

F.No.195/784/13-RA

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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, Cuffe Parade,
Mumbai- 400 005

F.No.195/784/13-RA | 223

Date of Issue: 03/05/2018

ORDER NO. 145 /2018-CX (WZ)/ASRA/MUMBAI DATED 27-04-2018
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s Orbit Computers Pvt. Ltd.

Respondent : Deputy Commissioner(Rebate), Central Excise, Raigad.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. BC/76/RGD (R)
/2013-14 dated 23.05,2013 passed by the Commissioner
(Appeals), Central Excise, Mumbai-III.



ORDER

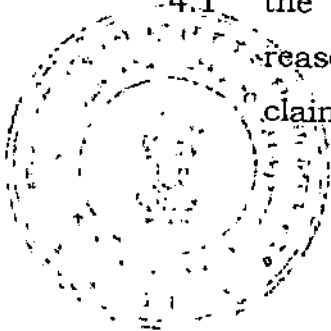
This revision application is filed by the M/s Orbit Computers Pvt. Ltd., Mumbai, (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BC/76/RGD (R) /2013-14 dated 23.05,2013 passed by the Commissioner (Appeals), Central Excise, Mumbai-III.

2. The issue in brief is that the Brief facts of the case are that the applicants are merchant exporter who had filed three rebate claims totally amounting to Rs.1,26,428/- (Rupees One Lakh Twenty Six Thousand Four Hundred Twenty Eight only) under Rule 18 of the Central Excise Rules read,2002 read with Notification No.19/2004 CE(NT) dated 6.09.2004 for the duty paid on goods exported. The Deputy Commissioner (Rebate), Central Excise , Raigad observed that there was no endorsement on the reverse side of the triplicate copy of ARE-1 and there was no remark / endorsement from the Central Excise Officer about the Verification of the goods for export to prove the identity of the goods and its duty paid character as required as per Para 8.4 of the Board's Circular No. 294/10/94CX dated 30.01.97. Also no prior permission was obtained from the Jurisdictional Commissioner as required as per Para 8.3 of the said circular. Accordingly the rebate sanctioning authority vide Order in Original No. 2764/12-13/DC(rebate)/Raigad dated 01.02.2013 rejected the rebate claim of duty.

3. Being aggrieved with the above Order in Original, the applicant preferred an appeal with the appellate authority, who, vide impugned Order in Appeal rejected applicant's appeal.

4. Being aggrieved, the applicant filed the instant Revision Application against the impugned Order in Appeal stating that :

4.1 the Hon'ble Commissioner (Appeals) has traversed beyond the reasons arrived at the by the Deputy Commissioner to reject the claim. This act of the Commissioner without putting us in notice



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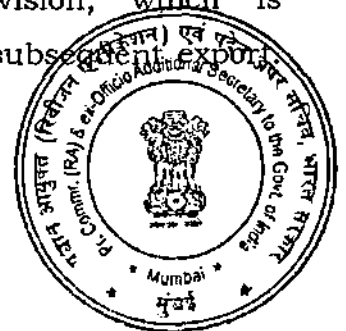
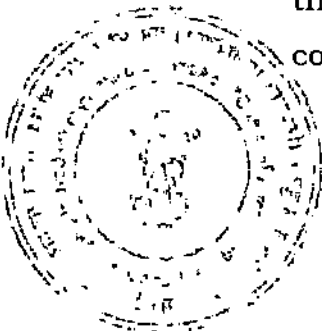
of the new grounds being considered has amounted to violation of principles of natural justice.

4.2 the Hon'ble Commissioner has rejected the claim for non-compliance of provisions and procedure laid down in CBEC Circular No. 294/10/94CX dated 30.01.1997 especially para 8.3 and para 8.6 (ii) . The procedures as laid down in these paragraphs were required to be followed by the Officers and not by the applicant. He has failed to appreciate that the applicant has followed, the procedure as laid down in the Circular No. 294/10/94-CX, as envisaged in para 8.1 of the said circular they vide their application dated 16.10.2012 had approached the officers of Central Excise Commissionerate, Belapur for inspection of the export consignments. However they were orally advised that since the cars are going to be stuffed in the containers under the Customs supervision there is no provision in the law to cause such inspection. Therefore the procedure if any, as per the said circular, if not followed, that is by the Officers and not by the Exporter/claimant. Therefore the impugned order deserves to be quashed and set aside.

