



F.No.195/1105 – 1107/11-R.A.(CX)
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue...12.1.13

Order No. 1253-1269 13 – CX dated 16.09.2013 of the Government of India, passed by Shri D.P.Singh, Joint Secretary to the Government of India, under Section 35EE of the Central Excise Act, 1944.

Subject : Revision Application filed Section 35EE of the Central Excise Act, 1944 against the Order – in -- Appeal No. US / 205 – 207 / RGD / 2011 dated 18.08.2011 passed by Commissioner (Appeals) – II, Central Excise, Mumbai – II.

Applicant : M/s. L'amar Exports Pvt. Ltd.
107, Anand Estate,
JMC Ice & Cold Storage,
Sane Guruji Marg,
Mumbai - 400 011

Respondent : Commissioner of Central Excise,
Raigad Commissionerate,
Plot No. 1, Kendriya Utpad Shulk Bhavan,
Sector – 17, Khandeshwar,
Navi Mumbai - 400 614

ORDER

These Revision Applications are filed by M/s. L'amar Exports Pvt. Ltd., Mumbai against the Order-in-Appeal No. US / 205 – 207 / RGD / 2011 dated 18.08.2011 passed by Commissioner (Appeals) – II, Central Excise, Mumbai – II with respect to Orders – in – Original Nos.866A/10-11 dated 31.08.2010, 2240/10-11 dated 31.03.2011 and 2255/10-11 dated 31.03.2011 passed by the Asstt. Commissioner of Central Excise (Rebate), Raigad.

2. Brief facts of the case are that M/s. L'amar Exports Pvt. Ltd., a Merchant Exporter has filed various rebate claims in respect of duty paid on exported goods under rule 18 of Central Excise Rules, 2002. After following due process of law, the original authority rejected the rebate claim of Rs.14,74,063/- , Rs.2,03,816/- and Rs. 88,476/- on the following grounds :

- (i) Goods were not exported directly from the factory;
- (ii) In some cases, the rebate sanctioning authority as mentioned in the ARE-1 is not the Maritime Commissioner, Raigad;
- (iii) The goods covered under the 12 rebate claims in the impugned order dated 31.08.2010 were cleared without payment of duty under bond and the claimant had applied for rebate of the same clearances, which was contradictory;
- (iv) Rebate claim No. 28198 was rejected as the goods were exported after expiry of 6 months from the date of removal and the claimant/ manufacturer had not applied for any extension beyond 6 months;
- (v) Non-submission of triplicate copies of ARE-1 in respect of 11 rebate claims in the impugned order dated 31.08.2010.

3. Being aggrieved by the said Orders-in-Original, the applicant filed appeals before Commissioner (Appeals) who upheld the Orders-in-Original and rejected the appeals of the applicant.

4. Being aggrieved by the impugned Orders-in-Appeal, the applicant has filed these Revision Applications under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds :

4.1 The Deputy Commissioner erred in holding that the goods were not exported directly from factory premises as required under the provision of the Notification and the Circular dated 30.01.1997. The condition of the Notification has altogether been misconceived to mean that the goods cleared from factory for export should be directly transported to the port and *en route* storage of goods would vitiate the said condition. As evident from the above text, the Notification only required that excisable goods should be exported after payment of duty, directly from a factory or warehouse, which has in fact been duly complied by us. The Notification did not, even remotely, suggest that the goods cleared for export from factory/warehouse should be transported directly to the port. In fact, the very second clause in the para 2 of the Notification allowed time period up to six months, from the date of clearance of goods from the factory till its actual exportation.

4.2 In view of the aforesaid principle of interpretation, the conclusion drawn by the Deputy Commissioner, referring to only the one of the condition of the Notification in isolation and with utter disregard to the other provision of the said Notification is not harmonious construction and defeats the very purpose of the Notification. Hence the order suffers from serious legal infirmities and deserves to be set aside.

