

REGISTERD 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. 195/86/13-RA/4789

Date of Issue: 04/11/19

ORDER NO. 128/2019-CX (WZ) /ASRA/MUMBAI DATED 14.10.2019 OF THE OF THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT,1944.

Applicant : M/s. H.P. International, Mumbai.

Respondent: Commissioner, Central Excise, Raigad.

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. US/658/RGD/2012 dated 15.10.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

ORDER

This Revision Application has been filed by M/s H.P. International, Unique House, Chakala Cross Road, Andheri (East), Mumbai (hereinafter referred to as "the applicant") against Order-in-Appeal No. US/658/RGD/2012 dated 15.10.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

2. The issue in brief is that the department had filed an appeal against order-in-original No.1313/11-12/DC (Rebate)/Raigad dated 29.11.2011 passed by Deputy Commissioner, Central Excise(Rebate), Raigad on the ground that the rebate claims to the tune of Rs.4,94,198/-(Rupees Four Lakh Ninty Four Thousand One Hundred and Ninety Eight only) had been wrongly sanctioned as the applicant had not followed the procedure of self sealing as required vide para 3(a)(xi) of Notification No.19/2004-CE(NT)P dated 06.9.2004. Reliance was placed on the decision of Hon'ble Tribunal in the case of M/s Kirloskar Brothers Ltd reported in 1997 (94)E.L.T. 176(Trib.).

3. Vide impugned Order-in-Appeal No. US/658/RGD/2012 dated 15.10.2012, the Commissioner (Appeals) set aside the Order-in-original No. No.1313/11-12/DC (Rebate)/Raigad dated 29.11.2011 passed by Deputy Commissioner, Central Excise(Rebate), Raigad and allowed the appeal filed by the department.

4. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government mainly on the following grounds:

4.1 The impugned Order in Appeal is bad in law as the same has been issued solely on one ground that "identity of the goods exported was not established". Their factory is regulated by the provisions of

Central Excise Act and rules made there under and as in the case at hand each and every dispatch of goods is either under central excise duty paying invoice or under ARE-1 along with supporting documents. Thus the identity of the goods leaving the factory for export is well documented, supported by documentary evidence duly authenticated and attested by the Central Excise and Customs Authorities.

4.2 On-going through the review order on basis of which the findings of the Original Authority were challenged before the Hon'ble Appellate Authority, it can be seen that the Order in Original was passed on 29.11.2011 and issued on 05.12.2011. However the review order was passed on 04.04.2012 which is beyond the stipulated period of three months under the law and thus the review order is hit by the statutory period of limitation and is bad in law. Since the review order itself is legally unsustainable the Appeal filed pursuant thereto and the order in appeal cannot be sustained and are liable to be set aside. The above issue is a question of law and can be raised at the present stage of Appeal and the impugned order passed by Commissioner (Appeals) is liable to be set aside on this ground alone. The Applicant crave leave to refer to and rely upon various case laws in support of the above contentions at the time of Personal Hearing.

4.3 The said Order-in-Appeal has simply reproduced the para 6.1 of chapter 8 of CBEC's Central Excise Manual and concluded that Respondent have not complied with mandatory provision and has not followed the procedure as laid down in para 3(a) (xi) of the Notification No.19/2004-CE (NT) dt.06.09.2004, that they have not submitted any documentary evidence to prove that the goods were actually opened and examined by the Customs Department. Therefore the identity of the goods exported was not established and the rebate claim was wrongly sanctioned. The above finding is totally erroneous and misconceived and thus the impugned Order is bad in law and liable to be set aside.

4.4 Commissioner (Appeals) has failed to appreciate that the ARE-1's under which the goods were exported were bearing endorsement of Custom Officers on reverse side in support of the Applicants claim that the said goods have been exported and the above facts were brought to the knowledge of Appellate Authority by them in their submission dt.08.06.2012 filed on 11.06.2012. The identity of the goods being exported was never under dispute and the only issue was

that the ARE-1's were not having endorsement by the Partner or Authorized Signatory of the exporter to the effect that the goods were packed and sealed in their presence. The above act of omission on part of the Applicant is at the most a procedural lapse and cannot jeopardize the identity of exported goods.

4.5 The Appellate Authority has failed to appreciate the case laws submitted by them in support of their case at the time of hearing and in written submissions which squarely covers the issues raised by them. The case laws have been discarded without assigning any valid or cogent reasons rendering the impugned order bad in law and liable to be set aside.

