REGISTERED
SPEED POST

F.No. 195/148 & 149/12-RA-CX
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 22/11/13

ORDER NO. 1379-1380/13-Cx DATED 20.11.2013 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 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. 530 & 531/BK/PKL/2011 both dated 29.12.2011 passed by Commissioner of Central Excise (Appeals), Delhi-III.
APPLICANT	:	M/s JSL Stainless Ltd., Hisar.
RESPONDENT	:	Commissioner of Central Excise, Rohtak.

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ORDER

These revision applications are filed by the applicant M/s JSL Stainless Ltd., Hisar against the order-in-appeal No. 530 & 531/BK/PKL/2011 both dated 29.12.2011 passed by Commissioner of Central Excise (Appeals), Delhi-III, with respect to orders-in-original passed by Deputy Commissioner Central Excise Division, Hissar.

2. Brief facts of the case are that applicant exported the goods on payment of duty and filed rebate claims of duty paid by then under Rule 18 of the Central Excise Rules, 2002. The original authority observed that the applicant did not submit original and duplicate copies of impugned AREs-1 as statutorily required in terms of para (8.3) of Chapter 8 of CBEC Excise Manual of Supplementary Instructions. Accordingly, Show Cause Notice were issued proposing rejection of rebate claims on aforesaid grounds subsequently, the rebate claims were rejected by the original authority. After following the due process of law, the rebate claims were rejected by the adjudicating authority.

3. Aggrieved by the said orders-in-original, the applicant filed appeals before the Commissioner (Appeals) who rejected the same

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

4.1 The impugned order has been passed without appreciating the fact that the goods in question have already been exported and applicants have duly realized the export proceeds against the same. In this respect following documents evidencing export of goods are not in dispute:-

(a) Copies of ARE 1s having endorsement of Customs at the back of said Invoices about export of goods.

(b) Copies of relevant Export Invoices.

(c) Copies of Bills of Lading

(d) Copies of Shipping Bills [It is pertinent to note that Shipping Bills have specific mention/cross referencing of ARE-1s numbers/dates and also container number such as HLXU 3601157 in respect of ARE1 No. 943 dated 30.08.2009 in Shipping Bill No. 1013348 dated 01.09.2009].

(e) Copies of Mate Receipts. The said Mate Receipts have also cross referencing of Shipping Bills and Container Numbers, for example Mate Receipt No. 998650 issued by Hapag-Lloyd(India) Pvt. Ltd., has mention of Shipping Bill No. 1013348 and Container No. HLXU 3601157.

In addition to above, the applicant has also furnished Bank Realization Certificates evidencing realization of export proceeds against the goods in question. Therefore, there does not remain any doubt about the export of goods having been taken place.

4.2 The applicants duly filed reply to the aforesaid Show Cause Notice vide their letter No. JSL/CE/2010/2357 dated 16.08.2010. It was stated by the applicants that in their letter dated 08.07.2010 they had duly mentioned that rebate claim application was filed on the basis of photocopy [duly endorsed by the Customs Authorities] of the ARE-1s for the reason that original and duplicate copy of the said ARE-1s had been misplaced at the applicant's end. It was further submitted that for the said reason the applicants had got the Customs endorsement on the copy of ARE-1s to establish that the goods have actually been exported. It was also informed that the applicants had already filed other supporting documents i.e. Bills of Lading, Shipping Bill, Mater Receipts and Excise Invoices, which shall conclusively establish the export of goods. The applicants further submitted that they had already realized the export proceeds against the said export and as a proof of realization of export proceeds, the applicant also furnished copies of Bank Realization Certificates dated 16.01.2010 issued by Citibank, New Delhi. In the said letter applicant had also given an undertaking to the

effect that in case the original and duplicate copies of ARE-1s are found/traced, the same shall be submitted to the office of Deputy Commissioner.

4.3 Commissioner (Appeals) has erred in relying the decision of Hon'ble Supreme Court in case of Saraswati Sugar Mills Vs. Commissioner of Central Excise, Delhi-III – 2011-TOIL-73-SC-CR. The Hon'ble Supreme Court in the said case has decided about the admissibility of cenvat credit on certain capital goods and no law as stated in the impugned order has been laid down by the Hon'ble Supreme Court. In the facts and circumstances of the case the Hon'ble Supreme Court has only held that the goods in question i.e. Iron and Steel structural goods shall not be entitled for cenvat credit.

