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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.198/30/2014-RA / 1301

Date of Issue: 12.03.2021

ORDER NO. 128 /2021-CX (WZ)/ASRA/MUMBAI DATED 05.03.2021 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 : Commissioner of Central Excise, Kolhapur

Respondent : M/s Tata Cummins Ltd.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. PUN-EXCUS-002-APP-179-13-14 dated 31.01.2014 passed by the Commissioner (Appeals), Central Excise, Pune-II.

ORDER

This Revision Application is filed by the Commissioner of Central Excise & Service Tax, Kolhapur Commissionerate (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. PUN-EXCUS-002-APP-179-13-14 dated 31.01.2014 passed by the Commissioner (Appeals), Central Excise, Pune-II.

2. The issue in brief is that M/s Tata Cummins Ltd., Plot No. A-1/1, MIDC, Phaltan Industries Area, Suravadi, Tal: Phaltan, District Satara - 415 552 (herein after as 'the Respondent'), manufacturer of I.C Engine and their parts had cleared excisable goods for export on payment of Central Excise duty vide ARE-1 No. 01 dated 20.12.2011 and subsequently filed rebate claim of Rs. 2,99,936/-. On verification of the records, the Assistant Commissioner, Central Excise, Satara Division, Kolhapur Commissionerate vide his Order-in-Original No. SATARA/200/ADJ/2012 dated 18.03.2013 sanctioned rebate claims of Rs. 2,99,936/- in cash. The Applicant Department then filed appeal with the Commissioner (Appeals), Central Excise, Pune-II on the grounds that on scrutiny of the rebate claim it was observed that in respect of the ARE-1 No. 01 dated 20.12.2011 at Sr.No. 2 of the front page of the Original, Duplicate & Triplicate copies of the ARE-1s, the original details were struck out and with help of "white correction fluid" fresh details were overwritten. Therefore, admissibility of the said copies as admissible evidence was lost. In view of the above, claim cannot be sanctioned and rebate was not admissible. The Commissioner(Appeals) vide Order-in-Appeal No. PUN-EXCUS-002-APP-179-13-14 dated 31.01.2014 upheld the Order-in-Original dated 20.12.2011 and the Departmental appeal was rejected.

3. Being aggrieved, the Applicant Department then filed the current Revision Application on the following grounds :

- (i) The rebate of duty on export of goods is admissible under the provisions of Section 11B of the Central Excise Act, 1944. Further, the Notification No. 19/2004-C. E. (N.T.) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 lays down the conditions, limitations and procedure for filing rebate claims with the Department. The details of goods viz, description, classification, quantity, value and duty payable etc. to be exported are to be filled in by the exporter on the face of the said ARE-1, whereas details like Shipping Bill number , Vessel through which export took place are to be filled on the reverse of the ARE-1. It was the sole responsibility of the exporter to confirm the correctness of the details filled in at the time of clearance itself.
- (ii) The reverse side of the ARE-1 under the above notification has four parts A, B,C and D each for a specific purpose. When read together, the format prescribed as per law clearly stipulates that it has to be prepared in such a way that the details of goods to be exported appear on the fact of the said ARE-1 and the certification by the various authorities in relation to the goods being exported are to be obtained on the reverse of the same
- (iii) In the present case, the original details are struck out and with help "White Correction Fluid" the fresh details are overwritten. Therefore, admissibility of the said copies as admissible evidence is lost. In circumstances considerable doubt arise regarding the actual export details. Further, such an ARE-1, cannot be said to be providing proof of export, as such ARE-1 is always open to mis-use.
- (iv) The Commissioner (Appeals) has also erred while passing the decision in as much as the following judgments, clearly applicable in the instant case, appear not to have been considered:-
- (a) The Government of India, Ministry of Finance IN RE West Coast Corporation [2013 (290)E.L.T. 135 (G.O.1.)], wherein it has been held that ARE-I the basic essential document for export of goods under rebate certification of original and duplicate copies of which

by customs proves export of goods. In absence of original/ duplicate copy of ARE-1 duly endorsed, by Customs, export of duty paid goods cleared on ARE-1 form from cannot be established, which is fundamental and statutory requirement sanctioning rebate claim.

- (b) The Government of India, Minister of Finance IN RE Enkay Containers- 2013 (295) E.L.T 165 (G.O.1.), wherein it has been further held that such requirement being statutory obligation allowing leniency would lead to fraudulent claims of additional/ double benefits.
- (c) The Government of India. Ministry of Finance IN RE Stanley Products 2012 (275) E.L.T. 507 (G.O.1.), wherein a has been held that non furnishing of legible and proper documents, it is not possible to cross check the details of each and every item cleared from the factory premises and the excise invoice with the details given in shipping bills. The shipping bills do not contain all the particulars as required under Law and thus are not proper and legible documents and therefore rebate is not admissible.
- (v) The legal position as well as procedure for export and claiming rebate of duty, as outlined above, clearly indicates that documents viz. original/ duplicate copy of ARE-1 duly certified by Custom Officer are fundamental requirement for sanctioning rebate claim. In absence of original/ duplicate copy of ARE-1 duly endorsed by Customs, or copies where details have been struck & re-written, export of duty paid goods cleared on ARE-1 form, from factory cannot be established.
- (vi) Therefore, the Order-in-Appeal is not legal and proper in upholding the Order-in-Original.

