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F.No. 195/390/11-RA
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.. 22/2/13

Order No. 140 /13-Cx dated 22.02.2013 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, Under Secretary 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under section 35 EE of the Central Excise Act., 1944 against the Order-in-Appeal No. SB/10/Th-I/11 dated 10.01.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai -I

Applicant : M/s D.K. Pharma Pvt. Ltd., Badlapur

Respondent : The Commissioner of Central Excise, Thane-I

ORDER

This revision application is filed by M/s D.K. Pharma Pvt. Ltd., Belapur against the Order-in-Appeal No. SB/10/Th-I/11 dated 10.01.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-I, with respect to order-in-original passed by the jurisdictional Assistant Commissioner of Central Excise, Kalyan-IV Division.

2. Brief facts of the case are that the applicants are engaged in the manufacturing of excisable goods falling under Chapter 29 of the Central Excise Tariff Act, 1985. The applicants had filed rebate claim in respect of duty paid on goods exported. On scrutiny of the claim, it was observed that the original and duplicate copies of ARE-1 and self attested copy of relevant Shipping Bill were not submitted along with the claim. Hence, the applicant was asked to furnish the required documents,. In spite of lapse of over 07 months time, the applicant failed to submit the documents. Accordingly, the original authority rejected the rebate claim vide impugned Order-in-Original.

3 Aggrieved with their Order-in-Original applicant filed appeal before Commissioner (Appeals), who rejected the same

4 Being aggrieved with the impugned Orders-in-Appeal, the applicant has filed these Revision Applications under section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 The original and duplicate copies of ARE-1 were submitted to the Assistant Commissioner, at the time of drawal of samples and the same were not returned to the applicant, in spite of repeated requests by way of letters and orally, which gets substantiated from letters dated 04.03.2009, 14.09.2009 and 27.05.2009.

4.2 Export of the goods is not in dispute and the same can be evidenced from the copies of Shipping Bill, triplicate copies of ARE-1, Bill of Lading, realization of export proceeds etc., based on the following judgements:-

- (i) Kanwal Engineers – 1996 (87) ELT 141 (Tri.)
- (ii) Model Buckets & Attachments (P) Ltd., - 2007 (217) ELT 264 (Tri.)

4.3 Original and duplicate copies of ARE-1s are not part of the refund claim, since the same were in possession of Customs Authorities. Triplicate of copy of ARE-1 bears the endorsement of customs authorities substantiating the export of goods. The bank realization certificate was not an issue for denying credit before Adjudicating Authority. However, the applicants now enclosed bank realization certificate substantiating the receipt of export proceeds from overseas buyer for the goods exported.

4.4 The fact of export (which is not in dispute), the co-relation of Shipping Bill and ARE-1, the duty paid nature of the goods as evidenced by triplicate copy of ARE-1, is established. The duplicate copy of ARE-1 was sent along with the goods, but presumably was not forwarded to the Rebate Sanctioning Authority. The original copy was not returned back to the applicants.

4.5 It is an undisputed fact that, the goods have actually been exported and the documents submitted with the rebate claim, like the triplicate copy of ARE-1, invoice (duplicate copy) and self attested copy of Shipping Bill (Exchange control copy), self attested copy of Bill of lading etc. establish a clear linkage of the goods exported.

4.6 The applicants further say that it is a well settled position of law not to deny the rebate of duty paid, for any procedural deficiencies, as long as the

goods have in fact been exported, in support of which reliance is placed on the following judgements:-

- (i) 1999 (105) ELT 30 (MAD), Ashok Layland Ltd.
- (ii) 1993 (66) ELT 497 (Tri.) – T.I. Cycles of India
- (iii) 1991 (53) ELT 558 (GOI)- Shantilal & Bhansali
- (iv) 1993 (67) ELT 759 (GOI) – F. Ahmed & Co.
- (v) 1994 (72) ELT 311 (Tri) – Dutta Engineering Works.

5. Personal hearing scheduled in this case on 21.12.2012 was attended by Ms. Aparna Hirandagi Advocate on behalf of the applicant who reiterated the grounds of Revision Application. Nobody attended the hearing on behalf of Respondent department.

6. Government has carefully gone through the relevant case records available and perused the impugned Orders.

7. Government observes that the applicant's rebate claim was rejected on the ground that the applicant failed to submit original and duplicate copies of relevant ARE-1 forms. Commissioner (Appeals) upheld impugned order-in-original. Now, the applicant has filed this revision Application on grounds mentioned in para (4) above.