4.6 The case of M/s Kirloskar Brothers Ltd. V/s Collector of Central Excise, Pune reported at 1997(94) E.L.T.176 (Tribunal), referred to in the Appeal by Department is not applicable to the present case and Appellate Authority by not discussing the case laws has failed to appreciate the legal position on the issue and therefore the said order is bad in law and liable to be set aside

4.7 They submit that the Partner/Authorised representative of the Applicant company was present all the time when the subject goods were packed and sealed and has signed all the documents including A.R.E.1s. prepared under C.Ex. Act and Rules but self-certification endorsement as required under C.B.E.C Manual / Notification No. 19 / 2004 C.E. (N.T.) dt.06.09.2004 remained to be made /endorsed on A.R.1 inadvertently. It is a procedural lapse which can be condoned in light of various case laws referred to and relied upon by the Applicant in grounds of Cross-objection. Those case laws are as under:-

- 1) RE-ACE Hygiene Products-2012 (276) ELT 131 (G.O I)
- 2) Ford India Pvt. Ltd. V/s Asstt. Commissioner C. Ex. Chennai 2011(272) E.L.T.353 (Mad)
- 3) Commissioner of C.Ex. V/s. Enterprises Ltd. Ambadi 2007(219) ELT917 (Tribunal)
- 4) RE: Commissioner of Central Excise Bhopal 2006 (205) ELT 1093 (G.O.I)
- 5) RE. Modern Process Printers 2006 (204) ELT 632 (G.O.I)
- 6) I.O.C. Ltd V/s Commr. Central Excise. Calcutta 2004 (178) ELT 834 (Tribunal- Kolkata)
- 7) RE- Deesan Agro Tech Ltd 2011 (273) ELT 457 (G.O I).

Further the Applicant wish to refer and rely upon following case laws IN RE IKEA TRADING (INDIA) LTD. 2003 (157) E.L.T. 359 (G.O.I.)

- i) IN RE AVENTIS PHARMA LTD, 2012 (285) E.L.T. 151 (G.O.1.)
- ii) IN RE SHRENIK PHARMA LTD. 2012 (281) E.L.T. 477 (G.O.I.)
- iii) COMMISSIONER OF C EX.. THANE-I V/s GLOBAL WOOL ALLIANCE P. LTD. 2012 (278) E.L.T 249 (Tri. - Mumbai) v) IN RE DAGGER FORST TOOLS LTD. 2011 (271) E.L.T. 471 (G.O.I.)

In the light of ratio laid down by above said case laws it was submitted that they had already given copies of A.R.E.1 duly endorsed by the Customs Authorities as proof of export and copies of Commercial Invoice, packing list, Bill of Lading, Mate Receipt, Bank Realization Certificate, Shipping Bill, Tax Invoice under Rule 11 of C. Ex. Rules 2002 to show that the goods covered by 5 A.R.E.1s covered in this case, have been actually exported and considering major compliance the benefit of rebate cannot be denied. The Applicant only manufactures adhesives and cannot export any other goods from his factory. The subject A.R.E 1s were signed by the Partner / Authorized persons of the Applicant and countersigned by the C. Ex officers on reverse of A.R.E.1 certifying payment of duty, at the time of export. The officers also did not point out lapse of not showing self-sealing certificate on A.R.E.1. otherwise said lapse could have been rectified at the time of export from the factory itself.

4.8 They submit that in the facts and circumstances of the case and in light of ratio laid down by various case laws referred to and relied upon by them the subject Order-in-Appeal is liable to be set aside with consequential relief to them.

5. A personal hearing in the case was held on 22.08.2019. Shri G.C. Chhabria, duly authorized by the applicant company along with Shri Jilajeet Vishva Kumar, Sales Coordinator of the applicant company appeared for hearing. None was present for the respondent. The applicant submitted that it was only a procedural error as only signature was missing; that the goods were verified by the Customs Officer.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the

impugned Order-in-Original and Order-in-Appeal. On perusal of records, Government observes that the applicant's rebate claim made under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 – C.E. (NT) dated 06.09.2004 was sanctioned by Deputy Commissioner, Central Excise (Rebate), Raigad vide Order-in-original No. 1313/11-12/DC (Rebate)/Raigad dated 29.11.2011. However, the department filed appeal against the said Order in Original on the ground that the rebate claims to the tune of Rs. 4,94,198/- (Rupees Four Lakh Ninety Four Thousand One Hundred and Ninty Eight only) had been wrongly sanctioned as the applicant had not followed the procedure of self sealing as required vide para 3(a)(xi) of Notification No.19/2004-CE(NT) dated 06.9.2004.

7. Government further notes that apart from point of dispute on merit of the case, the applicant submitted about the status of review/appeal of the impugned order-in-original by the jurisdictional Commissioner of Central Excise under Section 35E(2) and 35E(3) of the Central Excise Act, 1944 being time-barred. On the point of limitation, the applicant submitted that the review and filing of appeal has been done after the stipulated period of three months and hence appeal was clearly time barred.

