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**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, Cuff Parade,
Mumbai- 400 005

F NO. 195/791/13-RA/5155

Date of Issue: 14.11.19

ORDER NO. 141/2019-CX (WZ) /ASRA/MUMBAI DATED 14.11.2019
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 Superkino Equipments Pvt. Ltd., Umbergaon, Gujarat.

Respondent : Commissioner of Central Excise, Customs & Service tax, Vapi.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.SRP/101/ Vapi
/ 2013-14 dated 23.05.2013 passed by the Commissioner
(Appeals), Central Excise, Customs & Service tax, Vapi.

ORDER

This revision application is filed by M/s Superkino Equipments Pvt. Ltd., Umbergaon, Gujarat (hereinafter referred to as "the applicant") against the Order-in-Appeal No.SRP/101/Vapi/2013-14 dated 23.05.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service tax, Vapi.

2. Brief facts of the case are that the applicant, a manufacturer exporter, were exporting their finished products under Letter of Undertaking (LUT) under Rule 19 of the Central Excise Rules, 2002 read with Notification 42/2001(NT) and all the clearances were made under cover of appropriate ARE-1s and Excise Invoices and they regularly filed their proof of export. The applicant had executed LUT dated 19.01.2010 for removal of finished goods for exports with the jurisdictional Divisional office which was accepted by the Division office under Sr.No. 122/2009-10 in UT-1 register and was valid upto 31.12.2010. The applicant had carried out exports under the said LUT under cover of ARE-1s and Excise invoices.

3. The applicant made clearances for exports under said LUT following the provisions of Notification No.42/2001(NT) during the month of January, 2011 and February, 2011. On realizing that LUT under which they exported the aforementioned goods had expired and the same was remained to be renewed, they paid the Central Excise duty leviable on goods cleared for said exports. On receiving proof of export, the applicant filed five rebate claims on 15.11.2011 before Assistant Commissioner, Central Excise and Customs, Division Vapi (Original authority) in respect of the Central Excise duty of Rs.2,60,170/- (Rupees Two Lakh Sixty Thousand One Hundred Seventy only) paid by them on the goods exported under LUT without payment of duty during January,2011 and February 2011. The applicant was served with a show cause notice by the original authority proposing to deny the said rebate claims as the applicant had cleared the goods for export without payment of duty under LUT and not under the claim of rebate and thereafter they paid the duty on export

consignment and claimed the rebate of duty. As it appeared that the applicant had initially cleared the goods under LUT for export and later on they paid Central Excise duty on such goods, the rebate claims appeared liable for rejection.

4. The original authority observed that when the exporter had cleared the goods for export under LUT, they can not claim the rebate of duty paid by them subsequently as such situation was not covered under Rule 18 of Central Excise Rules, 2002 read with Notification No.19/2004-CE dated 06.09.2004. Accordingly, original authority vide Order in Original No.289 to 293/AC/REB/Div-Vapi/2012-13 dated 17.05.2012 rejected the rebate claims of Rs. Rs.2,60,170/- (Rupees Two Lakh Sixty Thousand One Hundred Seventy only) filed by the applicant.

5. Being aggrieved with the aforementioned Order in Original, the applicant filed appeal before Commissioner (Appeals), Central Excise, Customs and Service Tax, Vapi.

6. Commissioner (Appeals) observed that the applicant had not cleared the goods for export under rebate as per Rule 18 of the Central Excise Rules, 2002, instead, they cleared the goods without payment of duty and not exported the goods after payment of duty, which is the basic condition stipulated in the said Notification. He further observed that the payment of duty afterwards on being pointed out that their LUT was expired, cannot be treated to be export of the goods on payment of duty..... Accordingly, Commissioner (Appeals) vide Order in Appeal No.SRP/101/Vapi/2013-14 dated 23.05.2013 rejected the appeal of the applicant and upheld the Order in Original passed by the original authority.