4.3 In this regard, we rely on the decision of CESTAT, Mumbai in the case of Commissioner of Central Excise, Mumbai v. Rama Petrochemicals Ltd. as reported in 2004 (173) E.L.T.475 (Tri. - Mumbai). In terms of procedure of distribution of ARE-1 copies as laid down in para 5 of Chapter 8 of CBEC's Excise Manual of Supplementary instruction, Original and Duplicate copies of ARE1 are always sent to Custom in open and not in sealed cover. This procedure is followed

in both situations i.e. when assesses opts for sealing of goods in excise supervision as well as when goods are sent under self sealing and certification.

4.4 Deputy Commissioner also held that although we said and submitted in our reply to notice that we had followed the procedure as laid down in circular dated 30.01.1997, we in fact neither followed the procedure nor did it apply to our commodity, i.e. medicines there being no unique engine / chassis nos. like in case of other goods like motor vehicles. The said observation by the Deputy Commissioner is incorrect. We never submitted that the circular applies to our case neither we claimed to have followed the procedure contained therein. The said circular has been issued by the Board diluting the condition of direct export from factory for those goods which are cleared from factory on payment of duty for home consumption and diverted subsequently for export from any place other than factory (like depot), for export and where identity of goods could be establish and co-relation could be establish to the duty paid nature of goods with of removal of goods from factory. The Board issued the said circular in terms of powers conferred upon it under clause (a) to para 2 of the Notification. The Board had issued such circular only because the goods initially cleared on payment of excise duty for home consumption could not be said to have fulfilled the condition of direct export from factory. In fact, prior to issue of the said circulars, the rebate claims filed by merchant exporters were not sanctioned (as evident from first para of the said circular). This situation is clearly distinguishable from our case where goods were in the first place cleared from factory, in terms of the provisions of the Notification. We place reliance on the said circular only to this limited extent to distinguish our case from the one specified in the circular.

4.5 Had there been any restriction on *en route* storage of goods in terms of the said Notification, Board would have certainly relaxed that condition too in the said circular along with condition of direct export of goods from factory. It was obvious that the goods cleared for home consumption were lying at some depot /

godown of such manufacturers from where they cleared for exports subsequently. Therefore the conclusion and interpretation of the Notification by the Deputy Commissioner to the effect that goods cleared from factory should have been directly sent to the port of shipment without *en route* storage is without any basis.

4.6 The observation made in the impugned order that the medicine is not the commodity where identity of goods could be established with duty paying nature of the goods while cleared from factory is incorrect and not in consonance with industrial practice. Entire manufacturing process of the medicines is strictly governed by the provisions of the Drug Law. Batch number allocated to medicines is the distinctly different identity No and all manufacturing, analytical and clearance records invariably refer to such batch nos. Under the Drugs Law we are also bound to preserve records and samples of each batch till shelf life of the batch is over. Moreover, manufacturing of entire batch is done at a time from common materials issued for manufacturing. As such the cost of production of entire batch quantity is same. Batch No is invariably printed on each unit of the batch and all shipments documents refer to batch nos. Verification of medicines is carried out by different authorities like FDA, Excise, Customs etc. only on the basis of batch No. printed on units of the medicines. Therefore, the observation made by the Deputy Commissioner that the batch numbers printed on the packs of medicines is not enough to establish identity of goods is incorrect .

4.7 Name of the rebate sanctioning authority is decided and mentioned on ARE-I applications on the basis of proposed port of shipments. In most of the cases, goods are exported from the same port which is mentioned in the ARE-1. However, in few cases, due to change in logistics methodology, goods are cleared through a port other than the one initially decided e.g. goods initially cleared from factory for export by air are exported through sea and vice versa. In such cases, we file rebate claims, complying with all other procedural requirement, with the Office of the Maritime Commissioner having jurisdiction over port of shipment with

a request to condone the mistake as it is not possible to change the name of the rebate sanctioning authority as opted on ARE-I at a later date. As a matter of practice, office of Maritime Commissioners has always condoned this procedural requirement, when all other requirements are duly fulfilled. It is therefore incorrect on the part of Deputy Commissioner to reject claim for the want of procedural compliance when the substantial compliance has been ensured by us. We rely in this regard on following decision of the Tribunal:

TAFE LIMITED v. COMMISSIONER OF C.EX., CHENNAI as reported in 2008 (227) E.L.TL80 Tri. - Chennai).

