

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. 195/272/13-RA

Date of Issue:

ORDER NO. 13/2019-CX (SZ) /ASRA/MUMBAI DATED 30.08.2019
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 THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s. M.M. Forgings Ltd.,
Plant No. 2, Erasanayakanpatti,
Virimalai - 621 316

Respondent : Commissioner, CGST, No. 1 Williams Road, Cantonment,
Trichy - 620 001.

Subject : Revision Applications filed, under section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
310/2012 dated 06.11.2012 passed by the Commissioner
of Customs & Central Excise (Appeals) Trichirapalli 620
001.

ORDER

This revision application is filed by M/s. M. M. Forgings Ltd., (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. 310/2012 dated 06.11.2012 passed by the Commissioner of Customs & Central Excise (Appeals) Trichirapalli 620 001.

2. The facts of the case in brief are that the Applicant had filed a rebate claim amounting to Rs. 2,02,826/- (Rupees Two Lakhs Two Thousand Eight hundred and Twenty Six only) in April 2011 under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended in respect of duty paid on exported goods under 4 ARE-1s. The lower adjudicating authority rejected the rebate amount of Rs1,37,357/- pertaining to two ARE-1s indicating discrepancies regarding the vessels name which did not tally with the Bill of Lading.

3. Aggrieved by this order the applicant filed appeal before the Commissioner(Appeals). The Commissioner (Appeals) in his findings noted that the records in ARE-1 No. 71 & 72 dated 30.04.2011 mentions the vessel name as PAC Aquarius – 127. The Applicants produced a corrected copy of the Shipping bill wherein the vessel name has been corrected to Hansa Stavanger -12 along with the endorsement by the Customs Officer. However as the impugned ARE-1 were not modified with the vessels name, it was held that there is no correlation between the shipping bill/Bill of Lading and the ARE-1s Nos. 71 & 72 dated 30.04.2011, and as ARE-1s are the basic documents for export, it cannot be treated as technical and accordingly the appeal was rejected.

4. Being aggrieved and dissatisfied with the impugned orders-in-appeal, the applicant has filed this Revision Application inter alia on the following grounds;

4.1 The applicant submits that the order of the lower appellate authority is totally perverse and not in conformity with the Central Excise Act and Rules framed therein.

4.2 The main ground for rejection is that there is no correlation between the shipping bill/bill of lading and ARE Is. The respondent totally failed to look at the other supporting documents in the correct perspective and proceeded to reject the claim of the applicant with the pre conceived notion.

4.3 The applicants submit that, in ARE I except the Vessel name mentioned as PAC Aquaris 127, all other documents such as Shipping bill, Bill of lading, EIR report etc., can be very much correlated with the export goods to prove that the goods sent under the said ARE Is were ultimately exported.

4.4 The applicant submits that in the shipping Bill, ARE I Nos. 71 & 72 were mentioned and the Vessel name also been amended to Hansa Stavanger-I2 from PAC Aquarius 127. In the shipping bill there is an endorsement stating the Container No. FACIU 2570640, Sealed with Customs seal no. MFCH15072. The container Number endorsed in the shipping bill is mentioned in the Bill of lading. Likewise, the EIR report given by the Container terminal carries the Container No. FCIL12570640 and Seal Nos. MECCG08740 as mentioned in the Bill of lading. Thus, the other document covers the required details in order to substantiate that the goods have been exported through the Vessel Hansa Stavanger-12.

4.5 The applicants submit that the ARE-1 dated 30.04.2011 is the initial document prepared at the time of removal of goods from the factory of exporter. The actual export takes place later. At the time of removing the goods from the factory the applicant was supposed to send the goods by the Vessel PAC Aquaris-I27. However, they could not load the goods in the said vessel in time. Hence they loaded the goods in Vessel Hansa Stavanger-2.

4.6 Further, there is no doubt on the part of the department that the goods had not been exported. The applicants submit that in order to grant rebate, what has to be seen is whether the goods have been exported and duty on those exported goods had been paid or not. Once the duty paid nature and export proof is submitted, then sanction of rebate claim becomes automatic.

4.8 Once the conditions of the above notification are complied with, rebate can be granted. The provisions of the Notification make it abundantly clear that a mere submission of the ARE-1 form does not constitute the presentation of a claim for rebate of Central Excise unless the claim filed with other relevant documents such as shipping bills, bill of lading etc., That being the case, rejection the claim of the applicant on the basis of discrepancy in the Vessel name mentioned in ARE I is totally arbitrary.

