

REGISTERED 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. 195/207/13-RA / 5525

Date of Issue: 28.11.19

ORDER NO. 139/2019/CX(WZ)/ASRA/MUMBAI DATED 31.10.2019,
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 Steel Corporation (IBD), Mumbai

Respondent : Commissioner, Central Excise, Raigad

Subject : Revision Application filed under Section 35 EE of the Central
Excise Act, 1944 against Order-in-Appeal No. US/751/RGD/
2012 dated 31.10.2012 passed by the Commissioner of Central
Excise (Appeals-II), Mumbai.

ORDER

This revision application is filed by M/s Steel Corporation (IBD), Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/751/RGD/2012 dated 31.10.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai with respect to Order-in-Original No. 430/11-12/DC(Rebate)/Raigad dated 15.05.2012 passed by the Deputy Commissioner, of Central Excise (Rebate), Raigad.

2. Brief facts of the case are that the applicant, a merchant exporter, has exported the goods manufactured by M/s Aradhya Steel Wires Pvt. Ltd., Devangere and filed a rebate claims of Rs. 2,42,169/- (Rupees Two Lakh Forty Two Thousand One Hundred and Sixty Nine only) under Rule 18 of the Central Excise Rules, 2002 read with Notification No.19/2004-CE(NT) dated 6.9.2004. The original authority rejected the rebate claim on the ground that the manufacturer of goods M/s Aradhya Steel Wires Pvt. Ltd. fell in Bangalore-I Commissionerate and both the corresponding ARE-1s showed that the goods were cleared from Mumbai. Further, there were no signatures of manufacturer on Original, duplicate and Triplicate copies of ARE-1 and the corresponding invoices did not show clearance for exports. In view of these observations, the original authority held that the applicant had not fulfilled the conditions stipulated in Notification No.19/2004-CE(NT) dated 6.9.2004 read with the provisions of Rule 18 of the Central Excise Rules, 2002 and rejected the rebate claims.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals) who upheld the findings of the adjudicating authority that the rebate claims were liable for rejection for non compliance of statutory condition of direct export from the factory as laid down in Notification No.19/2004-CE(NT) dated 6.9.2004.

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

- 4.1 the order passed by the Adjudicating authority is not proper and legal as the same was passed on the basis of personal hearing conducted by his predecessor and this contention had not been considered by the Commissioner (A).
- 4.2 a genuine rebate claim should not be denied only on technical grounds as is done by Adjudicating authority and Appellate Authority .
- 4.3 the goods were received by them on payment of duty from M/s Aradhya Steel Wires Pvt. Ltd. Davangere, and on receipt of the goods they were stored in their Godown. Then they approached jurisdictional Supdt. of Central Excise, Range-V, Division A, Mumbai-I for inspection and permitting of export under their physical supervision. The same was permitted and the goods were cleared under the physical supervision of Supdt. & Inspector of Central Excise, Range-V, Division A. The examining officer of Customs verified the goods and Supdt /P.O. of Customs after export certified the physical export of goods. After following all these procedures they filed rebate claims. The duty payment certificate was directly called from jurisdictional Range of the manufacturer, M/s Aradhya Steel Wires Pvt. Ltd. by the adjudicating authority. They also obtained disclaimer certificate from M/s Aradhya Steel-Wires-Pvt-Ltd.
- 4.4 they scrupulously followed Notification No. 19/2004 CE (NT) dated 06.09.2004 and Board Circular No. 294/10/97 CX dated 30.01.1997 issued under F. No. 209/2/97- CX 6.
- 4.5 that there is no allegation that the goods cleared under ARE-1s had not been exported. When the physical export is accepted, all the procedural infraction needs to be condoned. They rely on GOI order in an identical issue where the exporter did not inform Range office before export and no ARE-1 had been certified by Range

officer, GOI allowed the rebate to the exporter. (GOI Order No. 335-337/2002 dated 31.12.2002). I

- 4.6 The customs officer has certified the ARE-1s showing therein the Shipping Bill No. & Date, Mate Receipt No. & date, Name of the Ship etc. The shipping bill also endorsed by the same customs officer showing all these details and ARE-1 Nos. Shipping Bill also shows ARE-1 No and date. Particulars like Description, Net weight, gross weight which tallied with each other documents, such as ARE-1, Central Excise invoice, Shipping Bill, Bill of Lading, Export invoice and packing slip hence there is no iota of doubt that same goods cleared ARE-1s were exported. Further they have received remittances from abroad for these exports.
- 4.7 they rely on GOI order in respect of M/s Krishna Filament Ltd. - 2001(131) E.L.T. 726 (GOI) and Circular No. 510/06/2000-CX dated 3.2.2000 and rebate claims should not be rejected on technical grounds. Further as per CBEC Circular No. 81/81/94-CX. dated 25.11.1994 Commissioner can condone all the conditions except the time limit for filing the Rebate claim as per Section 11B of the Central Excise Act, 1944.

