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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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. 198/15/2013-RA /220 Date of Issue: 03/05/2018

ORDER NO. 147 /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 : Commissioner of Customs & Central Excise, Raigad.

Respondent : M/s STI Industries, Mumbai.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BC/419/RGD(R)/2012-13 dated 29.11.2012 passed by the Commissioner, Central Excise (Appeals), Mumbai-III.

ORDER

This revision application is filed by the Commissioner of Central Excise, Raigad (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BC/419/RGD(R)/2012-13 dated 29.11.2012 passed by the Commissioner, Central Excise (Appeals), Mumbai-III.

2. The issue in brief is that the respondent, M/s. STI Industries, Mumbai 400 058 (herein after referred to as claimant) had filed eight claims for rebate of duty totally amounting to Rs.18,75,377/- (Rupees Eighteen Lakh Seventy Five Thousand Three Hundred Seventy Seven only) under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 (as amended) in respect of goods exported.

3. The Deputy Commissioner (Rebate), Central Excise, Raigad Commissionerate vide his Order-in-Original No. 1012/11-12/ DC (Rebate) / Raigad dated 27.06.2012 rejected the rebate claims amounting to Rs.18,75,377/- on the grounds that the claimant have not submitted Declaration under Rule 18 of Central Excise Rules, 2002 and also ARE-1 not completely filled by them not striking whatever applicable at Sr. No. 3(a), 3(b) and 3(c), 4 and 5 of ARE-1 as required under Rules and Act, as there is declaration to be given by Manufacturer / Exporter in ARE-1. Such declaration is mandatory as the claim cannot be processed and actual position of benefits availed or facilities are very much required to ascertain amount to be sanctioned.

4. Being aggrieved, the respondent filed appeal before the Commissioner, Central Excise, (Appeals), Mumbai-III. The Commissioner, Central Excise, (Appeals), Mumbai-III vide impugned Order in Appeal No. BC/419/RGD (R)/2012-13 dated 29.11.2012 allowed the appeal filed by the claimant and set aside the Order-in-Original No. 1012/11-12/DC(Rebate)/Raigad dated 27.06.20124.

5. Being aggrieved, the Department filed aforementioned Revision Application against the impugned Order in Appeal on following grounds :

5.1 The Commissioner, Central Excise, (Appeals), Mumbai-III erred by allowing the appeal on the following grounds:-

(a) Sr. No. 3(a) the manufacturer was required to certify whether he is availing CENVAT Credit facility or not. The claimant is eligible for Rebate of duty irrespective of whether manufacturer of the goods exported avails Cenvat facility or not. The exporter is merchant exporter and he has no role in availing Cenvat credit or otherwise. Sr. No.3(b) talks about availment of Notification No. 21/2004(NT). The said notification provides for rebate of duty on excisable goods used in manufacture / processing of export goods and the procedure involved. Whereas, in the instant case rebate is claimed on the finished exported goods. As regards Sr.No. 3 (c) of the said ARE-1, it talks about availment or otherwise of Notification No. 43/2001(NT). The said notification provides for procurement of inputs without payment of duty for manufacture of export goods. Whereas, in the instant case rebate is claimed on the finished exported goods. Non filling up these columns by the merchant exporter will not have any bearing on the admissibility of the rebate claim.

(b) Neither Rule 18 of CER 2002 nor Notification No. 19/2004-CE (NT)dated 06.09.04 as amended, prescribes any specific declaration required to be filed by the appellant. Therefore such declaration if any is not mandated in statute.