4.9 The Applicant submits that in the case of In Re: Omsons Cookware Pvt. Ltd. Reported in 2011 (268) E.L.T. 111 (GOI) has held in Para 14..... *restricted and technical interpretation of procedure etc. is to be avoided in order not to defeat the very purpose of such schemes which serve as export incentive to boost export and earn foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical breaches.* In the Union of India vs A. V. Narasimhalu. 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed *the administrative authorities should instead of relying on technicalities, act in manner consistent with the broader concept of justice.* Similar observation was made by the Apex Court in the Formica India v. Collector of Central Excise. 1995 (T E.L.T. 511 (S.C.) in observing that *once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so, had elapsed'.*

4.10 The Applicants submit that as per the settled legal position substantial benefits cannot be denied because of procedural infractions. In relying on the case of M/s Mangalore Chemicals and Fertilizers Ltd. v. DCCE - 1991 (55) E.L.T. 437 (S.C.). In fact, it is now trite law that the procedural infractions of notifications/circulars should be condoned if exports have really taken place and the law is settled that substantive benefit cannot be denied for procedural lapses.

4.11 As per para 8.3 of Chapter 8 of C.B.E.C., Central Excise Manual, following documents are required to be filled with claim of rebate under Notification No. 19/2004-C.E. (MT.), dated 6-9-2004 issued under Rule 18 of Central Excise Rules, 2002. (i) A request on the letterhead of the exporter containing claim of rebate, ARE-1 numbers and date corresponding invoice numbers and dates amount of rebate on each ARE-1 and its calculations. (ii) Original copy of ARE-1. (iii) Invoice issued under Rule II (iv) Self-attested copy of Shipping Bills and (v) Self-attested copy of Bill of Lading (vi) Disclaimer Certificate (in case when claimant is other than exporter). Thus it is evident that filing of aforesaid documents is the requirement for filing a rebate claim. Having done so, the department cannot harp on the procedural lapse, as long as the factum of export is not in doubt rebate being a beneficial scheme, the same should be granted.

4.12 The Applicants prayed that the Hon'ble Revision Authority may be pleased to quash and set aside the impugned order in Appeal and consequently the order of the original authority with consequential relief and thus render justice.

5. A personal hearing in the case was held on 21.08.2019. The Applicants submitted that the rebate was denied due to minor discrepancies in the documents. The export of goods is not disputed and submitted case laws in favour of their case.

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 Commissioner (Appeals) as the ARE-1 No. 71 & 72 dated 30.04.2011 mentions the vessel name as PAC Aquarius - 127, whereas the copy of the Shipping bill produced by the Applicants, the vessel name has been corrected to read as Hansa Stavanger -12. However the impugned ARE-1 are not modified with the vessel name. Hence there is no correlation between the

Shipping bill/ Bill of Lading and the ARE-1 No. 71 & 72 dated 30.04.2011 and as the ARE-1s are the basic documents for export, and therefore it cannot be treated as technical or procedural lapse.

8. The Government however notes that in the brief facts of the case in the order of the lower authority clearly mentions the Applicants rebate claim was sent to the Range officer at Viralimai for verification and the Range officer has reported the authenticity of the duty payment in respect of the goods exported. The Range officer has also certified that the claim is in order and that no dues are pending realization from the Applicant and the rebate claim can be sanctioned. Thus, it can be safely assumed that the goods were duty paid. The Government also notes that the lower authorities do not dispute the fact of export of the goods and the export, therefore is not in doubt. The only reason for dis allowing the rebate claim appears to be that the name of the vessel does not tally with the one mentioned in the ARE-1.

9. Government observes that for proper understanding of issue the relevant provisions of Notification and instructions regarding filing of rebate claim along with requisite documents to be perused are extracted as under :-

9.1 Paras 8.2, 8.3 and 8.4 of part I of Chapter 8 of C.B.E. & C. Excise Manual of Supplementary Instructions stipulates as under :-

“8.2 It shall be essential for the exporter to indicate on the A.R.E. 1 at the time of removal of export goods the office and its complete address with which they intend to file claim of rebate.

8.3 The following documents shall be required for filing claim of rebate :

(i) A request on the letterhead of the exporter containing claim of rebate, A.R.E. 1 numbers and dates, corresponding invoice numbers and dates amount of rebate on each A.R.E. 1 and its calculations,

(ii) Original copy of the A.R.E. 1,

- (iii) Invoice issued under rule 11,
- (iv) Self attested copy of shipping bill, and
- (v) Self attested copy of Bill of Lading.
- (vi) Disclaimer Certificate [in case where claimant is other than exporter]

8.4 After satisfying himself that the goods cleared for export under the relevant A.R.E. 1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of A.R.E. 1 duly certified by Customs, and that the goods are of 'duty-paid' character as certified on the triplicate copy of A.R.E.-1 received from the jurisdictional Superintendent of Central Excise (Range Office), the rebate sanctioning authority shall sanction the rebate, in part or full. In case of any reduction or rejection of the claim, an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued."