In view of the above, the applicant prayed that the said Order in Original and Order in Appeal be set aside and the rebate claim of Rs. 242,169/- may be directed to sanction and refunded to them.

5. Personal Hearing in this case was held on 23.08.2019 and was attended by Shri R.V.Shetty and Shri Sharad Shetty, Advocates who reiterated the submissions filed through revision application along with the written submissions of case laws filed. It was pleaded that Order-in-Appeal be set aside and Review Application be allowed. Nobody attended the hearing on behalf of department.

6. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned order-in-original and order-in-appeal.

7. On perusal of case records, Government observes that in the impugned Order-in-Appeal, it has been held that rebate claims were not admissible as the goods were not exported direct from factory or warehouse as laid down in condition 2(a) of Notification No.19/04-CE(NT) dated 6.9.04. The applicant has filed this revision application on grounds mentioned in para (4) above.

8. The department has contended that the applicant has not exported the goods directly from factory or warehouse and as such, violated the condition Notification No.19/2004-CE(NT). The applicant has stated that the goods can be exported from factory or warehouse or any other place permitted by the CBEC by a general or special order. The CBEC vide Circular No.294/10/97-Cx dated 30.1.1997 has prescribed the procedure for export of goods from place other than factory or warehouse. Applicants have stated that they have complied with requirement of the said circular dated 30.1.1997

9. Government notes that the admissibility of these rebate claims mainly depends on the compliance of provisions and procedure laid down in CBEC Circular dated 30.01.1997. The relevant paras of said Circular are as under:

"8.1 An exporter; (including a manufacturer-exporter) desiring to export duty paid excisable goods (capable of being clearly identified) which are in original factory packed condition/not processed in any manner after being cleared from the factory stored outside the place of manufacturer should make an application in writing to the Superintendent of Central Excise incharge of the Range under whose jurisdiction such goods are stored. This application should be accompanied with form AR4 duly completed in sixtuplicate, the invoice on which they have purchased the goods from the manufacturer or his dealer and furnish the following information :

(a) Name of Exporter

(b) Full description of excisable goods along with marks and/or numbers

- (c) *Name of manufacturer of excisable goods*
- (d) *Number and date of the duty paying document prescribed under Rule 52A under which the excisable goods are cleared from the factory and the quantity cleared.*
- (e) *The rate of duty and the amount of duty paid on excisable goods.*

8.2 *The AR-4 form should have a progressive number commencing with Sl. No. 1 for each financial year in respect of each exporter with a distinguishing mark. Separate form should be made use of for export of packages/consignments cleared from the same factory/warehouse under different invoices or from the different factories/warehouses. On each such form it should be indicated prominently that the goods are for export under claim of rebate of duty.*

8.3 *On receipt of the above application and particulars, the particulars of the packages/goods lying stored should be verified with the particulars given in the application and the AR-4 form, in such manner and according to such procedure as may be prescribed by the Commissioner.*

8.4 *If the Central Excise Officer deputed for verification of the goods for export is satisfied about the identity of the goods, its duty paid character and all other particulars given by the exporter in his application and AR-4, he will endorse such forms and permit the export.*

8.5 *The exporter will have to pay the supervision charges at the prescribed rates for the services of the Central Excise Officer deputed for the purpose.*

8.6 *The disposal of different copies of AR4 forms should be in the following manner :*

(i) *the original and duplicate copies are to be returned to the exporter for being presented by him along with his shipping bill, other documents and export consignment at the point of export.*

(ii) *triplicate and quadruplicate copies to be sent to the Superintendent In-charge of the Range in whose jurisdiction the factory from which the*

excisable goods had been originally cleared on payment of duty is situated. That Superintendent will requisition the relevant invoice duty paying document which the manufacturer shall handover to the Superintendent promptly under proper receipt and the Superintendent will carry out necessary verification, and certify the correctness of duty payment on both triplicate and quadruplicate copies of AR4. He will also endorse on the reverse of manufacturers' invoice "goods exported - AR-4 VERIFIED", (and return it to the manufacturer under proper receipt). He will forward the triplicate copy to the Maritime Commissioner of the Port from where the goods were/are exported. The quadruplicate copy will be forwarded to his Chief Accounts Officer. The Range Superintendent will also maintain a register indicating name of the exporter. Range Division/Commissionerate indicating name of the exporter's godown 'warehouse etc.' are located and where AR-4 is prepared, AR-4 No. and date, description of item corresponding invoice No. of the manufacturer; remarks regarding verification, date of dispatch of triplicate and quadruplicate copy.