5.2 The procedure as laid down in para 3(a) (xi) of the Notification No.19/2004-CE (NT) dated 06.9.2004 is mandatory in nature as, the information provided in ARE-1 is nothing but a self

assessment. However, the claimant has not followed the same. In respect of the incomplete declaration at Sr. No. 3(a), 3(b) and 3(c), The ARE-1 is a statutory form prescribed under Notification No.19/2004-CE (NT) dated 6.9.2004 issued under Rule 18 of Central Excise Rules, 2002. The declarations given in the ARE-1's are required to be filled in so as to ascertain whether benefits under specified Notification's have been availed by the exporter or not. This is a statutory requirement which have not been complied with by the respondents. ARE-1 document is giving all details including self assessment. After self assessing the said document, the claimant presented the same to the proper officer. Once the said document is assessed by the claimant, it is not open for them to re-assess it. Board has also clarified vide Circular No.510/06/2000-CX dated 3.2.2000 that any scrutiny of the correctness of the assessment shall be done by the jurisdictional Assistant/Deputy Commissioner only. Declaration under 3 (a) is for availment/non availment of cenvat credit on inputs, declaration under 3(b) is for availment/non availment of benefits under Notification No. 24/2004(NT) which provides for rebate on inputs including packing material used in manufacture/processing of goods for export and declaration under 3(c) is for availment/non availment of Notification No 43/2001(NT) which provides procurement of inputs including packing materials without payment of duty for manufacture/processing of goods for export. The declaration under 3(a), 3(b) and 3(c) are vital, as in absence of the same the adjudicating authority will not have knowledge whether the claimant is availing undue double benefits such as (A) Rebate on finished goods as well as rebate on inputs or (B) Rebate on finished goods as well as procurement of duty free inputs. To

nullify such possibilities it is provided in Form ARE-1 regarding a declaration under 3(a), 3(b) and 3 (c) which is being mandatory in nature. Therefore, in absence of complete declaration, the adjudicating authority can not ascertain the admissibility of rebate.

5.3 Further para 2 of Chapter 8 of CBEC's Excise manual of Supplementary Instructions provides as under -

2. Forms to be used

2.1 ARE-I is the export document (see Annexure-14 in Part 7), which shall be prepared in quintuplicate (5 copies). This is similar to the erstwhile AR4. This document shall bear running serial number beginning from the first day of the financial year. On ARE-I certain declarations are required to be given by the exporter. They should be read carefully and signed by the exporter or his authorized agent. The different copies of ARE-I forms should be of different colours as indicated below.

5.4 Whereas a contrary view was taken by other Commissioner , Central Excise (Appeals-II) Mumbai:- in a case of M/s Maind Investments Pvt. Ltd. the Commissioner (Appeals-II), Central Excise Mumbai rejected an appeal in identical issues vide OIA No. US/719/RGD/2012 dated 29-10-2012 on the ground that:-

"From the above it is clear that the above mentioned provision is mandatory provision and the appellant has not followed the procedure as laid down in pars 3(a) (xi) of the Notification No.19/2004-CE (NT) dated 06.9.2004.

In respect of the incomplete declaration at Sr. No. 3(a)(b) and (c), I hold the finding of the rebate sanctioning authority that ARE-1 is an assessment document and once the said

document is assessed it is not open for them to re-assess it. Board has also clarified under Circular No.510/06/2000-CX dated 3.2.2000 that any scrutiny of the correctness of the assessment shall be done by the jurisdictional Assistant/Deputy Commissioner only. Therefore, the rebate claim was rightly rejected by the adjudicating authority and accordingly, the impugned order is upheld.

5.5 Further, on the same ground i.e. incomplete declaration under 3(a), 3(b) and 3(c) the Commissioner , Central Excise (Appeals-II) Mumbai rejected appeals and upheld orders rejecting rebate claims on this ground.

5.6 Furthermore, two Commissioners, Central Excise (Appeals) differ on this issue. Therefore for judicial consistency the appeal is required to be filed in this case.

6. A show cause notice was issued to the respondent under Section 35EE of Central Excise Act, 1944 to file their counter reply. Respondent vide letter dated 10.10.2014 have filed following written submissions :-

6.1. That, the instant issue is related to rejection of rebate claim of the Respondent on the ground of not filling of columns 3(a), (b) & (c) of the ARE-1 form . The department claims that proper ARE-1 form is mandatory otherwise it may lead to additional/double benefit.

6.2. That, the Respondents are a manufacturer exporter, hence probability of anybody else like merchant exporter, filing & claiming rebate for the same goods exported by them does not arise at all.

