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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, Cuff Parade,
Mumbai- 400 005

F.No.195/298/13-RA/801 Date of Issue: 28/05/2018

ORDER NO. 152/2018-CX (WZ)/ASRA/MUMBAI DATED 10.05. 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.

Subject : Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. P-I/MMD/ 233/2012 dated November 30, 2012 passed by the Commissioner (Appeals), Central Excise, Pune I.

Applicant : M/s Tata BlueScope Steel Limited, Pune.

Respondent : The Commissioner, Central Excise, Pune-I.

Pr. Commr. (RA) & ex-Officio Additional Secretary to the Govt. of India
Mumbai
मुंबई

ORDER

This Revision application is filed by M/s. Tata BlueScope Steel Ltd., Pune (hereinafter referred to as 'applicant') against the Order -in-Appeal Order-In-Appeal No. P-I/MMD/233/2012 dated 30.11.2012, passed by the by the Commissioner, Central Excise, (Appeals), Pune-I.

2. The brief facts of the case is that the applicant received Pre-Engineered Steel Buildings (PEB) order from one M/s. Tata Advanced System Limited., SEZ Unit located at Adhibatala village, Ibrahim Patanam Mandal, Range Reddy District, Andhra Pradesh, a Unit as per provisions of Special Economic Zone Act, 2005 ("SEZ Act") for manufacturer and supply of PEB. The applicant supplied PEB to the customer on payment of Central Excise duty and filed Rebate claim for Rs.6,16,788/- (Rupees Six Lakh Sixteen Thousand Seven Hundred and Eighty Eight only) as per Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 CE (NT) dated 06.09.2004 and CBEC circular No. 6/2010-Cus., dated 19-3-2010.

3. The Deputy Commissioner, Central Excise, Pune-IV Division, Pune-I Commissionerate rejected the rebate claim on the aspect of 'time bar' as well as on 'merit' also.

4. Being aggrieved, the applicant filed appeal before Commissioner (Appeals) on the grounds that the applicant is entitled to Rebate Claim as goods were undisputedly exported to SEZ, Original rebate claim was filed well within time and subsequent date of filling of Rebate claim (for the second time) is not relevant in the instant case, and Original and duplicate copies of ARE-1 are not mandatorily required to be submitted before the rebate sanctioning authority as export of goods not in dispute.

5. Commissioner, Central Excise, (Appeals), Pune-I vide Order-In-Appeal No. P-I/MMD/233/2012 dated 30.11.2012 rejected the Appeal so filed by the Applicant on the following grounds:

- The relevant date in case of supplies to SEZ is the acknowledgement of goods by the proper officer of the SEZ and no such acknowledgement is available,
- Original and duplicate copies of ARE -1 duly acknowledged by the Customs officer in SEZ are not submitted with the Department,
- Further, no additional proof has been submitted for sample Shipping Bill, Bill of Lading, etc. or receipt portion of ARE 1 to establish that the goods have been received for export in SEZ and that export has taken place on such and such date.

6. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government mainly on the following grounds:

6.1 that the goods were supplied to the SEZ Unit; hence they are eligible to claim rebate of the Excise duty paid on the said goods under Rule 18 of the Excise Rules.

6.2 As per Section 26 of the SEZ Act, the goods and services supplied from DTA Unit to SEZ Unit or SEZ Developer are exempt from taxes and levies like services tax and excise duty. Further, these supplies are treated as "exports" in terms of Section 2 (m) (ii) of the Act.

6.3 The applicant refer to Circular No. 6/2010-Cus., dated 19-3-2010, with respect to rebate under Rule 18 of Excise Rules for clearance to SEZ.

6.4 that a uniform procedure is prescribed for the supply of goods from the DTA to the SEZ Units and Developers for carrying out their authorized operations. The same is laid down as per Rule 30 of the SEZ Rules. The DTA supplier supplying goods to the SEZ Developer shall clear the goods, as in the case of exports, either under bond or as duty paid goods under claim of rebate on the cover of ARE 1.

6.5 that the OIA has not considered the disclaimer certificate issued by SEZ Unit to substantiate that goods are delivered in SEZ Unit.

6.6 that this is a fit case for rebate of duty paid on goods supplied to the SEZ Unit. The documentation submitted clearly establishes that the goods were supplied directly by the Applicant to the SEZ Unit and were received in the SEZ Unit. The same is not in dispute.

6.7 Original Rebate claim was filed well within time and subsequent date of filling of Rebate claim (for the second time) is not relevant in the instant case.

6.8 that the Commissioner has upheld the order of the Original Authority rejecting the Rebate Claim of Rs. 6,16,788/- on the ground that the rebate claim filed is time barred. As per Section 11B of theExcise Act the rebate claim has to be filed before the expiry of one year from the relevant date. The Commissioner has considered the date of the ARE-1 as the relevant date for computing the one year time period for filing the rebate claim.

