F. NO. 195/539/13-RA

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GOVERNMENT OF INDIA
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Office of the Principal Commissioner RA and
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Mumbai- 400 005

F. NO. 195/539/13-RA/97 Date of Issue: 17.04.2018

ORDER NO.130 /2018-CX (WZ) /ASRA/Mumbai DATED 17.04. 2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Rajiv Plastics Ltd. A-8/9, Nand Bhuvan Indl. Estate, Mahakali Caves Road, Andheri (East), Mumbai-400 093.

Respondent :Commissioner of Central Excise (Appeals), Mumbai-III, Mumbai-400051.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No.BC/ 543/ RGD(R)/2012-13 dated 06.02.2013 passed by the Commissioner of Central Excise (Appeals) Mumbai-III.

ORDER

This revision application is filed by M/s. Rajiv Plastics Ltd. Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BC/543/RGD (R)/2012-13 dated 06.02.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.

2. Brief facts of the case are that the applicant are manufacturer exporters and have filed a rebate claim for Rs. 4,36,542/- under Rule 18 of the said Rules read with Notification No.19/2004 CE (NT) dated 6.09.2004 for the duty paid on goods exported. The rebate sanctioning authority observed that in respect of the said rebate claim, the applicants did not submit of the original copy of ARE-I. Accordingly, rebate claim was rejected.

3. Being aggrieved, the applicant filed appeal before before Commissioner (Appeals), Central Excise, Mumbai-III who observed that submission of original copy of ARE-1 being mandatory, rebate claim sans the original copy of the concerned ARE-1 cannot be entertained. Accordingly, Commissioner (Appeals) rejected the appeal filed by the applicant vide Order in Appeal No. BC/543/RGD(R)/2012-13 dated 28.01.2013.

4. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application on the following grounds that :

4.1 the learned Commissioner has grossly erred in rejecting the appeal filed by the Applicants, without taking into consideration and giving findings on the various submissions put forth by the Applicants.

4.2 the learned Commissioner failed to appreciate the fact that the various documents submitted by the Applicants, including the Duplicate and Triplicate copies of ARE-I duly attested by the authorities, established the fact that the goods in question were duly exported and that the duty

claimed as refund was paid on the export goods. Therefore, the rebate claimed by the Applicants deserved to be sanctioned and paid to the Applicants.

4.3 the Original copy of ARE-I duly attested by the Custom Officer, was misplaced by the CHA's clerk during transit. However, on becoming aware of the fact that the Original copy of ARE-I is missing, the said clerk had filed an FIR with the Police reporting loss of the said copy of ARE-1. Further, the Applicants had also executed an Indemnity Bond, indemnifying the Government for the loss, if any suffered on account of grant of rebate despite the Original copy of ARE-1 being lost. Under these circumstances, the Commissioner ought to have held that since the goods were duly exported and the duty claimed as rebate was duly paid on the said export goods, rebate was liable to be sanctioned and paid to the Applicants, holding there is sufficient compliance of the terms of the notification. This is particularly in the light of the fact that all other copies of ARE-1 in original, i.e. Duplicate & Triplicate copies of ARE-I, duly attested and certified by the Central Excise were available and submitted by the applicants alongwith the rebate claim. Further, other supporting documents furnished by the applicants also established the fact of export of duty paid goods. Therefore, the impugned order deserves to be set aside and quashed in toto.

4.4 that the learned Commissioner has grossly erred in not appreciating the settled legal position and a well accepted practice of accepting other evidences, supported by an Indemnity Bond, as proof of export. The Commissioner has admitted that such documents and Indemnity Bond is acceptable in case of removal of goods without payment of duty under Bond, for discharge of the obligations under Bond. It is submitted that in practice there is no difference

between the removal of the goods without payment of duty under Bond and removal of goods under claim for rebate of duty, since all the procedure in substance prescribed for such removal and submission of proof of exports are the same. Therefore, the Commissioner ought to have held that the documents submitted by the Applicants, alongwith the Indemnity Bond is sufficient compliance to acceptance of fact of export of duty paid goods and ought to have held that the rebate claimed by the Applicants was admissible, setting aside the Order-In-Original passed by the Dy. Commissioner. This is particularly in the light of the fact that the Applicants had submitted Duplicate and Triplicate copies of ARE-I duly certified by the Central Excise Range Officer as well as by the Customs authorities, from which the authenticity of the export and duty payment was established. Therefore, the impugned order deserves to be set aside and quashed.