4. The Respondent then filed the cross-objection on the following grounds:

- (i) They had cleared the goods with all the relevant documents. The document was made but Sr. No. 2 of the front page of ARE-1 No. 01

dated 20.12.2011, the original details was struck out and with help of "White correction fluid" the fresh details were overwritten. They had changed the name of the Exporter and it had been changed on all copies of ARE-1s before despatch of goods and before signing by Superintendent of Central Excise who had verified the dispatch of goods and then signed the ARE-1 while physical supervision of Export.

(ii) Para 3 of the Order-in-Original under which it was confirmed that the Respondent had submitted the following documents while filing rebate claims:

- (a) Original Copy of ARE-1;
- (b) Duplicate copy of ARE-1 in the sealed from the Customs Authorities;
- (c) Triplicate copy of ARE-1 in sealed cover from Central Excise Range Office;
- (d) Invoice issued under Rule 11 of Central Excise Rules, 2002;
- (e) Self attested copy of Shipping Bill (EP Copy);
- (f) Self attested copy of Bill of Lading;
- (g) Disclaimer Certificat obtained from Cummins India Ltd. bearing No. CIL/EXC/2012-13-M-DC/39 dated 05.-12-2012;
- (h) Relevant declaration and debit entry details.

(iii) From the above, it can be seen that the Respondent had received sealed covers from both the Central Excise and Customs Authorities and same were submitted to the Department. The documents i.e. Original which was filed with claim and the documents received in sealed covers both were same and struck out and with held of "White correction fluid" the fresh details were overwritten. From it, it can be

proved that the corrections were made before dispatch and before physical verification by Superintendent of Central Excise and who had then endorsed the documents. As such correction made prior to dispatch which was duly endorsed by the Authorized signatory and Superintendent were clearly accepted as original once and even Customs authorities had accepted it.

- (iv) The Commissioner(Appeals) in Para 8 and 9 of the Order-in-Appeal has rightly concluded that the correction was made prior to dispatch and certification form the departmental officer and it was done originally.
- (v) The goods were exported and the Respondent had submitted proof of exports duly matched with ARE-1.
- (vi) The department had relied upon the following decision:
 - (a) IN RE West Coast Corporation [2013 (290)E.L.T. 135 (G.O.1.)] – Here Respondent submitted that in their case they had submitted all the documents including ARE-1 Original and Duplicate copies and the ARE-1s were duly certified by the Customs Authorities, all the documents submitted with claim were correlated as such rebate is correctly allowed and the above decision clearly not relevant to their present case.
 - (b) IN RE Enkay Containers- 2013 (295) E.L.T 165 (G.O.1.), and
 - (c) IN RE Stanley Products 2012 (275) E.L.T. 507 (G.O.1.),In both the case, the original and duplicate copies of ARE-1's were not submitted and as such both decisions are not applicable to the present cases as the Respondent had submitted copies of ARE-1s and all other proof of exports which were duly matching.
- (vii) The Respondent placed reliance on few case laws:
 - (a) Aarti Industries Ltd Vs UOI [2014-TIOL-894-HC-MUM-CX];
 - (b) CCE Vs Neel Pigments Pvt Ltd. [2014 (1) TMI 1468 HC];
 - (c) Sanket Industries [2011 (268) ELT 125 (GOI)];

- (d) Leighton Contractors (I) Pvt Ltd. [2011 (267) ELT 422(GOI)].
- (viii) In their present case, all the documents were well correlated and genuine. Even if it is assumed (without accepting) that the correction is made and a procedural or technical or lapse settled position that substantial benefit cannot be deprived due to some procedural/ technical errors/ infractions.
- (ix) The Respondent prayed that the Order-in-Original and Order-in-Appeal be restored.

5. A personal hearing in the case was held on 19.7.2018. Shri V.S. Reddy, Superintendent, Range-IV, Divn.-1 Satara appeared on behalf of the Department and Shri R.M. Khandilkar, Director appeared on behalf of the Respondent. The Applicant reiterated the submission made in the revision application and pleaded that the Order-in-Appeal be set aside and Revision Application be allowed. The Respondent reiterated the order of the Commissioner(Appeals) and written submission and pleaded that instant Revision Application be dismissed and Order-in-Appeal be upheld. However, there was a change in the Revision Authority hence a fresh personal hearing was held on 09.12.2019. Shri R.M. Khandilkar, Consultant appeared on behalf of the Respondent and none appeared on behalf of the Applicant. The Respondent reiterated their earlier submission. All activities were before dispatch and Order-in-Original, Order-in-Appeal have accepted the claim. Again there was a change in the Revision Authority, hence a final personal hearing was held on 27.01.2021, however none appeared for the hearing.

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.