6.9 that the 'relevant date' for the purpose of computing the one-year time period as per Section 11B of the Act is the date on which the goods cross/enter the SEZ premises and not the date of ARE-1.

6.10 that the ground of limitation cannot be invoked in the instant case as the original rebate claim was filed well within the period of limitation. On the ground that original and duplicate copies of

ARE 1s were lost, the Original Authority had not accepted the claim that was filed on 4 October 2010. It is submitted that for the purpose of computation of period of limitation, the date of filing of the original rebate claim is alone relevant.

6.11 the Applicant referred to the case of Re: Dagger Forst Tools Limited 2011(271)ELT 471 (GOI), where it was held that rebate claims not hit by limitation as initial date of filing claim is the relevant date under Section 11B of the Excise Act.. Thus it is the date of filing of the initial claim which is relevant and in the present facts undisputedly the same is within the period of limitation. This decision also emphasized that technical deviation or procedural lapses to be condoned if there is sufficient proof of export of duty paid goods.

6.12 that the Original Authority failed to issue deficiency letter to the Applicant as per Chapter 8, Para 8, CBCE's Excise Manual of Supplementary Instructions 2005 (CBEC Manual).

6.13 that the officer has not performed his mandatory duty and declined to accept the Rebate claim only because some documents were missing from the Rebate Application. It is duty of the officer to accept the documents submitted by the Assesses and issue deficiency memo if it is found incomplete.

6.14 that the OIO alleged that as original and duplicate copy of the ARE 1s were not submitted and hence the rebate claim merits to be disallowed. The Original Authority was aware that the original documents were misplaced and an FIR to that effect was lodged by the Applicant; that original and duplicate copies of ARE-1 duly attested by SEZ Customs officer had been misplaced in transit and therefore, the Applicant could not attach the same to the Rebate Claim submitted to the Department.

6.15 that the Applicant had prepared all the afore-mentioned documents at the time of dispatch of goods to the Customer. The Customer received the Excise Invoice (original and duplicate copy), ARE–1 (original and duplicate copy) and Bill of Export. The Customer submitted all copies of ARE–1 and Bill of Export to SEZ Customs Officer for verification and attestation purpose. Thereafter, SEZ Customs Officer handed over copies of Bill of Export and original copy of ARE–1 to the Customer and retained duplicate copy of ARE–1 for sending to jurisdictional Excise Department of the Applicant for further verification.

6.16 that duplicate copies of ARE–1 were misplaced in transit from SEZ to the Applicant and the same are not traceable. That duplicate copies of ARE–1 duly attested by SEZ Customs Officer which are misplaced at present and cannot be located. The Applicant assured the Department that if the said copies are found in future, the same shall be submitted to the Department.

6.17 the Applicant lodged the First Information Report ('FIR') with respective police station for misplacement of aforesaid documents. The Applicant also accepted the fact that original and duplicate copies of ARE-1 are misplaced but a photocopy of ARE -1 duly endorsed by SEZ Customs officer was submitted with the Rebate claim. That substantive benefit of Rebate of Excise duty of supplies to SEZ should not be denied on the basis of so called aforesaid Procedural Lapse.

6.18 the Applicant places reliance in the case of CCE vs. Kanwal Engineers [1996 (87) E.L.T. 141 (Tri)], wherein it has been categorically held that refund of duty taken is admissible if export of goods can be established on the basis of other documents like Bank statement, Bill of Export / Shipping Bill.

6.19 that the Original Authority alleged that photocopy of ARE–1 is submitted against duplicate copy of ARE–1 duly attested by SEZ Customs Officer as a proof evidence. The Applicant, therefore, relied upon CBEC Circular No. 527/23/2000CX dated May 1, 2000 wherein it has been instructed that self-attested shipping bill photocopy should be considered as an eligible document for sanctioning rebate or allowing credit in running bond account or discharging individual export bond and accordingly, the Applicant has submitted a photocopy of original ARE–1 duly attested by them in lieu of duplicate copy of ARE–1.

6.20 the Applicant also placed reliance on the decision of the Hon'ble Tribunal in Model Buckets & attachments (P) Ltd. vs. CCE, Belgaum [2007 (217) E.L.T. 264 (Tri –Bang)], wherein it was held that if original ARE–1 is misplaced but export of goods can be proved with the help of other documents then no duty can be demanded from the Assessee. The Hon'ble Tribunal also referred the afore-mentioned CBEC Circular and held that photocopy or attested copy of Shipping Bill should be accepted as proof of export by the Department. A similar view has been adopted in the case of Henbenkraft [2001 (136) ELT 979 GOI].

6.21 that the Original Authority itself appreciated in the OIO that the goods have been exported to the Customer and Excise duty was paid on said export and no where it is alleged that export of goods has not taken place. In fact, as stated above the Original Authority in the Order-in-Original, appreciates that goods have been exported to the Customer and payment against the said goods is also received by the Applicant.