8. Government notes 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:-

8.1 Para 8.2, 8.3 and 8.4 of part I of Chapter 8 of CBEC 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 duty 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."

8.2 Para 3(b) of Notification No. 19/2004-CE/(NT) dated 06.09.2004 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 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."*

8.3 As per these statutory provisions and procedure prescribed under Notification No. 19/2004-CE/(NT) dated 06.09.2004 the goods shall be exported on the application ARE-1, directly from the factory or warehouse. The ARE-1 form, an application for removal of excisable goods for export is presented by

the exporter to Superintendent Central excise for goods intended for export who shall verify the identity of goods mentioned in the application and the particulars of duty paid or payable and if found in order shall allow clearance and seal each package or the container in the specified manner and endorse each copy of the application (ARE-1s) in token of having done the examination of goods. The original and duplicate copies of ARE-1 will be handed over to exporter who will present the same before customs. The triplicate copy of application will be sent to the office with whom rebate claim is to be filed. On arrival at place of export, the goods shall be presented to customs together with original duplicate and quadruplicate (optional) copies of the ARE-1 application. The Customs who shall examine the consignments with the particulars as cited in the application and if they find that the same are correct and exportable in accordance with law, shall allow export thereof and certify on the application that the goods have been duly exported citing the Shipping Bill number and date & other particulars of export. The Customs officers shall return the original copy of the ARE-1 to the exporter and forward duplicate copy of ARE-1 either by post or by handing over to the exporter in a tamper proof sealed cover to the officer specified in the ARE-1 application. The rebate sanctioning authority shall compare the duplicate copy of ARE-1 received from Customs with original copy of ARE-1 received from exporter and also with Triplicate copy of ARE-1 received from Superintendent of Central Excise and if satisfied that claim is in order, he shall sanction the claim either in whole or in part.

8.4 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. In the absence of said original and duplicate ARE-1, rebate sanctioning authority has no chance

to compare these documents with triplicate copy of ARE-1 as stipulated under above discussed provisions of Notification No. 19/2004-CE/(NT) dated 06.09.2004 and therefore he cannot satisfy himself of the correctness of the rebate claim. So, submission of original and duplicate ARE-1 duly endorsed by customs establishes the export of duty paid goods and therefore is an essential requirement which cannot be done away with.

8.5 In case of export of goods without payment of duty under bond in terms of Rule 19 of Central Excise Rule 2002, there is a provision under Chapter 7 of CBEC Excise Manual of Supplementary Instructions (the chapter which relate to procedure/instructions in respect of export under bond without payment of duty) for accepting proof of export on the basis of collateral documentary evidences if original and duplicate copies of ARE-1 are lost. But in case of exports on payment of duty under rebate claim in terms of Rule 18 of the Central Excise Rules, 2002, there is no such provision under relevant Chapter 8 of CBEC Excise Manual of Supplementary Instructions (the chapter which relates to procedure/instruction in respect of export under claim for rebate) for acceptance of collateral document evidence if original and duplicate ARE-1 is missing. In the Chapter 8 of CBEC Excise Manual of Supplementary Instructions, CBEC has not relaxed the condition of submission of original and duplicate ARE-1 alongwith rebate claim in any exigency and therefore applicant's contention that in absence of ARE-1 rebate may be allowed on the basis of other documentary evidences, is not tenable.

8.6 The applicant has stated that their original and duplicate copies of ARE-1 were held back by the Customs Authority and hence they could not submit the same. On perusal of records the Government observes that the applicant only once, through their letter dated 14.09.2009 addressed to Assistant Commissioner of Customs, requested to release the original and duplicate copies of ARE-1, that too after request of the department to provide the same. Government finds that

the applicant was required to procure the original and duplicate copies of ARE-1 from Customs Authorities and it was obligatory on the part of the applicant to submit the said documents along with rebate claim. There is no documentary evidence that said documents are with department. On the contrary department asked applicant to furnish the said documents. As such this plea is not acceptable.

8.7 The applicant has relied upon following case laws in favour of their contention:

- (a) Kansal Knitware V/s CCE reported in 2001 (136) ELT 467
- (b) Model Buckets V/s CCE reported in 2007 (217) ELT 264 (CESTAT)

In the cases relied upon by the applicant, goods were exported under bond without payment of duty in terms of rule 19 of CER 2002 and in the absence of certified copies of AR4/ARE-1 form other collateral valid documentary evidences were allowed to be accepted as proof of export. This view is in conformity with the instructions contained in CBEC Excise Manual Supplementary Instructions as discussed above. Whereas instant case relates to export of goods on payment of duty under rebate claim in terms of rule 18 of CER 2002 and Chapter 8 of CBEC Excise Manual does not permit acceptance of any such collateral documentary evidence. So the ratio of said case laws cannot be made applicable to this case.