4.8 On scrutiny of covering letter of the Manufacturer enclosing the Triplicate and Quadruplicate copies of the ARE-I, the original authority held that the said goods cleared under bond without payment of duty. However, the conclusion drawn by Deputy Commissioner is incorrect and without any fact. The Deputy Commissioner rejected our claims on this ground without examining the ARE-I or without any investigation. Further, the Commissioner (Appeals) is also view that rejecting rebate claims on this ground is not sustainable.

4.9 The Deputy commissioner has rejected rebate claim no. 28198 dated 04.03.2008 because the goods were exported after six month from the date of removal from the factory. In this matter we would like to clarify that we have removed said goods for export purpose only. Also the payment of duty and export of goods is not in dispute. The goods exported after six month is technical lapse. In this matter we would like to rely on following set of judgments.

4.10 The Deputy Commissioner has rejected 11 rebate claims for non submission of triplicate ARE-I. In this matter we would like to clarify that, we requested Jurisdictional Range Superintendent to hand over the said triplicate ARE-1 to us for further submission at Rebate sanctioning authority. But the

Jurisdictional Range Superintendent have not given it to us therefore we are not in position to submit the same. In this regard we would like to bring your attention at Para 3 (vii) (a) of Notification No 19/2004 CE (NT) 6.9.2004. Where it is clearly mentioned that triplicate application shall be sent to the office with whom rebate claim is to be filled, either by post or by handing over to exporter in tamper proof sealed cover after posting the particulars in official record. Also, we have requested in our reply to show cause notice to the office of the Maritime Commissioner, Raigad to do official correspondence with jurisdictional range for triplicate ARE-I.

5. Personal hearing scheduled in this case on 07.08.2013 at Mumbai was attended by Ms. Geeta Banjan, Accounts Manager and Mr. Sriohar Injapuri, Account and Excise Executive who reiterated the grounds of Revision Applications. Nobody attended the hearing on behalf of the department.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. In the instant cases, the applicant, a merchant exporter filed various rebate claim under Rule 18 of Central Excise Rules, 2002. The rebate claims were rejected by the original authority mainly on the grounds that the goods were not exported directly from factory; that rebate sanctioning authority said some cases has not been mentioned correctly; that in 12 rebate claims, the goods were cleared without payment of duty under Bond ; that in one of the claims, the goods were exported after expiry of 6 months from the date of removal and that in 11 rebate claims, the triplicate copies of ARE1 were not submitted. The Commissioner (Appeals) upheld the impugned Orders-in-Original. Now applicant has filed these revision applications on the grounds stated in para 4 above.

8. Government observes that the applicant's rebate claims were rejected primarily on the ground that the goods were not exported directly from factory

and as such violated the condition of the notification No. 19 /2004 - CE(NT). The said condition 2(a) reads as under :

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

The above said condition requires that the goods should be exported directly from factory to avail rebate benefit. The relaxation from said condition of direct export from factory has been provided in Board's Circular No. 294/10/97-CX dated 30.01.1997. However, the applicant has neither exported the goods directly from factory in terms of condition 2(a) of the Notification No. 19 /2004 - CE(NT) nor he followed the procedure mentioned in Circular No. 294/10/97-CX dated 30.01.1997.

Since the applicant neither exported the goods directly from factory or warehouse in terms of condition 2(a) of the Notification No. 19 /2004 - CE(NT) nor followed the relaxed procedure as prescribed Board's Circular dated 30.01.1997, the rebate claims in respect of the goods which were not exported directly from factory/warehouse, were rightly held inadmissible under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19 /2004 - CE(NT) dated 06.09.2004.