4.5 that the Commissioner has failed to appreciate the legal position that once it is established from various evidences, including original and duplicate copies of ARE-I, Central Excise invoice, bill of lading, shipping bill, export invoice, mate receipt, bank realization certificate, etc. that the duty goods have been duly exported, then the substantial benefit of export rebate cannot be denied on the alleged ground that one of the copies of ARE-I was lost and could not be submitted by the Applicants. It is a settled legal position that, when documentary evidences produced by a claimant of export rebate establish that the duty paid goods have actually been exported, then the rebate can be sanctioned even without insisting for ARE-I. In this connection the Applicants refer to and rely upon the Hon"ble Tribunal's order in the case of C.C.E. Vs Kanwal Engineers [1996(87)ELT-141-Tribunal], In the aforesaid order, the Hon'ble Tribunal held as under:

"4. We have heard both sides. The refund of credit of duty taken is admissible subject to such conditions or limitations as set out in the relevant Notification. Notification No. 85/87 dated 1-3-1987 itself specifies bill of lading or shipping bill as acceptable documents on the basis of which export could be proved. In this case since GP 2 and shipping bill and bank certificates had been produced nothing more remained to be done to establish proof of export. Commissioner (Appeal's) order therefore cannot be faulted. We are also not able to agree that Commissioner was not competent to sanction refund. Commissioner (Appeals) in fact has allowed refund claims, if the credit is otherwise admissible. The actual sanction was to be accorded by Assistant Commissioner. We therefore do not find any infirmity in the order of Commissioner (Appeals) holding that in these circumstances shipping bill can be considered as valid document in absence of AR 4/AR 4A." (Emphasis supplied)

The Applicants also refer to and rely upon the Hon'ble Tribunal's order in the case of Model Bucket & Attachment Vs. C.C.E. [2007(217) ELT 264-TriBangalore], in which while dealing with a case where original ARE-1 was misplaced, it has been laid down as under :

"4. As the issue lies on a short compass, we take up the appeal. We find that the documents produced by the appellant with regard to the proof of export has not been challenged. As per Board Circular No. 527/ 23 / 2000-CX, dated 1-5-2000. It has been clarified that attested copy/photocopy of the shipping bill (export promotion copy) if produced to the department proof of export can be accepted. The Tribunal in the case of CCE v. Kanwal Engineers-1996 (87) E.L.T. 141 (Tri.) has accepted the document showing the proof of export. The documents in

the cited judgment are same as in the present case. The issue is covered in assessee's favour. There is no evidence produced by revenue with regard to removal of goods in the domestic market. On the other hand, the Assistant Commissioner himself has certified with regard to the export of the goods. Therefore, there is no merit in the impugned order. The same are set aside by allowing the appeal with consequential relief if any."

The Applicants also refer to and rely on the following orders on the subject, clearly laying down that the rebate can be paid even in the absence of ARE-1:

GTC Industries Ltd. Vs. C.C.E.
2003(162)ELT-169-Tri-Del.

Nagarjuna Agra Tech Ltd. Vs. C.C.E.
2001(137)ELT-1106-Tri-Chennai

Wonderseal Packing Vs. C.C.E.
2002(147)ELT-626-Tri-Del

C.C.E. Vs. Tisco 2003(156)ELT-777-
Tri-Kolkata.

It is respectfully submitted that the ratio of the aforesaid orders squarely apply in the present case and following the same, the rebate claimed by the Applicants was liable to be sanctioned and paid to the Applicants. The aforesaid decisions were specifically brought to the notice of the Commissioner, however, she has failed to take the same into consideration and give any findings with reference to the ratio laid down in these decisions. Therefore, the impugned order deserves to be set aside and quashed in toto.

4.6 that the learned Commissioner has erred in placing reliance on the order in the case of In Re : Varindra Overseas (P) Ltd. [2012 (281) ELT 129 (GOI)].In the said case, the goods were apparently exported by a merchant exporter, and therefore, it was held that both manufacturer and merchant exporter may claim rebate based on different copies of the ARE-1. It is submitted that ratio of the above order is not applicable in the Appellants' case since in the present case, the goods have been exported by the Applicants directly as manufacturer exporter and there is no merchant exporter in between. Therefore, there were no chances of claiming rebate by any person, other that the Applicants. Furthermore, in the ARE-I the authority from whom the rebate will be claimed has also been specifically indicated. Therefore, there was no chance of claiming refund from any other authority also. Therefore, in the facts and circumstances of the case, the ratio of the decision in the case of Varindra Overseas did not apply to the present case.

4.7 that it is also a settled legal position that even if there are any lapses, if it is proved that the duty paid goods have been actually exported, the proper officer sanctioning the rebate claim is empowered to condone such lapses. In view of this legal position, it is submitted that the rebate claimed by the Applicants was liable to be sanctioned and paid to them.

4.8 In the light of the legal and factual position as explained hereinbefore, it is respectfully submitted that the impugned Order-In-Appeal passed by the Commissioner is legally unsustainable and deserves to be set aside and quashed in toto and the rebate claimed by the Applicants deserved to be sanctioned.