4.3 The Hon'ble Commissioner has failed to appreciate,

(a) that the goods under export are being Motor Vehicles having a clear chassis and engine number, which were declared on the export documents and was verified by the Officers of Customs at the port of export.

(b) The procedure as found by the Deputy Commissioner (Rebate) and the Hon'ble Commissioner for supervision is not required. In fact this is the stand of jurisdictional Central Excise officers, viz. the Assistant Commissioner, Belapur-I Division, which is confirmed by his letter dated 11.3.2013 for a subsequent export.



The subject export goods were stuffed in a similar fashion in the marine shipping containers.

(c) These vital submissions explain our conduct as to how the supervision by the jurisdictional Central Excise Officers could not be effected which should have been considered by the Hon'ble Commissioner.

(d) In respect of the impugned exports cleared from the premises of the Dealers falls under the Range of the Office the goods were Warehouse which of the Deputy Commissioner of Central excise, Belapur I division, Belapur Commissionerate, 5th Floor, CGO Complex, CBD Belapur, Navi Mumbai : 4000614 to whom the claimant had approached for verification of the vehicles due for export. However the Deputy Commissioner of the said Commissionerate and its Technical Department had advised to get the endorsement from the Customs Officers as cars were stuffed in the containers under the Customs Supervision. Accordingly the claimant followed the procedure laid down in para 7.3 and para 7.4 of the Chapter 8 of the CBEC's Central Excise Manual, The relevant paragraphs are reproduced here for ready reference :

"7.3 The goods are examined by the Customs for the purpose of Central excise to establish the identity and quantity, i.e the goods brought in the Customs area for export on an A.R.E 1 are the same, which were cleared from the factory. The Customs authorities also examine the goods for Customs purposes such as verifying for certain export incentives such as drawback, DEFC, DEPB or for determining exportability of the goods."

"7.4 For Central Excise purposes, the Officers Customs at the place of export shall examine the consignment with the



particulars as cited in application (A.R.E 1) and if he finds that the same are correct and the goods can be exported in accordance with the law for the time being in force (for example, they are not prohibited or restricted from being exported), shall allow export thereof. Thereafter, he will certify on the the copies of ARE-1 that the goods have been duly exported citing the shipping bill number and date and other particulars of export”.

- 4.4 it is on record that the Customs Officer has duly endorsed the duplicate copy of the ARE-1s, after satisfying himself out the fact that the goods intended for export are the same which were cleared on the relevant ARE-1s.
- 4.5 it is submitted that since the goods were cleared from Dealers Warehouse under their Invoice, at the time of preparing ARE is, the particulars of manufacturer's i.e Tata Motor Invoices were not available. Therefore the same are not coming out either in the invoices of M/s Fortune Cars or in the ARE 1s. However the manufacturer's invoices were obtained after the exports and were submitted alongwith the rebate claim. From the said manufacturer's invoices the Chassis Numbers and the Engine Numbers can be tallied and this would show the export of Motor Vehicles cleared under the impugned manufacturer's invoices 'beyond doubt.'
- 4.6 since the Manufacturer's invoices were not available at the time of export, the duty element was calculated on the basis of the amounts shown in Dealers Invoice. However the actual excise duty element comes as shown on the documents of Tata Motors and the rebate to that extent may be sanctioned.



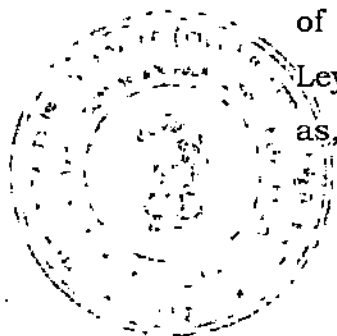
4.7 there were no claim of Rebate at different places as found, since there was a change in rebate sanctioning authority, the Rebate claims were transferred. The Applicant reserves its right to file an affidavit at the time of personal hearing to the extent that Rebate claim has not filed and availed at different places.

4.8 on perusal of various documents submitted alongwith the Rebate claim, such as ARE-1s, Shipping Bills, invoices, Bill of Lading etc., fully tally with each other which clearly establishes that the goods cleared from the factory of manufacture on payment of duty under the relevant invoices have actually been exported which meets the substantial / mandatory condition of the duty paid goods.