6.3 That, column 3(a) of the ARE-1 stipulates if the exporter has availed the CENVAT credit on the goods exported or not. But irrespective of whether the manufacturer exporter of the exported goods has availed CENVAT credit or not, is illegible for rebate. In fact, in the instant case the rebate claimed is on finished final product only, not on inputs used in manufacture of such exported goods.

6.4 That, column 3(b) of ARE-1 stipulates availment of benefits under Notification No.21/2004(NT) by the claimant. But, the claimant in the instant case asks for rebate on finished goods exported.

6.5 That, column 3(c) of the ARE-1 stipulates if benefit under Notification No. 43/2001(NT) are availed on procurement of inputs without payment of duty for manufacture of subject exported goods. But, the claimant in the instant case asks for rebate on finished goods exported.

6.6 That, grounds taken in rejecting the genuine rebate claim of the respondent are purely technical in nature which can be condoned. Considering payment of duty, and such finished goods being exported by them substantial benefit as rebate cannot be denied on technical grounds.

In view of the above, the respondent, M/s STI Industries requested to allow their legitimate claim of rebate and set aside the Order-in-Original No. 1012/11-12/DC(Rebate)/Raigad dated 27.06.20124.

7. A personal hearing in the case was held on 17.01.2018. None was present for the applicant. Shri R.K. Sharma, Advocate, Smt. Soma Sharma, Advocate and Shri Mangesh Jha, Assistant, appeared on behalf of the

respondent. The respondent pleaded that the substantive benefits of rebate cannot be denied on the basis of fulfillment of all conditions of export and receipt of BRC merely on the ground of technical infraction. Hence it was pleaded that instant revision application be dismissed and Order in Appeal be upheld.

8. 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.

9. On perusal of records, Government observes that the respondent had filed eight claims for rebate of duty totally amounting to Rs.18,75,377/- in respect of goods exported by them. Their claim was rejected by the lower authority on the grounds that the respondent had not submitted the declaration under Rule 18 of Central Excise Rules, 2002 which is mandatory requirement and that the assessee has not completely filled ARE 1 by not striking whatever applicable at Sr. No. 3 to 5 of ARE 1 as required under Rules and Act, as there is declaration to be given by Manufacturer /Exporter in ARE 1. Such declaration is mandatory as the claim cannot be processed and actual position of benefits availed or facilities are required to ascertain amount to be sanctioned and in absence of said information, claim cannot be processed. On respondent filing appeal, the Appellate Authority allowed the appeal holding that

> (i) Sr. No. 3 (a) of the ARE-1, it is observed that the manufacturer was required to certify whether he is availing CENVAT Credit facility or not. The appellant is eligible for Rebate of duty irrespective of whether manufacturer of the goods exported avails Cenvat facility or not. In the instant case, the appellant is merchant exporter and he has no role in availing Cenvat credit or otherwise.
>
> (ii) Sr. No. 3(b) talks about availment of Notification No. 21/2004(NT). The said notification provides for rebate of duty on excisable goods

used in manufacture/ processing of export goods and the procedure involved. Whereas, in the instant case rebate is claimed on the finished exported goods.

(iii) Sr. No. 3(c) of the said ARE 1, it talks about availment or otherwise of Notification No. 43/2001(NT). The said notification provides for procurement of inputs without payment of duty for manufacture of export goods. Whereas, in the instant case rebate is claimed on the finished exported goods. Non filling up these columns by the merchant exporter will not have any bearing on the admissibility of the rebate claim. Hence rebate claim cannot be denied on this count.

(iv) The other reason for rejection of the rebate claim is that "the appellants have not submitted the Declaration under Rule 18 of CER 2002 which is mandatory requirement". It is observed that neither Rule 18 of CER 2002 nor Notification No. 19/2004-CE (NT)dated 06.09.04 as amended, prescribes any specific declaration required to be filed by the appellant. Therefore such declaration if any is not mandated in statute and hence cannot be insisted upon or be a ground for rejection of the rebate claim. Further, the Adjudicating Authority has not specified what kind of declaration required to be submitted in terms of the statute.