7. 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 :-

- 7.1 they do not agree with the impugned order rejecting the rebate claims on the ground that the Notification No. 19/2004 (NT) does not visualize granting of rebate of the duty paid after the clearance of goods under ARE-1 visualizing export under LUT. The impugned order denies export benefit which is legally due to them and where there is no dispute as regards to export of goods and the duty paid nature of the goods exported.
- 7.2 there is no dispute on the facts that the goods are cleared for export after appropriate accounting in daily production register and under cover excise invoice under Rule 11 read with Rule 10 of Central Excise Rules 2002. The exports are made under cover of ARE-1 which bears due endorsement of excise and customs authority respectively. There is no dispute that the duty has been paid for the said clearances made for exports as per the requirement and provisions of Rule 8 of Central Excise Rules, 2002. There is no dispute that the goods have been transferred directly to port from the factory and the consignments have been duly exported and the foreign exchange / foreign remittance has been duly received. There is no dispute that the applicants have filed all the proof of exports including the shipping bills, bill of lading, ARE-1s duly countersigned by the excise as well as customs authority, copies of challans visualizing the duty payment made on the goods exported, bank realization certificate, as visualized under the rebate Notification No.19/2004(NT). In fact neither the Show Cause Notice nor the impugned OIO raised any doubt regarding the factum of export and the factum of duty payment on the said goods.
- 7.3 the only ground for the denying the rebate claim is that they under ARE-1 have shown export of goods under LUT and after the removal of goods have paid duty which is claimed as rebate. The provisions for rebate under Notfn. No. 19/ 2004(NT) does not visualize such circumstances for grant of rebate.
- 7.4 they humbly submit that it is a settled position of law that duties cannot be exported and if the goods are exported then all the duties involved on the said goods should be granted back to the exporter. The procedures are visualized only to safeguard the revenue and to ascertain that the goods are correctly exported.

Once the goods are exported and the duty payment has been established, the rebate thereof should not be denied on any procedural or technical grounds.

- 7.5 the provisions as regards to the establishing the proof of exports and to ascertain that the goods are correctly exported and are the same goods which are cleared from the factory, the procedure visualized under Rule 18 as well as under Rule 19 are the same. Hence the procedure so followed by the applicants even if of Rule 19, it gives complete evidence of the goods being exported and there is no dispute on the payment of duty as per Rule 8 and accordingly the rebate claim under Rule 18 has to be allowed with all consequential relief.
- 7.6 The Commissioner (Appeals) failed to appreciate the fact that export was intended to be carried out under LUT and the Supdt. of Central Excise had also countersigned the ARE-1 for export under rule 19 of Central Excise Rules, 2002. All the documents substantiating the exports are accepted by all the authorities. Since the LUT was lapsed, the duty as per Rule 8 was paid and there is no dispute on the said facts. Since the payment of duty is also substantiated and verified by the Jurisdictional Authority, the rebate claim under Rule 18 of Central Excise Rules, 2002 read with Section 11B of Central Excise Act. 1944 should be granted.
- 7.7 Rule 18 i.e. export under claim of rebate and Rule 19 i.e. export under LUT are two sides of the same coin and both are provided to give relief to the exporter to the extent of duty involved on the finished goods exported outside country. Rule 19 visualizes removal of goods after debiting duty under bond / LUT and removal under cover of ARE-1 and excise invoice from factory for certification by customs and excise regarding the same goods being exported outside India. After the proofs of exports are filed by the exporter the credit under the bond / LUT is granted to the exporter. On the other hand, Rule 18 visualizes removal of goods after debiting duty from Cenvat account or PLA account and removal under cover of ARE-1 and excise invoice from factory for certification by customs and excise regarding the same goods being exported outside India. After the proofs of exports are filed by the exporter they are eligible to get refund of the duty so paid by them.

The adoption of the procedure under Rule 18 and Rule 19 is the choice and option of the manufacturer exporter and once provisions are complied with the benefit of export cannot be denied to them. They have complied with all the requirements of Rule 18 read with notification No. 19/2004(NT) dated 06.09.2004 and the rebate claim cannot be denied to them.