8.1 Applicant has contended that the goods were cleared for export from factory on payment of duty under ARE-1 by following self sealing procedure, that the goods were stored enroute at Bhiwandi in their godown from where consignments were consolidated export order wise and sent in Truck to the port of export, that all the port goods were stuffed in containers in the presence of Customs, that they have not violated the condition 2(a) Notification No. 19 /2004 - CE(NT) dated 06.09.2004. In this regard, government observes that condition 2(a) clearly stipulate that excisable goods shall be exported after payment of duty directly from a factory or a warehouse. In this case, applicant had not exported

the goods directly from factory, but goods were first cleared to their own godown at Bhiwandi where goods from various manufacturers are received and from there the goods are cleared for export after consolidating the consignment as per export orders. The CBEC vide Circular No. 294/10/97-CX dated 30.01.1997, prescribed the procedure for exporting the goods under rebate claim from a place other than factory or warehouse. Since the goods were not exported directly from factory or warehouse, the procedure laid down in said Circular was required to be followed for becoming eligible to claim rebate duty under Rule 18 of Central Excise Rules, 2002.

8.2 The procedure laid down in Circular dated 30.01.1997 is extracted as under :

“8.1 An exporter, (including a manufacturer-exporter) 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 the factory stored outside the place of manufacturer should make an application in writing to the superintendent of Central Excise incharge of the Range under whose jurisdiction such goods are stored. This application should be accompanied with form AR4 duly completed in sixuplicate, the invoice on which they have purchased the goods from the manufacturer or his dealer and furnish the following information :-

- (a) Name of the exporter.
- (b) Full description of excisable goods along with marks and / or numbers.
- (c) Name of the manufacturer of excisable goods.
- (d) Number and date of the duty paying document prescribed under Rule 52 A under which the excisable goods are cleared from the factory and the quantity cleared. (Photocopy of invoice / duty paying document be submitted)

(e) The rate of duty and the amount of duty paid on excisable goods.

8.2 The AR-4 form should have a progressive number commencing with Sl. No. 1 for each financial year in respect of each exporter with a distinguishing mark. Separate form should be made use of for export of packages / consignments cleared from the same factory/warehouse under different invoices or from the different factories/warehouses. On each such form, it should be indicated prominently that the goods are for export under claim of rebate of duty.

8.3 On receipt of the above application and particulars, the particulars of the packages / goods lying stored should be verified with the particulars given in the application and the AR-4 form, in such manner and according to such procedure as may be prescribed by the Commissioner.

8.4 If the Central Excise Officer deputed for verification of the goods for export is satisfied about the identity of the goods, its duty paid character and all other particulars given by the exporter in his application and AR-4; he will endorse such forms and permit the export.

8.5 The exporter will have to pay the supervision charges at the prescribed rates for the services of the Central Excise Officer deputed for the purpose.

8.6 The disposal of different copies of AR-4 forms should be in the following manner :--

(i) the original and duplicate copies are to be returned to the exporter for being presented by him alongwith his shipping bill, other documents and export consignment at the point of export.

(ii) triplicate and quadruplicate copies to be sent to the Superintendent Incharge of the Range in whose jurisdiction the factory from which the excisable goods had been originally cleared on payment of duty is situated. That Superintendent will require the relevant invoice / duty paying document which the manufacturer shall handover

to the Superintendent promptly under proper receipt, and the Superintendent will carry out necessary verification, and certify the correctness of duty payment on both triplicate and quadruplicate copies of AR-4. He will also endorse on the reverse of the manufacturers' invoice "GOODS EXPORTED – AR-4 VERIFIED", (and return it to the manufacturer under proper receipt.) He will forward the triplicate copy to the Maritime Commissioner of the port from where the goods were / are exported. The quadruplicate copy will be forwarded to his Chief Accounts Officer. The Range Superintendent will also maintain a register indicating name of the exporter, Range / Division / Commissionerate indicating name of the exporter' godown, warehouse etc. are located and where AR-4 is prepared, AR-4 No. and date, description of items, corresponding invoice No. of the manufacturer; remarks regarding verification, date of dispatch of triplicate and quadruplicate copy.

(iii) the quintuplicate copy is to be retained by the Superperintendent Incharge of the range from where the goods have been exported for his record.

(iv) the sixtuplicate copy will be given to the exporter for his own record.

8.7 the goods, other than shipstores, should be exported within a period of six months from the date on which the goods were first cleared from the producing factory or the warehouse or within such extended period, (not exceeding two years after the date of removal from the producing factory) as the Commissioner may in any particular case allow, and the claim for rebate, together with the proof of the exportation is filed with the Assistant Commissioner of Central Excise before the expiry of the period specified in Section 11B of the Central Excise Act, 1944 (1 of 1944).