Commissioner (Appeals) also observed that it has time and again been emphasized by the Hon'ble Tribunals, GOI and Higher Courts that the substantial benefit of rebate is not to be denied on technical and procedural grounds when duty paid and export of the goods is established. Such technical and procedural lapses are liable to be condoned. Commissioner (Appeals) relied upon the following case laws in support of the above findings

(1) Government of India in the case of Mts. Sanket Industries Ltd (2011 (268) E.L.T. 125 (0.0.1

(2) Deesan Agro Tech Ltd (2011 (273) E.L.T. 457 (G.O.I)

9. Department has mainly contested the said order-in-appeal on the ground that the procedure as laid down in para 3(a) (xi) of the Notification No.19/2004-CE (NT) dated 06.9.2004 is mandatory in nature as the information provided in ARE-1 is nothing but a self assessment. However, the claimant has not followed the same. In respect of the incomplete declaration at Sr. No. 3(a), 3(b) and 3(c), The ARE-1 is a statutory form prescribed under Notification No.19/2004-CE (NT) dated 6.9.2004 issued under Rule 18 of Central Excise Rules, 2002. The declarations given in the ARE-1's are required to be filled in so as to ascertain whether benefits under specified Notification's have been availed by the exporter or not. This is a statutory requirement which have not been complied with by the respondents. ARE-1 document is giving all details including self assessment. The respondent in their written cross objections have reiterated the findings in the said order-in-appeal and pleaded that rebate claims were rightly allowed to them.

10. In this connection Government relies on the GOI Order Nos. 154-157/2014-CX, dated 21-4-2014 [2014 (314) E.L.T. 949 (G.O.I.)] in case of Socomed Pharma Pvt. Ltd. wherein it was held that wrong declaration ticked by mistake in ARE-1 does not make the provisions of Notification Nos. 21/2004-C.E. (N.T.) and 43/2001-C.E (N.T.) not applicable and merely ticking a wrong declaration in ARE-1 form cannot be a basis for rejecting substantial benefit of rebate claim.

11. Government observes that the issue involved in the aforesaid case is principally applicable to the present case in hand, in as much as the applicant's rebate claims filed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, were

initially sanctioned by the original authority vide impugned Orders-in-Original dated 31-10-2011 and 16-1-2012 mentioned at Sr. No. (1) & (2) of table. The department filed appeals before Commissioner (Appeals) on the ground that the applicant a merchant-exporter has declared in impugned ARE-1 that they are availing benefit of 21/2004-C.E. (N.T.), dated 6-9-2004 and Notification 43/2001-C.E. (N.T.), dated 26-6-2001, however they failed to follow the mandatory provisions as required under Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004 and Notification 43/2001-C.E. (N.T.), dated 26-6-2001. Commissioner (Appeals) decided the cases in favour of department vide Order-in-Appeal dated 18-6-2012 and 10-9-2012. Government in this case observed that

the applicant prepared the ARE-1 under claim of rebate and paid applicable duty at the time of removal of goods. The original authority in rebate sanctioning orders have categorically held that applicants have exported the goods under claim of rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 and also that range Superintendent confirmed the verification of duty payment. As such, the exported goods are duty paid goods. Once, it has been certified that exported goods have suffered duty at the time of removal, it can be logically implied that provisions of Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004 and Notification 43/2001-C.E. (N.T.), dated 26-6-2001 cannot be applied in such cases. There is no independent evidences on record to show that the applicant have exported the goods without payment of duty under ARE-2 or under Bond. Under such circumstances, Government finds force in contention of applicant that they have by mistake ticked in ARE-1 form declaration that they have availed benefit of Notification 21/2004-C.E. (N.T.), dated 6-9-2004 and Notification 43/2001-C.E. (N.T.), dated 26-6-2001. In this case, there is no dispute regarding export of duty paid goods. Simply ticking a wrong declaration in ARE-1 form cannot be a basis for rejecting the substantial benefit of rebate claim. Under such

circumstances, the rebate claims cannot be rejected for procedural lapses of wrong ticking. In catena of judgments, the Government of India has held that benefit of rebate claim cannot be denied for minor procedural infraction when substantial compliance of provisions of notification and rules is made by claimant. Applying the ratio of such decisions, Government finds that rebate claims in impugned cases cannot be held inadmissible