- 7.8 the objection so raised that the removal was under ARE1 showing LUT and then the duty had been paid after removal. The said facts were explained by them that the LUT had expired and fresh LUT had taken time and hence full duty on the export goods were paid along with interest. As such the duty is always paid at the end of the month as per Rule 8 and if there is a delay in payment then the assessee is required to pay the duty alongwith interest as per Rule 8(3) of Central Excise Rules, 2002 and the same cannot be made grounds to deny the export benefit and the rebate claim under Rule 18 *ibid*.
- 7.9 the fact that ARE-1 showed removal under LUT under Rule 19 and then paying duty and claiming rebate under Rule 18 cannot be made to denying rebate claim as export benefits should be granted if the goods are exported and there is no dispute on the factum of payment of duty. Preparation of ARE-1 and other procedural issues cannot be made the grounds for denying the export benefit.
- 7.10 In support of their claim they wish to refer and rely on the following two decisions of High Court , wherein the benefit of rebate was granted even when the original ARE- I copies were not available upholding the principles that when substantive provisions of export and grant of rebate are complied with, the benefit thereof cannot be denied.

(a) Gujarat High Court Order No.0/17294/2013 dated 20/06/2013 in case of Raj Petro Specialities, SEA No. 17481 OF 2012; and

(b) Bombay High Court Order dated 24/04/2013 in W.P.No.3102 OF 2013 in case of U.M.Cables Ltd. Vs.U.O.I.

They further refer to the decisions of :

Shreeji Colour Chem Industries Vs. C.C.E, 2009(233)ELT 367 (Tri.Ahmd.), wherein demand was raised for non production of AR-4 as proof of export. Honble CESTAT held that proof of export of goods by way of invoice, Bill of Lading and Shipping Bill is sufficient even in absence of original copy of AR-4 Forms. Accordingly the impugned order was set aside with the findings that there was no allegation that the export has actually not taken place.

C.C.E., Jamshedpur Vs. TISCO Tube Division , 2003(156)ELT 777 (Tri.Kol.), wherein the Order of the Commissioner (Appeals) upheld by the CESTAT where it was held that if there is sufficient proof of export of goods by way of invoices, bill of lading and shipping bills non production of ARE-1 was immaterial.

Modern Press Printers, 2006(204)ELT 632 (GOI) , wherein it was held that rejection of rebate claim was barred as substantive fact of export was not in doubt and rebate being a beneficial scheme it should have been interpreted liberally. It was also held that procedural infraction of Notification / Circulars are to be condoned if export has taken place actually and substantive benefit should not be denied.

In view of their aforesaid submissions the applicant requested to set aside the impugned order and to grant them all the consequential relief.

8. A Personal hearing in this case was held 23.08.2019 and Shri Vinay Sejpal, Advocate, duly authorized by the applicant company appeared for hearing and reiterated the submission filed through Revision Application. He filed fresh submissions dated 22.08.2019. It was prayed that the Order-in-Appeal be set aside and Revision Application be allowed. Joint Commissioner CGST and Central Excise, Surat Commissionerate, vide letter F.No.XXIV/Div-UMG/Superkino-JS(RA)/2019 dated 21.08.2019 (received in this office on 26.08.2019) submitted counter objections in the present revision application.