5. A Personal hearing was held in this case on 16.01.2018 and Shri Sumit Minocha, Director, and Shri Nikhil Mujpara, Export Manager, appeared for hearing and reiterated the submission filed through Instant RA. It was pleaded that they filed FIR against the Original ARE-1. The goods have been genuinely exported and BRC copy alongwith other documents exhibiting Genuine Export is on record. Hence Order in Appeal be set aside and Revision Application be allowed.

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. Government observes that rebate claim was rejected by the original authority for the reason of non-submission of original copy of ARE-1 by the applicant. Commissioner (Appeals) vide Order in Appeal No. BC/543/RGD(R)/2012-13 dated 28.01.2013 while rejecting the appeal filed by the applicant observed that submission of original copy of ARE-1 being mandatory, rebate claim sans the original copy of the concerned ARE-1 cannot be entertained.

8. Government in the instant case notes that the Original copy of ARE-1 No. 133/11-12 dated 18.01.2012 was lost by the clerk of CHA during transit, after the same was duly attested by the Customs Authority and the said clerk had duly filed an FIR dated 24.05.2012 with MIDC police Station, Andheri (West) for the loss of the said ARE-1. Further, the applicant had also executed an Indemnity Bond on 27.06.2012, indemnifying the Government for the loss, if any suffered on account of grant of rebate despite the Original copy of ARE-1 being lost.

9. In this regard Government observes that while deciding the identical issue, Hon'ble High Court of Bombay in its judgment dated 24-4-2013 in the case of M/s. U.M. Cables v. UOI (WP No. 3102/2013 & 3103/2013) reported as TIOL 386 HC MUM CX. = 2013 (293) E.L.T. 641 (Bom.), at para 16 and 17 of its Order observed as under :-

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-1 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. 1754/2010-CX, dated 20 December, 2010 of D.P. Singh, Joint Secretary, Government of India under Section 35EE of the Central Excise Act, 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] and 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, 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-1 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-1 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.*

10. Government also observes that Hon'ble High Court, Gujarat in Raj Petro Specialities Vs Union of India [2017(345) ELT 496(Guj)] also while deciding the identical issue, relying on aforestated order of Hon'ble High Court of Bombay, vide its order dated 12.06.2013 observed as under :

"Considering the aforesaid facts and circumstances, more particularly, the finding given by the Commissioner (Appeals), it is not in dispute that all other conditions and limitations mentioned in Clause (2) of the notifications are satisfied and the rebate claim

have been rejected solely on the ground of non-submission of the original and duplicate ARE1s, the impugned order passed by the Revisional Authority rejecting the rebate claim of the respective petitioners are hereby quashed and set aside and it is held that the respective petitioners shall be entitled to the rebate of duty claimed for the excisable goods which are in fact exported on payment of excise duty from their respective factories. Rule is made absolute accordingly in both the petitions".

11. Government finds that rational of aforesaid Hon'ble High Court orders are squarely applicable to this case also. Further, from the Order-in-Original No.1435/12-13/DC(Rebate)/Raigad dated 28.08.2012 Government observes that applicant has submitted the following documents to the rebate sanctioning authority along with his claims:

1. Duplicate ARE-1 duly endorsed by the officer of Customs,
2. Triplicate copy of ARE-1 (received in sealed envelope) duly endorsed by the Supdt in-charge of the manufacturing unit,
3. Excise Invoices under which the export goods were removed from the factory of manufacturer,
4. Self attested copies of Shipping Bills /Bills of Lading and Mate Receipt,
5. Declaration/undertaking regarding refund of rebate amount in case of excess or erroneous sanction of the same,
6. Commercial Invoice,
7. Packing List,
8. Indemnity Bond dated 27.06.2012, indemnifying the Government against the loss, if any suffered on account of loss of Original copy of ARE-1 .

Moreover, during the personal hearing, the applicant has also submitted duplicate copy of Bank Realization Certificate (BRC). Therefore, Government holds that as the bonafides of export are proved and BRC has been received, the rebate claim should not be withheld for non production of original copy of ARE-1.

12. In view of the above, Government remands the matter back to the original authority for the limited purpose of verification of the claim with directions that he shall reconsider the claim for rebate on the basis of the aforesaid documents submitted by the applicant 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 copy of the ARE-1 form, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

13. In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. BC/543/RGD (R)/2012-13 dated 28.01.2013.

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

15. So ordered.

17.4.2018

(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No.130/2018-CX (WZ) /ASRA/Mumbai DATED 17.04.2018.

True Copy Attested

एस. आर. हिरूलकर
S. R. HIRULKAR
(AC)

To,
M/s. Rajiv Plastics Ltd.,
A-8/9, Nand Bhuvan Ind. Estate,
Mahakali Caves Road, Andheri (E),
Mumbai 400 093.

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5thFloor,CGO Complex, Belapur, Navi Mumbai, Thane.
3. The Deputy / Assistant Commissioner (Rebate), GST & CX, BelapurCommissionerate.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.