4.9 the Hon'ble Commissioner has failed to appreciate that the exported goods being Motor Cars, they can clearly be identifiable with the help of certain marks, engine numbers, chassis numbers etc. Therefore the correlation between the Motor Cars cleared by M/s TATA Motors Ltd., Sanad Factory, on payment of Central Excise duty and the subsequent export of same said duty paid cars can easily be established on the basis of collateral evidences and there is no dispute as regards the export of duty paid cars which are capable of being clearly identifiable and which are in original factory packed condition/not processed in any manner after being cleared from the factory and procured from the Registered dealer. We had made a specific request to Commissioner (Appeals) to obtain and confirm the fact of duty payment from the manufacturer's Range in Ahmedabad, which has not been accepted and done by the Commissioner.

4.10 the Hon'ble Commissioner has mis-read the decisions in the case of Sanket Industries Ltd and G.O.I decision in the case of Ashok Leyland Ltd - 2012 (284) ELT 150 (G.O.I) wherein it has been held

as,



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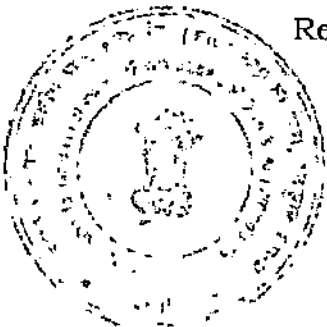
"11. In this instant case, department has not disputed the export of duty paid goods. The correlation between the goods cleared from the Hosur Unit, and the goods exported stands established here as all the vehicles have unique chassis no identification. Boards Circular No. 294/97-CX., dated 30-11-1997 clearly states that when certain goods having special characteristics and are clearly identifiable with a unique engine No. and chassis No. it is possible to correlate the goods exported and payment of duty thereupon. In this circular the condition of direct export from the factory or payment of duty is also relaxed where such correlation and duty paid nature is established. Regarding difference in description of goods in ARE-1 & Shipping Bill applicant has stated that short main description is given in Shipping Bill due to shortage of space. Government notes that the ARE-1 original/duplicate contains the endorsement of customs that goods mentioned in ARE-1 have been exported vide said Shipping Bill. As such the export of said goods stands established.

12. In view of above circumstances, Government observes that rebate of duty on impugned exported goods is admissible to applicant under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. Hence Government sets aside the impugned orders and directs the original adjudicating authority for sanctioning rebate, if otherwise in order."

Therefore the impugned order is bad in law and deserves to be set aside.

4.11 the Hon'ble Commissioner has further failed to appreciate the following submissions,

"In view the settled law the following findings of the Respondent,



"On scrutiny of the ARE-1 document it is observed that there is no remark/endorsement from the Central excise Officer about verification of the goods for export to prove the identity of the goods and its duty paid character as required under para 8.4 of the above said circular...."

is without application of mind and binding decisions of GOI and the circular of the Board.

- 4.12 without prejudice to the above, it is further submitted that when the provisions as per of para 7.2 and 7.3 of the CBEC Central Excise Manual is followed there is no need to follow the procedure prescribed in a Board Circular. The procedure followed by the claimant is in accordance with requirement under Notification No. 19/2004-CE (NT) dated 06.09.2004. The relevant para reads as,

"3(xiv) The Commissioner of Customs or other duly appointed officer shall examine the consignments with the particulars as cited in the application and if he finds that the same are correct and exportable in accordance with the laws for the time being in force, shall allow export thereof and certify on the copies of the application that the goods have been duly exported citing the shipping bill number and date and other particulars of export :

Provided that if the Superintendent or Inspector of Central Excise sealed packages or container at the place of dispatch, the officer of customs shall inspect the packages or container with reference to declarations in the application to satisfy himself about the exportability thereof and if the seals are found intact, he shall allow export.

On perusal of the proviso clause above it is clear that the inspection either from the Customs Officer or the Central Excise Officer can be accepted to sanction the rebate. In our



exported were admittedly examined by the Customs Officers at the Port Of Export therefore insistence of the supervision by the Central Excise Officer is not required or envisaged by the above Notification itself.

4.13 the finding that the duty paid characteristic of exported goods has not been proved beyond doubt is further without application of mind as the duty paying invoices of M/s Tata Motors Ltd to the Distributor and the Tax Invoice of the distributor viz M/s Fortune Cars to the Claimant M/s Orbit Computers Pvt Ltd., can be co-related and M/s Fortune Cars have signed the ARE-is as well as they have given the disclaimer certificates that they will not claim the Rebate of Central Excise Duty. This chain of Central Excise Duty paid by M/s Tata Motors Ltd., on the subject cars, exported, can be verified by Engine Numbers and Chasis Numbers.