7. On perusal of records, Respondent, manufacturer of I.C Engine and their parts had cleared excisable goods for export on payment of Central Excise duty vide ARE-1 No. 01 dated 20.12.2011 and subsequently filed rebate claim of Rs. 2,99,936/-). On verification of the records, the Assistant

Commissioner, Central Excise, Satara Division, Kolhapur Commissionerate vide his Order-in-Original No. SATARA/200/ADJ/2012 dated 18.03.2013 sanctioned rebate claims of Rs. 2,99,936/- (Rupees Two Lakhs Ninety Nine Thousand Nine Hundred and Thirty Six Only) in cash. The Department has filed the current Revision Application on the grounds that on scrutiny of the rebate claim it was observed that in respect of the ARE-1 No. 01 dated 20.12.2011 at Sr.No. 2 of the front page of the Original, Duplicate & Triplicate copies of the ARE-1s, the original details were struck out and with help of "white correction fluid" fresh details were overwritten. Therefore, admissibility of the said copies as admissible evidence was lost.

8. Government notes that the Notification No.19/2004-CE(NT) dated 6.9.2004 which grants rebate of duty paid on the goods, laid down the conditions and limitations in paragraph (2) and the procedure to be complied with in paragraph (3). The fact that the Notification has placed the requirement of "presentation of claim for rebate to Central Excise" in para 3(b) under the heading "procedures" itself shows that this is a procedural requirement. Such procedural infractions can be condoned.

9. Government notes that the jurisdictional Assistant Commissioner while sanctioning the rebate claim found that

- a) *The goods & the quality as shown in the above mentioned table were shipped within the period as stipulated under Notification No 19/2004 C:E (N.T.), dtd. 6.9.04. (i.e., within six months from the date of clearance) to the respective destination/countries.*
- b) *The claim for rebate has been lodged with the Rebate sanctioning authority, as mentioned in the respective ARE-1s, within the period as stipulate under Sec.11B of the Central Excess Act, 1944 read with Rule 19 of the Central Excise Rules, 2002.*
- c) *The description and quantity of the goods as mentioned in the ARE-1s vis-à-vis shipping Bill and Bills of Lading tally and is in order.*
- d) *The triplicate copies of the ARE-1s are duly certified by the jurisdictional Supdt. The duty has been paid through Cenvat account. The amount of rebate claimed tallies with the amount of duty paid & the amount of duty certified by the Range.*

- e) *The physical export of goods covered by the ARE-1s has been certified by the Officer in Part B of the Original and Duplicate copies of the said ARE-1s.*
- f) *No dues toward the Govt. of whatsoever nature are pending against the claimant.*
- g) *The export is under SRP."*

Government finds this itself shows that whatever goods had been cleared for export in fact has been exported as all the documents are well correlated. Further, the Notification itself shows the procedural infractions which can be condoned. Hence here the mistake of the original details being struck out and with help of "white correction fluid" in all the copies of ARE-1 No. 01 dated 20.12.2011 at Sr.No. 2 of the front page can be condoned as the corrections was made by the Respondent prior to the presentation of the ARE-1 before jurisdictional Central Excise Superintendent and Customs Authorities.

10. Government finds that the deficiencies observed by the adjudicating authority and Appellate authority are of technical nature. In cases of export, the essential fact is to ascertain and verify whether the said goods have been exported. In case of errors, if the same can be ascertained from substantive proof in other documents available for scrutiny, the rebate claims cannot be restricted by narrow interpretation of the provisions, thereby denying the scope of beneficial provision. Mere technical interpretation of procedures is to be best avoided if the substantive fact of export of duty paid goods is not in doubt. In this regard the Government finds support from the decision of Hon'ble Supreme Court in the case of Suksha International – 1989 (39) ELT 503 (SC) wherein it was held 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 the other. In UOI vs. A.V. Narasimhalu – 1983 (13) ELT 1534 (SC), the Apex Court observed that the administrative authorities should instead of relying on technicalities, act in a manner consisted with the broader concept of justice. In fact, in cases of

rebate it is a settled law that the procedural infraction of Notifications, Circulars etc., are to be condoned if exports have really taken place, and that substantive benefit cannot be denied for procedural lapses. Procedures have been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is the manufacture of goods, discharge of duty thereon and subsequent export.

11. In view of the above position, Government finds no infirmity in the Order-in-Appeal No. PUN-EXCUS-002-APP-179-13-14 dated 31.01.2014 passed by the Commissioner (Appeals), Central Excise, Pune-II and, therefore, upholds the same and dismisses the Revision Application filed by the Department being devoid of merits.


5/3/21
(SHRAWAN KUMAR)

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

ORDER No. \28/2021-CX (WZ)/ASRA/Mumbai Dated 05.03.2021

To,
The Commissioner of CGST,
Kolhapur Commissionerate,
Vasant Palaza Commerical Complex,
4th & 5th floor, C.S. No. 1079/K.H.,
Rajaram Road, Bagal Chowk,
Kolhapur - 416 001.

Copy to:

1. M/s Tata Cummins Ltd., Plot No. A-1/1, MIDC, Phaltan Industries Area, Suravadi, Tal: Phaltan, District Satara - 415 552.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.