4.4 The applicant submits that a distinction is to be made between the procedural condition of a technical nature and a substantive condition. That non-observance of procedural condition is condonable and substantive benefit cannot be disallowed on the basis of such non-observance of procedural condition of a technical nature. In this connection reliance is placed on the decision of Hon'ble Supreme Court in case of Mangalore Chemicals & Fertilizers Ltd. Vs. Dy. Commissioner – 1991 (55) ELT 437 (SC). The said decision was relied upon by the applicant, however, Commissioner (Appeals) has failed to give any findings in this regard.

4.5 Commissioner (Appeals) has erred in disallowing the claim of the applicant merely on the basis of procedural ground to the effect that the applicant could not produce original or duplicate copies of ARE-1s as per Notification No. 19/2004-CE/(NT) dated 06.09.2004, as amended. It is submitted that the said condition the Notification is of procedural nature and provides for submission of ARE-1 only to establish export of goods. Therefore, even if the applicant could not place original or duplicate copies of ARE1s, the Commissioner (Appeals) should have accepted the rebate claim on the basis of overwhelming evidence including evidence of realization of export proceeds placed by the applicant before the Commissioner (Appeals). Non-production of original or

duplicate copies of ARE1s can at best be termed as procedural lapse and the substantive benefit available to the applicant should not have been disallowed merely for the said reason in the circumstances where it was not possible for the applicant to trace out the misplaced copies of ARE1s.

4.6 Commissioner (Appeals) has failed to appreciate that the applicant had duly undertaken to produce the lost/misplaced ARE1s as and when found by them, therefore, the Commissioner (Appeals) should have, in fairness, allowed the rebate claim after verifying the amount of duty paid from the attested photocopies of ARE1s having endorsement of export with the triplicate copies of the said ARE1s available with the Range Superintendent of Central Excise, Hisar. The applicants hereby undertake not to claim rebate of duty on the ARE1s, if found at any later date. Further, the applicant is also prepared to file such undertaking in this behalf as is directed by you Honour. The applicant has relied upon various case laws in favaour of their contention that rebate claim can not be denied for said procedural lapse.

5. Personal hearing scheduled in this case on 18.10.2013 was attended by Shri K.K.Gupta, Advocate; Shri Sanjeev Mishra, DGM (Excise) of applicant company and Shri Rajesh Yadav, Manager (Excise) of applicant company on behalf of the applicant who reiterated the grounds of revision application. Nobody attended hearing on behalf of department.

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

7. On perusal of records, Government observes that the applicants rebate claims were rejected vide impugned Orders-in-Original on the ground of that applicant failed to submit original and duplicate copies of impugned AREs-1.

8. Government finds that in a recent judgment dated 24.04.2013, in the case of UM cables vs. UOI in W.P. No. 3102-2/13 & 3103/13, the Hon'ble Bombay High Court reported as 2013-TIOL -386-H.C.-MUM-Cx has decided the same issue and has observed in para 11, 12, 13, 14 ....., 16 , 17 of said order 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-I, 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-I applications were actually exported as evident from the original and duplicate copies of the ARE-I 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-I 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-I 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 = (2009B-TIOL-1973- CESTAT-AHM). 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."

9. Government notes that Hon'ble High Court of Bombay in the above said judgement has held that rebate sanctioning authority shall not reject the rebate claim on the ground of non production of original and duplicate copies of ARE-1 form, if it is otherwise satisfied that conditions for grant of rebate have been fulfilled. The ratio of said judgement is squarely applicant to the instant cases as facts are identical. As such matter is required to considered in the light of above said judgement.

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

11. The revision applications are disposed off in terms of above.

12. The revision applications are allowed in terms of above.

13. So ordered.

(D.P.Singh)
Joint Secretary to the Government of India

M/s Jindal Stainless Ltd.,
O.P. Jindal Marg,
Hisar (Haryana)

(Attested)

(टी॰ आर॰ आर्य / T.R. ARYA)
अधीक्षक, आर.ए / Superintendent RA
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance, (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

G.O.I. Order No.1379-1380/13-Cx dated 20-11-2013

Copy to:-

1. The Commissioner of Central Excise Rohtak, SCO No.6, Sector-1, Rohtak (Haryana)
2. Commissioner of Central Excise (Appeals), Delhi-III, Vanijya Nikunj, Udyog Vihar Phase-V, Gurgaon (Haryana)
3. Deputy Commissioner of Central Excise Division, 135-E, Model Town, Hisar
4. Shri K.K.Gupta, Advocate, B-137, Second Floor, Ramprastha, Ghaziabad-201011 (U.P.)
5. PS to JS(Revision Application)
6. Guard File
7. Spare Copy.

T.R. Arya

Supdt (Revision Application)