4.14 it is well settled that once incidence of duty paid by the manufacturer the same has been transferred to the buyers (dealers M/s Fortune in this case) and finally borne by M/s Orbit Computers Pvt Ltd., the ultimate exporter, then vide Section 11B of Central Excise Act, 1944, such claim of refund of duty borne by M/s Orbit Computers Pvt Ltd. can be claimed by them. As 'refund' under Section 11B includes 'rebate'. The claim of rebate in the present case cannot be dismissed on the findings as arrived.

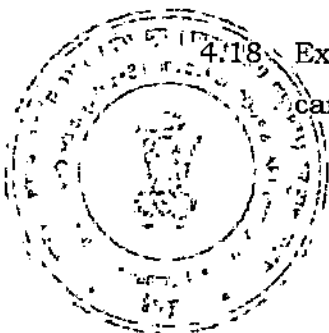
4.15 chassis number and engine number engraved on the vehicles, as per Motor Vehicle Act. They cannot be duplicated and changed by any one. If chassis number and Engine number are exported, as in this case, there can be no reason to doubt that the duty has not been discharged by M/s Tata Motors on the said vehicles, as it is not the case of Department that Tata Motors have not paid duty on all cars removed by them from the factory.



4.16 the reliance on the Superintendent letter dated 8.1.2013 and the finding that the goods have been removed under Self Removal Procedure, the identity and the duty paid characteristic of the exported goods cannot be proved beyond doubt in absence of report of verification from the Jurisdictional Central Excise Officers of the factory is in ignorance of the fact that there is a duty paying document of M/s Tata Motors Ltd., to the Dealer and the cars have been sold by the dealer to the Exporter and the identity of the sale to the dealer and the exporter. This could can be verified from Engine and Chassis number as recognised and prescribed by the Board vide their Circular No. 294/10/97-0(dt. 30.1.1997. These details were available and submitted and have not been found to be incorrect. Therefore the status of duty payment on cars exported cannot be doubted. The claim has been rejected on irrelevant reasons.

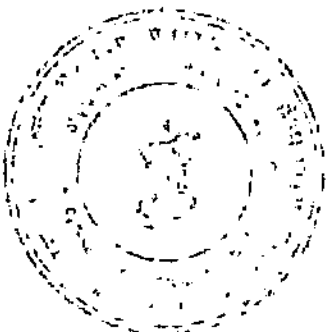
4.17 admittedly, the rebate claim is rejected for not following the procedure laid down in a Board Circular. It is our plea, that the law is well settled that the substantial benefit of rebate cannot be rejected for procedural infraction. The goods have been exported on valid shipping bills. The Custom Officers have examined the goods which were stuffed in the containers under their supervision. The certificate in Part 'B' of the ARE-1 has been certified by the Customs Authority at the port of shipment of the goods under the shipping bills. There is no allegation and or finding that the Customs Officers have found any objection as regards the nature of the goods after examining the goods as per the prescribed duty or /and that the Customs Officers have waived the examination. This acceptance of the Customs Officer cannot be lightly brushed aside by the Rebate sanctioning authority to establish that the goods as per the invoice and the packing list and other documents, have been exported as in this case and are sufficient for establishing the identity and co-relation with the goods cleared from factory on payment of duty as envisaged in Board Circular No. 294/10/97 dt.30.01.1997 and the law to be entitled to the rebate payments.

4.18 Export from India are required to be encouraged and lawful incentives cannot be denied on technical procedural grounds. In this connection we



rely on the decision of GOI in the case of Sanket - 2011 (268) ELT 125 wherein the rebates have been allowed and the Government of India has observed as follows :

17. In this regard, Govt. further observes that rebate/drawback etc. are export-oriented schemes and unduly 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 *Suksha International v. UOI*, 1989 (39) E.L.T. 503 (S.C.), 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. In *the Union of India v. A.V. Narasimhalu*, 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a 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 (77) 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. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute similar view propounded by the Apex Court in *Mangalore Chemicals and*



Fertilizers Ltd. v. Dy. Commissioner, 1991 (55) E.L.T. 437 (S.C.). In fact, as regards rebate specifically, it is now a title law that the procedural infraction of Notifications, circulars, etc. are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned. This view of condoning procedural infractions in favor of actual export having been established has been taken by tribunal/Govt. of India in a catena of orders, including Birla VXL Ltd., 1998 (99) E.L.T. 387 (Trib.), Alfa Garments, 1996 (86) E.L.T. 600 (Tri.), T.I. Cycles - 1993 (66) E.L.T. 497 (Trib.), Atma Tube Products, 1998 (103) E.L.T. 270 (Trib.), Creative Mobus, 2003 (58) RLT 111 (GOI), Ikea Trading India Ltd., 2003 (157) E.L.T. 359 (GOI) and a host of other decisions on this issue.

