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F.No. 195/1219/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue..... 01/11/13

ORDER NO. 1286/2013-CX DATED 01.10.2013 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D.P.SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the order-in-appeal No.US/350/RGD/2011 dated 18.10.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai, Zone-II

Applicant : M/s Sam Alloys Pvt. Ltd., Khalapur, Raigad

Respondent : The Commissioner of Central Excise, Mumbai Zone-II

ORDER

This Revision application is filed by M/s Sam Alloys Pvt. Ltd., Khalapur, Raigad against the order-in-appeal No.US/350/RGD/2011 dated 18.10.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai, Zone-II with respect of order-in-original passed by the Assistant Commissioner, Central Excise (Rebate), Raigad.

2. The applicants had removed the said goods on payment of duty vide ARE-1 No.3/09-10 dated 26.6.09 from their factory for export through JNPT under claim for rebate of duty under rules 18 of Central Excise Rules 2002. While going to JNPT the driver of the Truck misplaced the export documents in transit such as original and duplicate copies of ARE-1s. The applicants approached the Superintendent of Central Excise of their jurisdiction and requested him to issue duplicates of these documents. The Superintendent of Central Excise, therefore, issued duplicate copies of original and duplicate ARE-1 No.3/09-10 dated 26.6.2009 from his 'Triplicate' copy of ARE-1 and marked the same copies as 'Duplicate'. The applicants also filed a Police complaint on 28.6.2009 regarding the loss of AREs-1. The applicants exported the goods on the strength of the said ARE-1 and shipping bill No.7458420 dated 26.6.09 and Customs Officer has certified the said export on 26.6.09. Assistant Commissioner (Rebate) Central Excise issued a 'Deficiency Memo-cum-SCN-call for personal hearing'. By this memo the Assistant Commissioner called upon the applicant to explain the reasons for not furnishing original and duplicate copies of ARE-1 duly endorsed by the Customs Officer. The Assistant Commissioner rejected the claim of the applicants for not producing copies of ARE-1s as required under Rule 18 of Central Excise Rules 2002 read with Notification No.19/2004-CE(NT) dated 6.9.2004 and also on the ground that the fundamental criteria as envisaged in Para 8.3/8.4 of Chapter 8 of CBEC's Excise Manual of Supplementary Instructions for ascertaining the goods exported, is not fulfilled and therefore rebate claim is liable for rejection.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeal), who rejected the same.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 In the present case the applicants exported goods on payment of duty under claim for rebate under Rule 18 of Central Excise Rules 2002 read with Notification No.19/2004-CE(NT) dated 6.9.2004 and filed 'Duplicate copies of ARE-1 No.03 dated 26.6.2009 issued' by the Superintendent of Central Excise, Invoice No.018 dated 26.6.2009, shipping bill No.745820 dated 26.6.2009 and mate receipt No.1276 dated 29.6.2009 and B/L No.NQG 0090038 dated 29.6.2009. The Customs Officer duly endorsed the Shipping bill of goods for having been exported goods mentioned under ARE-1 No.03/26-6-2009. The applicants submit that the 'duplicate' copies of ARE-1 and Triplicate copy of ARE-1 as submitted by the Superintendent of Central Excise and the original shipping bill obtained from the customs officer certifying that the goods as mentioned in the ARE-1s have been duly exported.

4.2 The applicants say and submit that in UOI V Suksha International 1989 (39) ELT 503 (SC), the Hon'ble Supreme Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with other. In the *UOI v. A.V.Narsimhalu* 1983 (13) ELT 1534 (SC), the Apex court also observed that the administration authorities should instead of relying on restrictive interpretation and technicalities, act in a manner consistent with the border concept of justice. Similar observations was made by the Apex Court in the *Formica India v Collector of Central Excise* 1995 (77) ELT 511 (SC). In observing that once a view taken that the party would have been entitled to the benefit of the notification had they met with the requirement of concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the *time* when they could have done *it* had elapsed. While drawing a distinction between a procedural condition of technical nature

and a substantive condition in interpreting statute similar view was also pronounced by the Apex Court in *Manglore Chemicals & Fertilizers Ltd. v. Dy. Commissioner* 1991 (55) ELT 437 (SC). In fact as regards drawback, rebate specifically it is now title law that the procedural in fraction of Notification, Circulars etc are to be condoned if export have really taken place and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirement. This view of condoning procedural infraction in favour of actual export having been established has been taken by tribunal/Government of India in a catena of orders.