8. Government observes that the "Order to File Appeal" issued by the Commissioner of Central Excise, Customs and Service Tax, Raigad Commissionerate vide F.No. III/18/PA-228/Gr.I/2011-12-dated 4/4/2012 (Exhibit B to Revision Application), that the impugned Order in Original was reviewed by the Commissioner, Central Excise, Customs and Service Tax, Raigad Commissionerate on 4.4.2012 in terms of Section 35E(2) of the Central Excise Act, 1944. In the instant case, Government observes that the said order has been reviewed by the Commissioner within the stipulated period of three months from the date of communication of relevant Order-in-Original. Thus, Government holds that the order of review is not hit by limitation and hence Government proceeds to examine the case on merits.

9. Government observes that Para (3)(a)(xi) Notification No. 19/2004-C.E. (N.T.) dated 6-9-2004 provides that where the exporter desires self-sealing and self-certification for removal of goods from the factory or warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit of the goods or the owner of warehouse or a person duly authorized by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify all the copies of the application that the goods have been sealed in his presence, and shall send original and duplicate copies of the application along with goods at the place of export, and shall send triplicate and quadruplicate copies of application to the Superintendent or Inspector of Central Excise, having jurisdiction over the factory or warehouse, within twenty-four hours of removal of the goods.

10. The applicant in its application with response to the above, has contended that the ARE-1's under which the goods were exported bearing endorsement of Custom Officers on reverse side in support of their claim that the said goods had been exported and the above facts were brought to the knowledge of Appellate Authority by them in their submission dt. 08.06.2012 filed on 11.06.2012. The applicant submitted that in spite of it, the Appellate Authority proceeded to draw inference that they failed to give documentary evidence to prove that the said goods were actually exported, that the identity of the goods being exported was never under dispute and that the only issue was that the ARE-1's were not having endorsement by the Partner or Authorized Signatory of the exporter to the effect that the goods were packed and sealed in their presence, that the above act of omission on their part was at the most a procedural lapse and cannot jeopardize the identity of exported goods.

11. Government observes that the procedure for sealing by Central excise Officer or Self-Sealing and Self Certification procedure, discussed supra, has

been prescribed to identify and correlate of export goods at the place of dispatch. Government notes that in the instant case the impugned goods were cleared from the factory without sealing either by Central Excise officers or without bearing certification about the goods cleared from the factory under self-sealing and self-certification procedure and therefore the conditions and procedure of sealing of goods at the place of dispatch were not followed. Government however observes that failure to comply with provision of self-sealing and self-certification as laid down in para 3(a) (xi) of the Notification No.19/2004-CE(NT) dated 06.09.2004 is condonable if exported goods are co-relatable with goods cleared from factory of manufacture or warehouse and sufficient corroborative evidence available to correlate exported goods with goods cleared under Excise documents. Export oriented schemes like rebate/drawback are not deniable by merely on technical interpretation of procedures, etc.

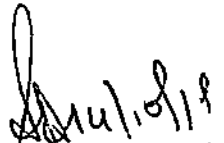
12. Government observes that though the applicant has erred in not following the procedure, however in this case sufficient documentary evidence has been submitted to show that the goods which cleared the factory under five ARE-1s (mentioned in Order in Original No. 1313/11-12/DC (Rebate)/Raigad dated 29.11.2011) had in fact the same goods which were exported vide corresponding shipping bills. Government, therefore, is of the considered view that such a lapse may be condoned if the exported goods could be co-related with the goods cleared from the factory of manufacture. Moreover, the applicant has received the foreign remittances also and have produced BRC in all cases. Therefore, Government does not find any infirmity in Order in Original No. 1313/11-12/DC (Rebate)/Raigad dated 29.11.2011 and upholds the same.

13. In view of above circumstances, Government holds that said rebate claims are properly sanctioned to the applicant under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-

9-2004. Therefore, Government sets aside the impugned Order-in-Appeal and restores Order in Original No. 1313/11-12/DC (Rebate)/Raigad dated 29.11.2011 passed by Deputy Commissioner (Rebate), Central Excise, Raigad.

14. Revision Application succeeds in above term.

15. So, ordered.


(SEEMA ARORA)

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

ORDER No 128/2019-CX (WZ) /ASRA/Mumbai DATED 14.10.2019.

To,
M/s H.P. International,
Unique House,
Chakala Cross Road,
Andheri(East), Mumbai 400 099

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner, Central Excise, (Appeals) Raigad.
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Belapur.
4. Sr. P.S. to AS (RA), Mumbai
5. ~~Guard file~~
6. Spare Copy.