4.19 Reliance has been placed by the Commissioner on the case law for interpretation of exemption notifications which was not the issue in this case.

5. A personal hearing in the case was held on 23.01.2018. Shri Parveen Nariani, Director and Shri Jairam Shastri, Consultant appeared on behalf of the applicant and reiterated the submissions filed through Revision Application and pleaded that Order in Appeal be set aside and revision application be allowed and



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. On perusal of records, Government observes that the lower authority has rejected the rebate claims on the grounds that the respondent had not followed the procedure prescribed under Board's Circular No. 294/10/97-CX dated 30.01.1997 and that there was no co-relation between the exported goods to the goods cleared from manufacturer. The lower authority also observed that the procedure prescribed in the Notification No.42/2001-CE (NT) dated 26.06.2001 is not relevant since the excisable goods have not been cleared from the manufacturing unit but have been cleared from the premises other than the manufacturing unit. It was further observed by the original authority that there is no remark /endorsement from the Central Excise officer about verification of the goods for export to prove the identity of the goods and its duty paid character as required under para 8.4 of the above said circular.

8. Whereas, the Commissioner (Appeals) observed that the applicants are merchant exporters who have purchased Tata Nano Cars from M/ s Fortune Car who are authorized dealers of Tata Motors. They wanted to export the said cars and accordingly with the help of M/s Fortune Cars prepared ARE-1's. On going through the ARE-1 No. 11, 12, & 13 it is observed that in all the said documents the details of the Central Excise Invoice of manufacturer are not forthcoming on the said ARE-1s. The copy of Tata Motor Invoices also do not show the consignee as M/s Fortune Cars and hence no link could be drawn to the export goods having originated from M/s Tata Motors, the manufacturer. Moreover, the duty paid character of the export goods has not been established as the triplicate copy of the ARE-1's are not endorsed by the Jurisdictional Range Supdt. of the manufacturer. Also the amount of duty shown in the ARE-1 and claimed as rebate do not tally with the duty shown on the relevant copy of the Tata Motor invoices. Moreover the ARE-1 nos. 11 & 12 are not



to the Rebate sanctioning authority at Maritime Commissioner, Raigad. Hence the Claim being availed at different places cannot be ruled out.

9. Government observes that the applicant on the date of personal hearing filed additional written submissions along with the copies of duty payment details interalia stating therein that :

9.1 The goods exported as cars, which are uniquely identifiable by their chassis and engine numbers.

9.2 The goods are exported in "As Built Factory Condition" which is confirmed by the endorsement of the Customs Officer on the Part B of all the relevant ARE-1's.

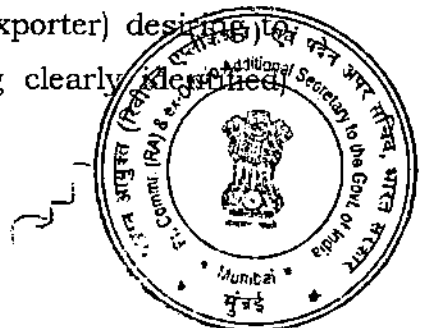
9.3 The unique identification marks of the goods i.e. the chassis and engine numbers are found to be present on all the relevant manufacturer invoices and export documents. Hence the export of goods removed from factory after payment of duty has been exported can be proved beyond doubt.

9.4 The duty paid character has been proved beyond doubt . Also here we would like to state that the goods manufactured by Tata Motors Limited are invoiced to TMDL (Subsidiary of Tata Motors), which in-turn are invoiced to their authorized dealers from whom we purchase. Hence at the time of exports the duty is shown on the assessable value as per the TMLD Invoices. Hence the actual duty paid by the manufacturer is more than what we have claimed. We without any prejudice or objection accept the amount, whichever lesser, sanctioned.

9.5 The Hon'ble Commissioner has rejected the claim for non-compliance of provisions and procedures laid down in CBEC Circular No. 294/10/97CX dtd. 30/01/1997.