6.22 that it will be irrational on the part of the Department to deny the Rebate Claim on the basis of non-submission of the original and duplicate copy of ARE–1 by the Applicant since export of goods is

proved by the Applicant with the help of following documents which are duly attested and sufficient to establish that goods were received by the Customer:

i. Copy of Bill of Export duly attested by SEZ Customs Officer;

ii. Photo copy of the ARE–1 duly attested by SEZ Customs Officer;

iii. Disclaimer from the Customer in favour of the Applicant to avail Rebate Claim; and

iv. Duly attested Bank statement evidencing payment against goods sold to the Customer.

6.23 that on the basis of aforesaid documents, it is proved beyond doubt that goods were indeed exported and the Customer received the same in SEZ and SEZ Customs Officer also acknowledged the receipt of goods in SEZ. Further, payments from the Customers against such supplies are also received by the Applicants. It is, therefore, submitted that the Rebate Claim of the Applicant should not be denied merely on the basis of Procedural Lapse.

6.24 the Supreme Court decision in Oryx Fisheries Private Limited v. Union of India 2011 (266) ELT 422 (SC) wherein it was held that the principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it.

6.25 That the Applicant has submitted the following additional documents to substantiate its claim:

1) The disclaimer certificate issued by SEZ Unit to substantiate that goods are delivered in SEZ Unit has already been provided by the Applicant

2) Photocopy of ARE–1 against duplicate copy of ARE–1 duly attested by SEZ Customs Officer as proof of receipt of goods in SEZ Copy of Bill of Export duly attested by SEZ Customs Officer

3) Duly attested Bank statement evidencing payment against goods sold to the Customer

6.26 that, the stand taken by the Commissioner in the OIA that no addition proof of exports has been submitted to establish the exports does not hold good.

6.27 in the present case nowhere it is alleged that export / supply to SEZ has not taken place. The allegations if at all are with respect to the alleged violation of procedure by the Applicant while filing the rebate claim. The Department itself has appreciated in the SCN and the OIA that goods have been supplied to the customer and said customer has received the goods in SEZ.

6.28 that it is well settled position of law by the decision of the Hon'ble Supreme Court in Mangalore Fertilizers & Chemicals Ltd. v. Dy. Commissioner reported in [1991 (55) E.L.T. 437 (S.C.)] that a procedural or administrative non-compliance/lapse cannot be the basis to deny substantive benefit. Reliance in this regard is also placed on the following judicial pronouncements:-

- Birla VXL – 1998 (99) E.L.T. 387 (Tri)
- Alpha Garments -1996 (86)E.L.T. 600 (Tri)
- Atma Tube – 1998 (103) E.L.T. 270
- Creative Mobous – 2003 (58) R.L.T. 111 (GOI)
- Ikea Trading India Ltd. – 2003 (157)E.L.T. 359 (GOI)
- IN RE: Commissioner of Central Excise, Bhopal – 2006 (205) E.L.T. 1093 (G.O.I.)
- IN RE : Modern Process Printers - 2006 (204) E.L.T. 632 (G.O.I.)

6.29 The Applicant enclosed self-attested photocopies of all relevant Excise invoices to Rebate claim as per CBEC circular No. 130/41/95 CX dated 30/5/1995.

7. A Personal hearing in the matter was fixed on 08.03.2018. Mr. Vijay Jangam, Manager, Finance, Mr. Vishal Kulkarni, Advocate and Ms. Kehkasha Sehgal, Advocate appeared for the personal hearing on behalf of the applicant. No one was present from the respondent's side (Revenue). The applicant reiterated the submissions filed in the instant revision application and pleaded that OIA be set aside and RA filed by them be allowed.

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. Government observes from the impugned order in original that the applicant had filed the subject rebate claim on 04.10.2010 however, the same was not admitted in the division office as they did not submit claim with original and duplicate ARE1s hence returned to them for doing the needful for resubmission with required documents. The original authority has further observed that the applicant had not filed appeal with competent authority, if they felt aggrieved on returning incomplete claim to them on 4.10.2010 by Supdt. (Rebate) with specific remark. Thereafter, the original authority also observed that the subject claim was filed by the applicant in the division office on 24.05.2012 and since the same was filed after the expiry of one year from the date of admitting the goods in SEZ as per the provisions of sub-section (5) (B) (a) (ii) of Section 11 - B of the Central Excise Act, 1944.

10. Government further observes that the applicant had misplaced the original and duplicate copies of ARE-1 duly attested by SEZ Custom officer and hence they could not attach the same to the rebate claim submitted to

the department. Thereafter, the applicant also lodged the First Information Report (FIR) with respective police station for misplacement of aforesaid documents.