9. In their counter objections department mainly argued that :

- the Letter of Undertaking dated 19.01.2010 which was executed and accepted by the erstwhile Central Excise & Customs, Vapi Division, Vapi Commissionerate (Now Umbergaon Division, CGST & CEX, Surat Commissionerate) was valid upto 31.12.2010, The Letter of undertaking was correctly valid for the twelve calendar months (January - 2010 to December - 2010) and no further extension for the same had been given to the applicant
- the Rebate claim can be claimed, if the goods have been cleared for export under Rule 18 of the Central Excise Rules, 2002, read with the provisions of Notification No. 19/2004-C.E.(N.T.) dated 06.09.2004. However, the applicant had cleared the goods for export under Rule 19 i.e. without payment of duty under 'letter of Undertaking following the provisions of Notification No. 42/2001- C.E.(N.T.) dated 26.06.2001. However, they had paid the duty later on and they had filed the claim with authority Central Excise & Customs, Vapi Division, Vapi Commissionerate (Now Umbergaon Division, CGST & CX, Surat Commissionerate). The Assistant Commissioner. Central Excise & Customs, Division Vapi held that the relevant ARE-1s and the Central Excise Invoices under which they cleared the goods for export and the applicant had mentioned on those documents that the export under LUT. Thus, it was clear that the exporter had initially claimed the goods for export under LUT and when they came to know that the said LUT was expired, they paid the Central Excise duty thereon and claimed the rebate. The exporter had cleared the goods for export under LUT. Thus, they cannot claim the rebate of duty paid by them subsequently as such situation not covered under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E.MT1 date.
- the rebate sanctioning authority had complied with the conditions of Notification No 42/2001. CE.(N.T.) dated 26.06.2001 and it is also true that the applicant had cleared the goods under Rule 19 of the Central Excise Rules, 2002 and mere duty payment which was made later on, cannot be governed under Rule 18 of the Central Excise Rules, 2002 read with Notification No 19/2004-CE (N.T) dated 06.09 2004.
- as the applicant had exported the goods under Rule 19 (without payment of duty) and they had filed the rebate claims as exported under Rule 18 (on payment of duty), the Commissioner (Appeals) also observed the facts

and submitted that the exemption notification being a liberal piece of legislation shall have to be construed strictly for Its benefit

- the applicant had exported the goods under Rule 19 read with Notification No 42/2001- C.E.(N.T.) dated 26.06.2001 and submitting that they had complied with all the procedures as of the Notification No. 19/2004-C.E.(N.T.) dated 06.09.2004 issued under Rule 18 of Central Excise Rules. 2002, but it is also fact that both the notifications cannot be transformed with each other.
- the applicant had not cleared the goods for export under rebate as per Rule 18 of the Central Excise Rules, 2002, a fact not disputed by the applicant. Instead they cleared the goods without payment of duty, which is a basic condition stipulated in the Notification No 19/2004-C.E.(N.T.) dated 06.09.2004. The payment of duty afterwards on being pointed out that their LUT was expired, cannot be treated to be export of the goods on payment of duty.
- the applicants had relied upon the Gujarat High Court Order No. 0/17294/2013 dated 20.06.2013 in the case of Raj Specialities, however, the ratio is not applicable in the instant case as the issue involved therein that the claimant had not submitted the Original and Duplicate copy of the ARE-1s alongwith the rebate claims, as they were lost in transit However, in the instant case, the rebate claims had been rejected for non-fulfillment of conditions as laid down under Notification No. 19/2004-C.F.(N.T.) dated 06.09.2004 and the goods had been actually exported under Notification No. 42/2001- C.F..(N.T.) dated 26.06.2001.
- the case laws as relied by the applicant are same as they had relied before the Commissioner (Appeals) and the Commissioner (Appeals) found that the case laws relied upon by the applicant involve distinguishable facts and circumstances. In those cases, the issue was whether or not the proof of export was established, whereas in this case, the sanction of rebate of duty not paid at the time in making export of goods is involved.

In view of its aforesaid counter objections department prayed for rejection of the Revision Application filed by the applicant by upholding the Orders passed by the lower authorities.

10. Government has carefully gone through the relevant case records available in case files, oral & written submissions/counter objections and perused the impugned Order-in-Original and Order-in-Appeal.

11. Government in the instant case observes that the LUT under which the applicant cleared the goods for export had already expired on 31.12.2010 and therefore, there was no option open for the applicant but to pay duty for clearing the goods for export during January, 2011 and February 2011 and claim rebate thereupon under Rule 18 of the Central Excise Rules, 2004. When the LUT under which the exports were effected during the said period by the applicant, had expired and remained to be renewed the said exports cannot be said to have been effected under LUT and in the absence of valid LUT the export could not have allowed export under Rule 19 of the Central Excise Rules, 2004, i.e. without payment of duty following the provisions of Notification No. 42/2001- C.E.(N.T.) dated 26.06.2001. Hence, even though the applicant mentioned LUT on ARE-1s, these exports cannot be held to have been effected under Rule 19 of the Central Excise Rules, 2002.