As envisaged in para 8.1 of the said circular

"8.1 An exporter, (including a manufacturer-exporter) desirous of availing the rebate on export duty paid excisable goods (capable of being clearly identified)



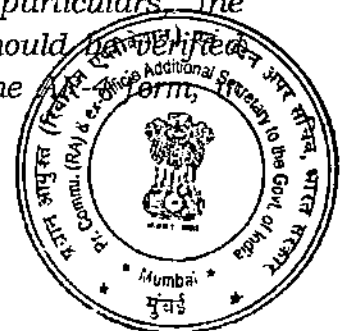
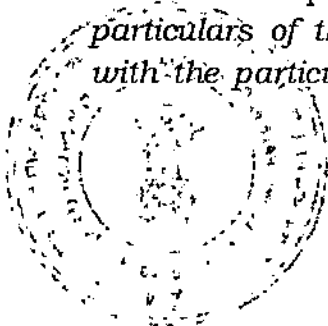
which are in original factory packed condition/ not processed in any manner after being cleared from the factory stored outside the place of manufacturer should make an application in writing to the superintendent of Central Excise in charge of the Range under whose jurisdiction such goods are stored. This application should be accompanied with form AR4 duly completed in sixuplicate, the invoice on which they have purchased the goods from the manufacturer or his dealer and furnish the following information:-

- (a) Name of the exporter
- (b) Full description of excisable goods along with marks and / or numbers.
- (c) Name of the 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. (Photo copy of invoice/ duty paying document be submitted).
- (e) The rate of duty and the amount of duty paid on excisable goods."

We had approached vide our application dated: 16.10.2012 the Officers Of Central Excise, Belapur Commissionerate for inspection of the export consignments. However we were advised that since the vehicles are easily identifiable by their unique chassis and engine numbers, and that the stuffing of containers would be done under Customs supervision there is no provision in the law to cause such inspection.

Hence, The Hon'ble Commissioner has rejected the claim for non-compliance of provisions and procedures laid down in CBEC Circular No. 294/10/97CX Dtd: 30/01/1997 especially paras which emphasizes on the procedure to be followed by the Officers and not us.

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



such manner and according to such procedure as may be prescribed by the Commissioner.

&

8.6 The disposal of different copies of AR-4 forms should be in the following manner:-

ii) triplicate and quadruplicate copies to be sent to the Superintendent Incharge 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 & quadruplicate copies of AR-4. 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" godown, warehouse etc. are located and where AR-4 is prepared, AR-4 No. and date, description of items, corresponding invoice No. of the manufacturer, remarks regarding verification, date of dispatch of triplicate & quadruplicate copy.

It is clear from the correspondences that the facilities were not extended to us by the departmental officers and hence request your honor not to penalize us for same.

9.6 We would also like to place our reliance on the case of ALCON BIOSCIENCES PVT. LTD. Reported in 2012 (281) E.L.T. 732 (G.O.I), wherein it has been emphatically reiterated that:-

"Government observes that there are catenas of judgments that the substansive benefit cannot be denied"



infractions/lapses. The core aspect or fundamental requirement for claiming rebate is payment of duty of materials and their use in the manufacture of exported goods. Since there is no dispute about this fulfillment of fundamental requirement, the rebate claim cannot be denied."

9.7 We also rely upon following judgments –

Pidilite Industries Ltd. – 2014 (311) ELT 965 (GOI)

Vinergy International Pvt. Ltd. – 2012 (278) ELT 407 (GOI)

Ashok Leyland Ltd. – 2012 (284) ELT 150 (GOI)

Also it has been specified in para 6. Of the board's circular no. 294/10/97-CX Dtd 30.10.1997,

"It has, therefore, been decided that the cases where exporters submit the proof that goods have actually been exported to the satisfaction of the rebate sanctioning authority, and that where goods are clearly identifiable and correlatable with the goods cleared from factory on payment of duty, the condition of exports being made directly from the factory/ warehouse should be deemed to have been waived. Other technical deviations not having revenue implications may also be condoned".

