prescribe anything different from what is prescribed in the Act. In other words, the rules can occupy a field that is left unoccupied by the statute. The rules cannot occupy a field that is already occupied by the statute."

11. Government observes that the condition of limitation of filing the rebate claim within one year under Section 11B of the Central Excise Act, 1944 is thus a mandatory provision. As per explanation (A) to Section 11B refund includes rebate of duty of excise on excisable goods exported out of India or excisable materials used in the manufacture of goods which are exported. As such the rebate of duty on goods exported is allowed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 subject to the compliance of provisions of Section 11B of Central Excise Act, 1944. The explanation (A) to Section 11B has clearly stipulated that refund of duty includes rebate of duty on exported goods. Since refund claim is to be filed within one year from the relevant date, the rebate claim is also required to be filed within one year from the relevant date. Government finds no ambiguity in provision of Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 regarding statutory time limit of one year for filing rebate claims.

12. Similarly, in their judgment dated 27.11.2019 in the case of Orient Micro Abrasives Ltd. vs. UOI[2020(371)ELT 380(Del.)], their Lordships have made categorical observations regarding the applicability of the provisions of Section 11B to rebate claims. Para 14 and 15 of the judgment is reproduced below:

> *"14. Section 11B of the Act is clear and categorical. The Explanation thereto states, in unambiguous terms, that Section 11B would also apply to rebate claims. Necessarily, therefore, rebate claim of the petitioner was required to be filed within one year of the export of the goods.*
>
> *15. In Everest Flavours Ltd. v. Union of India [2012(282)ELT 481(Bom.)], the High Court of Bombay, speaking through Dr. D. Y. Chandrachud, J (as he then was) clearly held that the period of one year, stipulated in Section 11B of the Act, for preferring a claim of rebate, has necessarily to be complied with, as a mandatory requirement. We respectfully agree."*

In such manner, the Hon'ble High Court of Delhi have reiterated the fact that limitation specified in Section 11B would be applicable to rebate claims even though the notifications granting rebate do not specifically invoke it.

13. In view of the findings recorded above, Government upholds the Orders-in-Appeal No. – CD/668/RGD/2015 dated 07.08.2015 and CD/1/RGD/2016 dated 01.12.2015 passed by the Commissioner(Appeals),Central Excise, Mumbai-II and rejects the impugned Revision Application.

Shrawan 16/12/22

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

ORDER No.12-12/2022-CEX (WZ) /ASRA/Mumbai Dated 16.12.2022

To,

1. M/s. Simplex Infrastructure Ltd., 502 A, 5th Floor, A wing, Poonam Chambers, Dr. Annie Besant road, Mumbai-400018.

2. The Principal Commissioner CGST Belapur Commissionerate, Ist Floor, CGO Complex, CBD Belapur, Navi Mumbai- 400614.
3. B.R. Tripathi(Advocate), A-23/90, Rajawadi CHS, Chitranjan Nagar, Ghatkopar (E), Mumbai- 400077.

Copy to:

1. The Commissioner(Appeals),Central Excise ,Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, BKC, Bandra, Mumbai-400051.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.