4.3 In the case of *American Dry Fruits Stores vs. Collector of Central Excise* reported in 1992 (61) ELT 709 (Tribunal) observed that manufacture of goods without licence and export of the same without following AR-4 procedure being only a technical infringement and allowed their appeal.

5. Personal hearing scheduled in this case on 7.8.2013 was attended by Shri S.V.Apte, advocate on behalf of the applicant, who reiterated the grounds of revision application. He relied upon the judgement dated 24.4.13 of Hon'ble High Court of Bombay in the case of *UM Cables Ltd. Vs UOI 2013-TIOL-386-HC-MUM-CX*. Nobody attended hearing on behalf of department.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. Government observes that the applicant cleared the goods for export from JNPT, Nhava Sheva. The applicant filed rebate claim without original and duplicate copies of ARE-1, as the same were claimed to have lost by them enroute from their factory to Nhava Sheva. They approached the Range Superintendent who issued "duplicate copies' of original and duplicates copies of ARE-1", on the basis of triplicate copy of ARE-1. They exported the goods on the strength of said ARE-1 & shipping bill No.7458420 dated 26.6.09. Customs have certified that goods were exported on

26.6.09. The original authority rejected the rebate claims on the ground that applicant failed to furnish original and duplicate copies of ARE-1 duty endorsed by the customs officer. Commissioner (Appeals) upheld impugned order-in-original. Now the applicant has filed this revision application applications on grounds mentioned in para (4) above.

7. Government finds that the applicant has relied upon judgment dated 24.04.2013 of Hon'ble High Court of Bombay in the case of UM cables vs. UOI in W.P. No. 310 2/13 & 3103/13. The Hon'ble High Court has observed in para 11, 12, 13, 14, 16 , 17 as under:-

"11. The Manual of Instructions that has been issued by the CBEC specifies the documents which are required for filing a claim for rebate. Among them is the original copy of the ARE-1, the invoice and self-attested copies of the shipping bill and the bill of lading. Paragraph 8.4 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 as evident from the original and duplicate copies of the ARE-1 form duly certified by customs. The second is that the goods are of a duty paid character as certified on the triplicate copy of the ARE-1 form received from the jurisdictional Superintendent of Central Excise. 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.

12. 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.

13. 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 1991 (55) E.L.T. 437 (S.C.) = (2092-TIOL-234=SC-CJ()). 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 at paragraph 11. The Supreme Court held as follows:

"The mere fact that it /s 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 of all conditions irrespective of the purposes they were intended to serve."

14. The particulars which are contained in Form ARE-I relate to the manufacturer of the goods, the number and description of the packages, the weight, marks and quantity of the goods and the description of the goods. Similarly, details are provided in regard to the value, duty, the number and date of invoice and the amount of rebate claimed. Part A contains a certification by the central excise officer to the effect inter alia that duty has been paid on the goods and that the goods have been examined. Part B contains a certification by the officer of the customs of the shipment of the goods under his supervision.

15. In the situation in the two writ petitions, the rebate claims that were filed by the Petitioner would have to be duly bifurcated. As noted earlier the first writ petition Writ Petition 3102 of 2013 relates to two claims dated 20 March 2009 and 8 April 2009 in the total value of Rs.12.54 lacs. In respect of the second of those claims dated 8 April 2009, of a value of Rs.10.08 lacs, the Petitioner has averred that the goods were loaded by the Shipping Line on the vessel and the vessel sailed on 18 April 2008 whereas the Let Export Order was passed by the customs authorities on 19 April 2008. The Petitioner has stated that in view of this position the customs authorities withheld the endorsement of the ARE-1 forms and the issuance of the export promotion copy of the shipping bill paragraphs 8(g) and 8(h) of the petition. We find merit in the contention of counsel appearing on behalf of the Revenue that in these circumstances, the rejection of the rebate claim dated 8 April 2009 by the adjudicating authority and which was confirmed in appeal and in revision cannot be faulted. Admittedly even accordingly to the Petitioner the goods came to be exported and the vessel had sailed on 18 April 2008 even before a Let Export Order was passed by the customs authorities. The primary requirement of the identity of the goods exported was therefore, in our view, not fulfilled. In such a case, it cannot be said that a fundamental requirement regarding the export of the goods and of the duty paid character of the goods was satisfied.