8.8 The rebate will be sanctioned, if admissible otherwise, after following the usual procedure".

8.3 The said procedure is not followed by the applicant though in written reply filed by AC CE (Rebate), Raigad, they had claimed to have followed the said procedure. The Jurisdictional Central Excise authorities were not informed about the said export and the goods were cleared for export from godown without supervision / examination by Central Excise Officers, who had to verify the identity of goods and their duty paid character. In such a situation, it cannot be proved that the duty paid goods cleared from factory have actually been exported.

9. As regard claim where proper rebate sanctioning authority is not mentioned on ARE1 and other claim where the export is stated to be done under bond without payment of duty on the forward letter, the condition of the said procedural lapses are of no help since goods are not exported directly from factory or warehouse and said rebate claim also not admissible as already held foregoing para.

10. As regards rejection of one of the rebate claims on the ground that the applicant exported the goods after six months from the date of clearance from the factory, Government finds that the condition of export of goods within six months from their clearances from factory is a mandatory condition of the Notification No. 19/2004-CE(NT) and non-compliance of the same renders the rebate claims inadmissible. Applicant has failed to submit any permission granted by Commissioner of Central Excise for extension of said six months period. As such the said rebate claim is rightly rejected.

11. As regard to the non submission at triplicate copies of ARE1, para 8.4 of the part 1 of Chapter 8 of the CBEC Excise Manual prescribes the following guidelines :-

"8.4 After satisfying himself that the goods cleared for export under the relevant A.R.E. 1 applications mentioned in the claim were actually exported, as evident from the original and duplicate copies

of A.R.E.1 duly certified by Customs, and that the goods are 'duty-paid' character as certified in the triplicate copy of A.R.E.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 rejection or reduction 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, it is ample clear that triplicate copies of ARE1 is required to verify duty paid nature of the goods. Commissioner (A) observed that the applicant did not adduce any evidence to prove that triplicate copies of ARE-1 were given to jurisdictional excise officer of the manufacturer for onward submission to the rebate sanctioning authority and in the absence of the same, duty paid on the goods could not be verified. Government is in agreement with findings of Commissioner (Appeals) in this regard.

12. In view of the above discussions, Government do not find infirmity in orders of Commissioner (A) and hence, upholds the same.

13. Revision Applications are rejected being devoid of merit.

14. So, Ordered.



(D.P. SINGH)

JOINT SECRETARY (REVISION APPLICATION)

M/s. Lamar Exports Pvt. Ltd.,
107, Anand Estate,
JMC Ice & Cold Storage,
Sane Guruji Marg,
Mumbai - 400 011

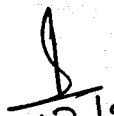
(भागवत शर्मा/Bhagwan Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (वित्त विभाग)
Ministry of Finance (Dept. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/NEW DELHI

Order No. ~~125-126~~ 13 - CX dated 16.09.2013

Copy to:-

1. The Commissioner of Central Excise, Raigad Commissionerate, Plot No. 1, Kendriya Utpad Shulk Bhavan, Sector - 17, Khandeshwar, Navi Mumbai - 400 614
2. The Commissioner of Central Excise (Appeals) - II, 3rd Floor, Kendriya Utpad Shulk Bhavan, Plot No. C - 24, Sector - E, Bandra - Kurla Complex, Bandra (East), Mumbai - 400 051
3. The Asstt. Commissioner (Rebate), Central Excise, Raigad C/o. The Commissioner of Central Excise, Raigad Commissionerate, Plot No. 1, Kendriya Utpad Shulk Bhavan, Sector - 17, Khandeshwar, Navi Mumbai - 400 614
4. M/s. Lamar Exports Pvt. Ltd., 107, Anand Estate, JMC Ice & Cold Storage, Sane Guruji Marg, Mumbai - 400 011
5. ✓ PS to JS(RA)
6. Guard File
7. ~~7.~~ Spare Copy.

ATTESTED


17/9
(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)