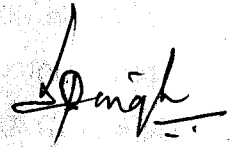
8.8 In view of above position, Government is of considered view that in the absence of original/duplicate copy of ARE-1 duly endorsed by customs, the export of same duty paid goods which were cleared on ARE-1 form from factory of manufacture, cannot be established which is fundamental requirement for sanctioning the rebate claim under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE/(NT) dated 06.09.2004. As such rebate claims were rightly rejected by lower authorities.

9. Government notes that nature of above requirement is a statutory condition. The submission of application for removal of export goods in ARE-I form is must because allowing such leniencies would lead to possible fraud of claiming an alternatively available benefit which may amount to additional/double benefit. This has never been the policy of the Government to allow unintended benefit Hon'ble Supreme Court in case of Sharif-ud-Din. Abdul Gani AIR 1980 SC (3403) & 203 (156) ELT (178) Bombay) has observed that distinction between required forms and other declarations of compulsory nature and/or simple technical nature is to be judiciously done. When non-compliance of said requirement leads to any specific / odd consequences then it would be difficult to hold that requirement as non-mandatory. As such there is no force in the plea of the applicant that this lapse should be considered on a procedural lapse of technical nature which is condonable in term of case laws cited by applicant. The Hon'ble Supreme Court in the case of J Yashoda Vs. Shobha Rani has discussed Section 63, 64 & 65 of Evidence Act, 1872 and therein upheld the High Court view that the photo copies cannot be received as secondary evidence in terms of Section 63 of the Act and they ought not to have been received since the documents in question were admittedly photocopies, there was no possibility of the documents being compared with the originals. Government therefore holds that non-submission of statutory documents i.e. ARE-1 original and duplicate copy duly endorsed by customs and not following the basic procedure of export goods as discussed above, cannot be treated as just a minor/technical procedural lapse for the purpose of granting rebate of duty. Government has already held in GOI orders Nos.246/11-Cx dated 17.3.11, 216/11-Cx dated 7.3.11, 835/11-Cx dated 17.3.11, 736/11-Cx dated 13.6.11 509/12-Cx dated 30.04.2012, 525/12-Cx dated 30.04.2012 and 597-598/12-CX dated 22.05.12 and several other orders issued subsequently, that rebate claim is not admissible if the original and duplicate copy of ARE-1 is not submitted along with rebate claim.

10. In view of above circumstances, Government finds no infirmity in the order of Commissioner (Appeals) and hence upholds the same.

11. Revision application is thus rejected being devoid of merit.

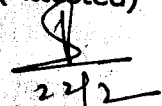
12. So, ordered.



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

M/s D.K. Pharma Chem Pvt. Ltd.
F-32, W-7/6/5, MIDC, Badlapur,
Badlapur-421 503.

(Attested)

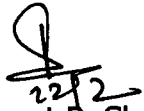


(भागवत शर्मा/Bhagwat Sharma)
सहायक आसिस्टन्ट कमिश्नर/Assistant Commissioner
C.E.C.-O.D (Revision Appellate)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev)
नया दिल्ली/Deptt. of India
New Delhi / New Delhi

Order No. 140 /13-Cx dated 22-02-2013

Copy to:-

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 2. The Commissioner of Central Excise (Appeals) Mumbai Zone-I, Meher Building, D.S. Lane, Chaowpathy, Mumbai – 400 007.
 3. The Assistant Commissioner of Central Excise, Kalyan-IV Division, 2nd Floor, Bhagwandas Mension Shivaji Chowk, Kalyan (West).
 4. M/s Aparna Hirandagi, Advocate, Cen-Ex Services, Post Office Building, 2nd Floor, Andheri-Kurla Road, J.B. Nagar, Andheri (East,) Mumbai 400 059
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- ✓ 4A. PS to JS(Revision Application)
5. Guard File
 6. Spare Copy.


(Bhagwat P. Sharma)
OSD (Revision Application)

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DEPARTMENT OF CHEMISTRY

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