(iii) the quintuplicate copy is to be retained by the Superintendent In-charge of the Range from where the goods have been exported for his record.

(iv) the sextuplicate copy will be given to the exporter for his own record.

8.7 The goods, other than ship stores, should be exported within a period of six months from the date on which the goods were first cleared from the producing factory or the warehouse or within such extended period (not exceeding two years after the date of removal from the producing factory) as the Commissioner may in any particular case allow, and the claim for rebate, together with the proof of due exportation is filed with the Assistant Commissioner of Central Excise before the expiry of period specified in Section 11B of the Central Excise Act, 1944 (1 of 1944).

8.8 The rebate will be sanctioned, if admissible otherwise after following the usual procedure."

10. Government observes that in this case the applicant cleared the goods from manufacturer M/s Aradhya Steel Wires Pvt. Ltd. at Devanagere and

brought the said goods at their Godown at Mumbai. The aforesaid circular dated 30.1.1997 provides for the export of goods from a place other than factory or registered warehouse subject to compliance of procedure laid down therein. Hence, rebate claims cannot be rejected merely on the grounds that the goods have not been exported directly from the factory or warehouse. The whole case is required to be seen in context of compliance of the said circular dated 30.1.1997. The department has not brought out any violation of circular dated 30.1.1997 by the applicant. Moreover, the applicant kept the department informed that they are exporting their goods through Mumbai godown. The applicant vide their letters dated 09.01.2004 and 24.01.2006 duly informed jurisdictional Superintendent about details of such goods received from M/s Aradhya Steel Wires Pvt. Ltd., Devanagere which they intended to export and also requested them to get their goods stuffed in presence of Central Excise authorities. Accordingly the goods in both the cases were cleared under the physical supervision of Supdt. & Inspector of Central Excise, Range-V, Division A, Central Excise, Mumbai-I

As such, the applicant cannot be alleged to have violated the provisions contained in the above said circular.

11. Government observes in the present case that the applicant had submitted all required documents viz. ARE-1, Excise Invoice, Shipping Bill, Bill of Lading & Mate Receipt etc. to the original authority and there is no doubt about export of goods. From the copies of export documents, Government observes that the details regarding quantity, net weight, gross weight, description etc. are exactly tallying impugned ARE-1 and shipping bills; that the Part-II on reverse of ARE-1 contains the Customs Certification about export of goods vide relevant Shipping Bills; that Customs officer has certified that goods mentioned on ARE-1 have been exported vide relevant Shipping Bill; that at the same time Part-I on reverse side of ARE-1 has the endorsement of

Central Excise Officers, which denotes that identity of goods and its duty paid character is established. The Central Excise Officers are required to verify the particulars of packages/goods lying/stored with the particulars given in ARE-1 Form and if the Central Excise Officer is satisfied about identity of goods, its duty paid character and all the particulars given by the exporter in his application, he will endorse the ARE-1 Form and permit export. In this case no contrary observation is made by Central Excise Officers and therefore they have made endorsement in ARE-1 after doing the requisite verification and allowed exports. The original authority has also verified the duty payment in respect of Central Excise Invoices issued by M/s Aradhya Steel Wires Pvt. Ltd., Devanagere from Jurisdictional Superintendent of Central Excise, Devangere Range. Moreover, the applicant has also produced BRCs for these exports.

12. Government also notes that there are a catena of judgements that the substantial exports benefits should not be denied on mere procedural infractions until and unless there is some evidence to point out major violation to defraud the Government revenue. Further, Government has decided identical issues in a catena of its judgements, wherein it has been held that in case where the goods could not be exported directly from factory or warehouse in terms of the Notification No. 19/2004-C.E.(N.T.) dated, substantial compliance of aforesaid circular dated 30.01.1997 and resultant export of duty paid-goods, rebate claims have to be held admissible.-----

13. Keeping in view the existence of enough adduced evidence here in above, Government is of the considered opinion that when there is nothing on record to out rightly negate the claim of applicant that duty paid goods cleared from M/s Aradhya Steel Wires Pvt. Ltd., Devanagere were exported by them. Government, thus holds that duty paid goods have been exported in this case and rebate claim is admissible to the applicant.

14. In view of above circumstances Government sets aside both the orders passed by the lower authorities and remands the case back to the original authority to settle the applicant's rebate claim as per law in view of above observations and due verification of original documents.

15. Revision application is disposed off in above terms.

16. So, ordered.



(SEEMA ARORA)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. (39)/2019-CX (WZ) /ASRA/Mumbai DATED 31.10.2019

To,

M/s Steel Corporation (IBD),
23/27, Kumbharwada, 2nd Lane,
Sant Sena Maharaj Marg,
Mumbai-400 004.

Copy to:

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