12. The applicant in their Revision Application have claimed that during the period 1st January 2011 to 27th February 2011 they had cleared eight export consignments under the said LUT and as per the directions of the Range Superintendent they followed the provisions of Rule 8(3) of the Central Excise Rules, 2002 by paying central excise duty along with interest. They further submitted that there was no dispute as regards factum of exports and there is no dispute on the payment of duty by them. They also claimed that all the above referred consignments were cleared under cover of excise invoice as per Rule 11 along with ARE-1 and the same had been duly accepted and counter signed by the Range Authorities as exports as per the provisions of Notification No. 42/2001(NT); that they also filed all the proof of exports including shipping bills, bill of lading, foreign remittance certificates, etc. as visualized under Notfn.No.19/2004(NT) dtd. 06/09/2004 as amended from time to time and

there was no dispute on the fact that the duty was paid and there was no dispute on the fact that the goods were exported and they had been cleared directly from factory to port. The exports were verified by the Jurisdictional Excise authority as well as by the appropriate customs authority. The countersigned copy of the ARE-Is from the customs as well as Range Authorities are forwarded and counter checked by the appropriate rebate sanctioning authority.

13. Government observes that as per provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No 19/2004-C.E.(N.T.) dated 06.09.2004, the rebate of duty paid on excisable goods exported is granted subject to compliance of conditions and procedure prescribed in Notification No 19/2004-C.E.(N.T.) dated 06.09.2004. Condition 2(a) of the said Notification stipulates that goods shall be exported on the payment of duty directly from factory or warehouse. Government further notes that as per provisions contained in para 1.1(1) of Part-I, Chapter 8 of CBEC's Excise Manual of Supplementary Instructions the excisable goods shall be exported after payment of duty. The condition of "payment of duty" is satisfied once the exporter records the details of removals in the Daily Stock Account maintained under Rule 10 of Central Excise Rules, 2002 whereas as per Rule 4(1) of the 'Rules' "every person who produces or manufactures any excisable goods shall pay the duty leviable on such goods in the manner provided in Rule 8 or under any other law". This rule provides that every person engaged in the manufacture of excisable goods, can remove the goods from his factory only after payment of duty leviable on such goods. With effect from 01.04.2003 the assessee was required to pay duty for a particular month by the 5th of the next month. However, duty for the month of March had to be paid by the 31st March. Rule 10 of the said Rules required maintenance of Daily Stock Account by giving complete details of goods produced and manufactured including amount of duty actually paid. As per Rule 8 of Central Excise Rules, 2002 the amounts involved for such exports become entitled for rebate claim when the mandatory provisions of Rule 8

requiring payment to be made by 5th of next month or complied to the satisfaction of the proper officer.

14. Government observes that in the present proceedings only five exports are involved the details/particulars of which are as under:-

Sr. No.	File No.	Date of filing	ARE-1 No & date/Shipping Bill No & Date	Duty Amount (Rs.)	Date of Removal of Goods	Challan No. & Date of Payment of duty
1	1099	15.11.2011	UBR-II/LUT-972/ 10-11 dated 28.02.2011 / 2636741 dated 25.02.2011	59,303/-	27.02.2011	00011 dated 04.03.2011
2	1101	15.11.2011	UBR-II/LUT-788/ 10-11 dated 17.01.2011 / 9261790 dated 17.01.2011	67,000/-	16.01.2011	00001 dated 26.02.2011
3	1102	15.11.2011	UBR-II/LUT-870/ 10-11 dated 31.01.2011 / 9308570 dated 29.01.2011	49,704/-	30.01.2011	00001 dated 26.02.2011
4	1103	15.11.2011	UBR-II/LUT-912/ 10-11 dated 10.02.2011 / 9345364 dated 08.02.2011	74,697/-	09.02.2011	00001 dated 26.02.2011
5	1105	15.11.2011	UBR-II/LUT-911/ 10-11 dated 10.02.2011 / 9351378 dated 10.02.2011	9,466/-	09.02.2011	00001 dated 26.02.2011
	Total			2,60,170/-		