11. Now, coming to the instant case, Government observes from the Order-in-Original No. 1012/11-12/DC(Rebate)/Raigad dated 27.06.2012 that only deficiency noticed by the original authority on scrutiny of eight rebate claims filed by the applicant was *"Particulars mentioned in Sr. No. 3(a), 3 (b) & 3(c) of ARE-1 are not strike out whichever not applicable.* Government also observes that Commissioner (Appeals) in his impugned order has already discussed non relevance of filing up of declarations in Sr. No. 3(a), 3 (b) & 3(c) of ARE-1 which does not have any bearing on the admissibility of the rebate claim. Further, applying the ratio of the aforesaid judgement, Government observes that non ticking/filling of Sr. No. 3(a), 3 (b) & 3(c) of ARE-1 Forms cannot be a basis for rejecting the substantial benefit of rebate claim when there is no dispute regarding export of duty paid goods.

12. Hon'ble Bombay High Court in UM Cables Limited Vs UOI [2013 (293) E.L.T. 641 (Bom.)] while holding that Notification No. 19/2004-C.E. (N.T.) and C.B.E. & C. Manual of Supplementary Instructions of 2005 only facilitate processing of rebate application and enables authority to be satisfied that requirement of goods having been exported and being of duty paid character and it cannot be raised to level of mandatory requirement has observed as under :-

"12. The procedure which has been laid down in the notification dated 6 September, 2004 and in CBEC's Manual of Supplementary Instructions of 2005 is to facilitate the processing of an application for

rebate and to enable the authority to be duly satisfied that the two fold requirement of the goods having been exported and of the goods bearing a duty paid character is fulfilled. The procedure cannot be raised to the level of a mandatory requirement. Rule 18 itself makes a distinction between conditions and limitations on the one hand subject to which a rebate can be granted and the procedure governing the grant of a rebate on the other hand. While the conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory.

13. A distinction between those regulatory provisions which are of a substantive character and those which are merely procedural or technical has been made in a judgment of the Supreme Court in Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner - 1991 (55) E.L.T. 437 (S.C.). The Supreme Court held that the mere fact that a provision is contained in a statutory instruction "does not matter one way or the other". The Supreme Court held that non-compliance of a condition which is substantive and fundamental to the policy underlying the grant of an exemption would result in an invalidation of the claim. On the other hand, other requirements may merely belong to the area of procedure and it would be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes which they were intended to serve [at paragraph 11]. The Supreme Court held as follows."

"The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some other may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."

13. Since the export of duty paid goods is not in dispute, the rebate claim cannot be denied. As such, Government holds that in the instant case the rebate claim is admissible to the applicant under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. Government, keeping in view the discussion made in the foregoing paras, finds the impugned Order-in-Appeal as legal and proper and therefore upholds the same. Government remands back the case to original authority.

for sanctioning of the claimed rebates, after due verifications of documents. The original authority is directed to sanction the rebate claims if the same are otherwise in order. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

14. The revision application is dismissed being devoid of any merit and impugned Order in Appeal is upheld as legal and proper.

15. So ordered.

(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 147 /2018-CX (WZ)/ASRA/Mumbai DATED 27.04.2018.

True Copy Attested

To,
Commissioner of Goods and Service Tax,
Belapur Commissionerate,
1st Floor, CGO Complex, CBD Belapur,
Navi Mumbai, 400 614.

एस. आर. हिरुलकर
S. R. HIRULKAR
(A.C)

Copy to:

1. M/s STI Industries, 208 Damji Shamji Udyog Bhavan, Veera Desai Road, Veera Desai Road, Andheri (West), Mumbai 400 058.
2. The Commissioner, Central Excise, (Appeals) Raigad.
3. The Deputy / Assistant Commissioner(Rebate), GST & CX Mumbai Belapur.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.