10. Government observes that in the instant case the applicant had produced Original and Duplicate copy of ARE-1s duly endorsed by the officer of Customs. Government further observes that where there is no examination by the jurisdictional officers of Central Excise, there are many cases where Government of India has conclusively held that the failure to comply with requirement of examination by jurisdictional Central Excise Officer in terms of Board Circular No.294/10/97-Cx dated 30.01.1997 may be condoned if the exported goods could be co-related with the goods cleared from the factory of manufacture or warehouse. Government places its reliance on para 11 of GOI Order Nos. 341-343/2014-CX dated 17.10.2014 (2015 (321) E.L.T. 160(G.O.I) In RE: Neptunus Power Plant Services Pvt. Ltd. In this case, in order to examine the issue of corelatibility, Government made sample analysis of the exports covered vide some of the shipping bills and applying the same an



instant case, Government finds that in shipping bill No. 9939496 dated 20.07.2012 there is cross reference of ARE-1 No. 011 dated 20.07.2012 and vice-versa. Further, the chassis number and the engine number of the vehicle mentioned on the ARE-1 tally with the manufacturer's invoices, dealers invoices and other export documents including Shipping Bill and export invoices, Bill of Lading etc. Government finds similar correlation in respect of ARE-1 Nos. 012 dated 20.07.2012 and 013 dated 16.10.2012 with the copies of the export documents. As such there is sufficient corroboratory evidence to establish that goods covered under impugned excise documents have actually been exported vide impugned export documents. Further, endorsement of customs officer at the port of export, on part B of all the aforesaid three ARE-1s also conclusively support the above observation.

11. As regards duty paid character of the goods exported, the applicant has submitted the copies of relevant pages of Cenvat Credit Register and ER-1 returns pertaining to manufacturer viz. Tata Motors Ltd. Moreover, the copy of Duty Payment Certificate issued by the concerned Range Supdt. of Central Excise incharge of manufacturer's unit vide letter F.No. A.R-I/Orbit/Rebate/TML/2013-14/201 dated 29.11.2013 confirming the duty payment along with invoice number, chassis number, engine number tallies with those mentioned in the copy of manufacturer's invoices, dealers invoices, Shipping bills, Bills of Lading which had been submitted by the claimant alongwith the claims.

12. Government also notes that, while allowing the Revision application in favour of the applicant, Government at para 12 of its aforementioned Order No. 341-343/2014-CX dated 17.10.2014 (reported in 2015 (321) E.L.T. 160(G.O.I) observed as under:-

"In this regard Govt. further observes that rebate/drawback etc. are export-oriented schemes, A merely technical interpretation of procedures etc. is to be best avoided if the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical lapse. In Suksha International v. UOI - 1989 (39) E.L.T. 503 (S.C.), 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."



In the Union of India v. A.V. Narasimhan - 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a 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 (77) 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. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner - 1991 (55) E.L.T. 437 (S.C.). In fact, as regards rebate specifically, it is now a title law that the procedural infraction of Notifications, circulars, etc., are to be condoned if exports have really taken place, and, the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned. This view of condoning procedural infractions in favour of actual export having been established has been taken by Tribunal/Govt. of India in a catena of orders, including Birla VXL Ltd. - 1998 (99) E.L.T. 387 (Tri.), Alpha Garments - 1996 (86) E.L.T. 600 (Tri.), T.I. Cycles - 1993 (66) E.L.T. 497 (Tri.), Atma Tube Products - 1998 (103) E.L.T. 270 (Tri.), Creative Mobus - 2003 (58) R.L.T. 111 (G.O.I.), Ikea Trading India Ltd. - 2003 (157) E.L.T. 359 (G.O.I.) and a host of other decisions on this issue".

13. Government further observes that the applicant has been following the similar export procedure and the Office of Central Excise, Raigad (Rebate) had

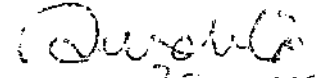


been sanctioning their rebate claims as is evident from the copies of the order in original passed by the rebate section enclosed by the applicant.

14. In view of above discussion, Government holds that the instant rebate claims of duty paid on exported goods are admissible under Rule 18 of Central Excise Rule, 2002 read Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. As such, Government finds order of Commissioner (Appeals) is not just and proper and hence, sets aside the same.

15. The revision application thus succeeds alongwith consequential relief.

16. So, ordered.




(ASHOK KUMAR MEHTA)

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

ORDER No. 145/2018-CX (WZ)/ASRA/Mumbai DATED 27-04-2018.

True Copy Attested

To,
M/s Orbit Computers Pvt. Ltd.
904 and 904A, Panchratna, Opera House,
Charni Road (East),
Mumbai, 400 004.


एस. आर. हिरुलकर
S. R. HIRULKAR

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.