From the aforesaid chart Government observes that in respect of three exports (at Sr. No. 1, 4 & 5) the applicant has paid duty totally amounting to Rs.1,43,466/- (Rupees One Lakh Forty Three Thousand Four Hundred and Sixty Six only) within the prescribed date i.e before the 5th of following month from the date of clearance and in respect of two exports (Sr. No.2 & 3) total amount Rs. 1,16,704/- (Rupees One Lakh Sixteen Thousand Seven Hundred and Four only) there was a delay of 20 days for which interest has been paid as per Rule 8(3) of the Central Excise Rules, 2002 .

15. Government in this regards relies on GOI Order No. 1227/2011-CX dated 20.09.2011 {2012 (281) E.L.T. 747 (G.O.I.)} in RE: Marim International. In this case, while rejecting the Revision Application and upholding Order in Appeal rejecting the rebate claim on account of late payment of Central Excise Duty in respect of goods cleared for export, GOI observed as under :-

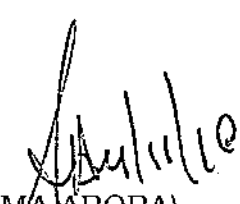
10. Government further observes that sub rule 3 and 3(A) of Rule 8 provides for payment of duty alongwith applicable interest if the assessee failed to pay the amount of duty by due date. Government notes that provision for claim of Rebate is governed by Rule 18, which requires payment of duty at the time of export. Provision contained in Rule 8 does not absolve the assessee from substantial conditions of payment of duty for claim of rebate under Rule 18 of Central Excise Rules, 2002.

16. Government observes that a GOI has taken a similar view in its Order No. 501-503/13-CX dated 31-5-2013 in the case of M/s Sandhar Automotives.

17. In view of the foregoing discussion and relying on case laws discussed supra, Government holds that the applicant is not eligible for rebate of duty paid in respect of two claims (Sr. No.2 & 3 of Table at para 14 above) totally amounting Rs.1,16,704/- (Rupees One Lakh Sixteen Thousand Seven Hundred and Four only) for not depositing the duty within the specified time stipulated under Rule 8 of the Central Excise Rules, 2002. As regards three claims (at Sr. No. 1, 4 & 5 of the table at para 14 above) the applicant has paid duty totally amounting to Rs.1,43,466/- (Rupees One Lakh Forty Three Thousand Four Hundred and Sixty Six only) within the specified time stipulated under Rule 8 of the Central Excise Rules, 2002 and therefore the applicant is eligible for rebate under Rule 18 of the Central Excise Rules, 2002 subject to verification of documents by the Original Authority of Central Excise.

18. In view of above position, Government sets aside the impugned Order-in-Appeal and remands the case back to original authority to decide the case afresh taking into account the above observations. The applicant is directed to submit all the documents before original authority for verification. A reasonable opportunity of hearing will be afforded to the concerned parties. The original authority is directed to sanction the rebate claims if claims are otherwise found in order.

19. So ordered.


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

ORDER No. 14/2019-CX (WZ) /ASRA/Mumbai DATED 04.11.2019

To,
M/s Superkino Equipments Pvt. Ltd.
Plot No.A-1/284/1,GIDC,
Round Canteen Road, Umargam IE,
Valsad (Gujarat).

Copy to:-----

1. The Commissioner of GST & CX, Surat, Pooja Park, 1st Floor, Opp. Bank of Baroda, Bhilad, Distt Valsad -396105.
2. The Commissioner of GST &CX, (Appeals), 3rd Floor, Magnus Building, Althan Canal Road, Near Atlanta Shopping Center, Althan, Surat-395007.
3. Assistant Commissioner, Umbergaon Division, Pooja Park, First floor, Opp Bank of Baroda, Bhilad, Distt Valsad-396105.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file
6. Spare Copy.