9.2 Para 3(b) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 issued under Rule 18 of the Central Excise Rules, 2002, envisage as under :-

"3(b) Presentation of claim for rebate to Central Excise :-

(i) Claim of the rebate of duty paid on all excisable goods shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner;

(ii) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime Commissioner of Central Excise shall compare the duplicate copy of application received from the officer of customs with the original copy

received from the exporter and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part.”

10. From above position, it becomes quite clear that ARE-1 application is the basic essential document for export of duty paid goods under rebate claim. Among the documents required to be submitted along with rebate claim only original/duplicate copy of ARE-1 are the original documents and in case of all other documents, photocopies of the same are admissible. The Customs certification on these copies of ARE-1 proves the export of goods.

11. From the above it is clear that the ARE-1 is issued at the time of removal of the goods, whereas the Bill of Lading is issued by the carrier and /or his agent to acknowledge the receipt of the cargo for shipment and issued on filing EGM. In the international trade it is not uncommon that the sailing schedule changes owing to various reasons. The exporter may have planned the export to be shipped on a particular vessel keeping the approximate time lines, for transport of the goods to the port and Customs examination etc. However more often than not inordinate delays and unforeseen exigencies may delay the cargo thus missing the cut off time of the vessel, planned at the time of preparation of ER-1. Thus resulting in rescheduling the export through a different vessel, this results in the change of vessel name on the subsequent documents. It is therefore the most essential aspect to be scrutinized is for the rebate authority to establish the fact that the goods exported are the same as the one are cleared under subject ARE-1s. Further, the Applicant claims that the containers used for export are mentioned in the Bill of lading are reflected in the Shipping bill endorsing the fact that the goods have been exported through the vessel Hansa Stavanger -12. This aspect is not reflected in the Order in original and the Order in Appeal.

12. Government observes that while deciding a similar 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 that “.....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.”

10. Government finds that the rationale of aforesaid Hon'ble High Court judgment, is squarely applicable to the instant case in so much as the original ARE-1s have been produced, albeit with a minor discrepancy of the name of the vessel. Further, In the case of M/s Suksha International v. UOI, 1989 (39) E.L.T. 503 (S.C.) relied upon by the Applicant, the Hon'ble Supreme Court has observed 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.* The Government also relies on the judgement of the Apex court, relied upon by the Applicant, in the case of Mangalore Chemicals and Fertilizers Ltd. v. DCCE - 1991 (55) E.L.T. 437 (S.C.). Hon'ble Supreme Court while drawing a distinction between a procedural condition of technical nature and a substantive condition in interpreting statute observed that “ *procedural lapses of technical nature can be condoned so that substantive benefit is not denied for mere procedural infractions.*

11. Government further observes that the Applicant has submitted all the required documents along with these claims viz., Original copy of ARE-1, Invoice issued under Rule II, Self-attested copy of Shipping Bills, Self-attested copy of Bill of Lading, Disclaimer Certificate (in case when claimant is other than exporter) to the rebate sanctioning authority. Having done so, the department instead of dwelling on technical discrepancies, which happened beyond the control of the Applicants, needs to ascertain whether the exports have genuinely taken place and the goods are of duty paid nature. As long as the factum of export is not in doubt rebate being a beneficial scheme, the same should not be denied.

12. In view of the above, Government holds that ends of justice will be met if the impugned Order in Appeal is set aside and the case remanded back to

the original adjudicating 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 in the correct perspective and assess the claim after satisfying itself in regard to the authenticity of those documents. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

13. Government sets aside the impugned Order-in-Appeal No. 310/2012 dated 06.11.2012 and remands the case to the original adjudicating authority as ordered supra.

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

15. So ordered.

(SEEMA ARORA)

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

ORDER No. 13/2018-CX (SZ) /ASRA/Mumbai

DATED 30.08.2019

To,

M/s. M.M. Forgings Ltd.,
Plant No. 2, Erasanayakanpatti,
Virimalai - 621 316

Copy to:

1. Commissioner, CGST, No. 1 Williams Road, Cantonment, Trichy - 620 001.
2. The Commissioner of CGST & CX, (Appeals), No. 1 Williams Road, Cantonment, Trichy - 620 001.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.