16. However, it is evident from the record that the second claim dated 20 March 2009 in the amount of Rs.2.45 lacs which forms the subject matter of the first writ petition and the three claims dated 20 March 2009 in the total amount of Rs.42.97 lacs which form the subject matter of the second writ petition were rejected only on the ground that the Petitioner had not produced the original and the duplicate copy of the ARE-1 form. For the reasons that we have indicated earlier, we hold that the mere non-production of the ARE-1 form would not ipso facto result in the Invalidation of the rebate claim. In such a case, It is open to the exporter to demonstrate by the production of cogent evidence to the satisfaction of the rebate sanctioning authority that the requirements of Rule 18 of the Central Excise Rules 2002 read together with the notification dated 6 September 2004 have been fulfilled. As we have noted,

the primary requirements which have to be established by the exporter are that the claim for rebate relates to goods which were exported and that the goods which were exported were of a duty paid character. We may also note at this stage that the attention of the Court has been drawn to an order dated 23 December 2010 passed by the revisional authority in the case of the Petitioner itself by which the non-production of the ARE-I form was not regarded as Invalidating the rebate claim and the proceedings were remitted back to the adjudicating authority to decide the case afresh after allowing to the Petitioner an opportunity to produce documents to prove the export of duty paid goods in accordance with the provisions of Rule 18 read with notification dated 6 September 2004 Order No.1754/10-CX dated 20 December 2010 of D.P. Singh, Joint Secretary, Government of India under Section 35 EE of the Central Excise Ad 1944. Counsel appearing on behalf of the Petitioner has also placed on the record other orders passed by the revisional authority of the Government of India taking a similar view Garg Tex-O-Fab' Pvt. Ltd. - 2011 (271) E.L.T. 449 Hebenkraft - 2001 (136) E.L.T. 979. The CESTAT has also taken the same view in its decisions in Shreeji Colour Chem Industries v. Commissioner of Central Excise, 2009 (233) E.L.T. 367 = (209B-TIOL-1973- CESTAT-AHHJ). Model Buckets & Attachments (P) Ltd. v. Commissioner of Central Excise 2007 (217) E.L.T. 264 and Commissioner of Central. Excise v. TISCO 2003 (156) E.L.T. 777.

17. We may only note that in the present case the Petitioner has inter alia relied upon the bills of lading, banker's certificate in regard to the inward remittance of export proceeds and the certification by the customs authorities on the triplicate copy of the ARE-I form. We direct that the rebate sanctioning authority shall reconsider the claim for rebate on the basis of the documents which have been submitted by the Petitioner. We clarify that we have not dealt with the authenticity or the sufficiency of the documents on the basis of which the claim for rebate has been filed and the adjudicating authority shall reconsider the claim on the basis of those documents after satisfying itself in regard to the authenticity of those documents. However, the rebate sanctioning authority shall not upon remand reject the claim on the ground of the non-

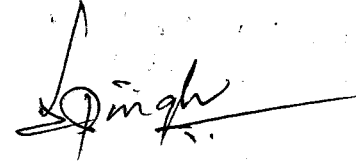
production of the original and the duplicate copies of the ARE-I forms, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled. For the aforesaid reasons, we allow the petitions by quashing and setting aside the impugned order of the revisional authority dated 22 May 2012 and remand the proceedings back to the adjudicating authority for a fresh consideration. The rejection of the rebate claim dated 8 April 2009 in the first writ petition is, however, for the reasons indicated earlier confirmed. Rule is made absolute in the aforesaid terms."

8. Government notes that ratio of said judgment is directly applicable to this case and therefore matter has to be examined in the light of said judgment.

9. Therefore, Government sets aside the impugned order-in-appeal and remand the case back to original authority to decide the matter afresh in the light of said judgment of Hon'ble High Court of Bombay. A reasonable opportunity of hearing will be afforded to the parties.

10. The revision application is disposed off in terms of above.

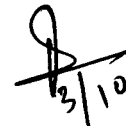
11. So ordered.



(D.P. Singh)

Joint Secretary (Revision Application)

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(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt of India
नई दिल्ली/NEW DELHI

G.O.I. Order No. 1286 /13-Cx dated 01.10.2013

Copy to:-

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2. The Commissioner of Central Excise (Appeals), Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhavan, Plot No.C-24, Sector-E, Bandra-Kurla Complex, Bandra (East), Mumbai 400051.
3. The Assistant Commissioner of Central Excise(Rebate), Raigad
4. Shri S.V.Apte, Advocate, A-1 Shreepal Complex, Panchpakhadi, Thane-400601
- ✓ 5. PS to JS (Revision Application)
6. Guard File
7. Spare Copy.

(Attested)



(B.P.SHARMA)
OSD (Revision Application)