11. In the instant case Government notes that applicant had filed rebate claim on 04.10.2010 and the same was returned to the applicant with the remark "the original and duplicate copies of ARE-1 not enclosed with the claim and on 4th October, 2010. Government observes that as per the procedure the department should have issued a deficiency memo / show cause notice showing therein the discrepancies observed in the rebate claim filed by the applicant.

12. Government observes that there are catena of judgments wherein it has been held that time-limit to be computed from the date on which refund/rebate claim was originally filed. High Court and Tribunal, have held in following cases that original refund/rebate claim filed within prescribed time-limit laid down in Section 11B of Central Excise Act, 1944 and the claim resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held time-barred as the time limit should be computed from the date on which rebate claim was initially filed.

(i) CCE, Delhi-I v. Aryan Export & Ind. - 2005 (192) E.L.T. 89 (DEL.)

(ii) A Tosh & Sons Pvt. Ltd. v. ACCE - 1992 (60) E.L.T. 220 (Cal.)

(iii) CCE, Bolpur v. Bhandiguri Tea Estate - 2001 (134) E.L.T. 116 (T. Kol.)

(iv) Good Year India Ltd. v. CCE, Delhi - 2002 (150) E.L.T. 331 (T.-Del.)

(v) CCE, Pune-I v. Motherson Sumi Systems Ltd. - 2009 (247) E.L.T., 541 (T. Mum.) = 2011 (22) S.T.R. 496 (Tribunal).

Government of India has also held in a case of M/s. IOC Ltd. reported as 2007 (220) E.L.T. 609 (GOI) as well as in a case of M/s Polydrug Laboratories (P) Ltd., Mumbai (Order No. 1256/2013-CX dated 13.09.2013) as under :-

> *"Rebate limitation-Relevant date-time Limit to be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after removing defects was submitted under section 11B of Central Excise Act, 1944."*

13. Government in this connection also relies on Hon'ble High Court of Gujrat's Order dated 17.12.2015 in Special Civil Application No. 7815 of 2014 in the case of Apar Industries (Polymer Division) Vs Union of India [2016 (333) E.L.T. 246 (Guj.)] wherein while the petitioner had submitted the rebate claim in time although, in wrong format. The said claim was returned to the petitioner upon which the petitioner represented the same claims alongwith necessary supporting documents later on. These applications were treated by the Department as time barred and claims were rejected. While disposing the petition, the Hon'ble High Court observed that

> *Thus, making of the declarations by the petitioner in format of Annexure-19 was purely oversight. In any case, neither Rule 18 nor notification of Government of India prescribe any procedure for claiming rebate and provide for any specific format for making such rebate applications. The Department, therefore, should have treated the original applications/declarations of the petitioner as rebate claims. Whatever defect, could have been asked to be cured. When the petitioner represented such rebate applications in correct form, backed by necessary documents, the same should have been seen as a continuous attempt on part of the petitioner to seek rebate. Thus seen, it would relate back to the original filing of the rebate applications, though in wrong format. These rebate applications were thus made within period of one year, even applying the limitation envisaged under Section 27 of the Customs Act. Under the circumstances, without going into the question whether such limitation would apply to rebate claims at all or not, the Department is directed to examine the rebate claims of the petitioner on merits. For such purpose, revisional order and all the orders confirmed by the revisional order are set aside. The Department shall process and decide rebate claims in accordance with Rules.*

14. Government also observes that the aforesaid decision of High Court of Gujarat has been accepted by the department as communicated vide Board Circular No.1063/2/2018-CX dated 16.02.2018.

15. Government is of considered view that the ratio of afore stated case laws is squarely applicable to this case since the same time-bar issue is involved in the instant case.

16. As regards original authority's observations in his Order in Original that "*the applicant have not complied with the legal provisions of rule 18 of Central Excise Rules, 2002, read with Notification No. 19/2004-CE(N.T) dated 06.09.2004 read with Section 11 B of Central Excise Act. 1944 by not submitting prescribed documents namely original and duplicate ARE-1s they are not entitled for grant of rebate claim on merit also*", Government observes that while deciding the identical issue, and allowing the petition in favour of the claimant, Hon'ble High Court of Bombay in its judgment dated 24-4-2013 in the case of M/s. U.M. Cables v. UOI (WP No. 3102/2013 & 3103/2013) 2013 (293) E.L.T. 641 (Bom.), at para 16 and 17 of its Order observed as under :-

> *16. However, it is evident from the record that the second claim dated 20 March, 2009 in the amount of Rs. 2.45 lacs which forms the subject matter of the first writ petition and the three claims dated 20 March, 2009 in the total amount of Rs. 42.97 lacs which form the subject matter of the second writ petition were rejected only on the ground that the Petitioner had not produced the original and the duplicate copy of the ARE-1 form. For the reasons that we have indicated earlier, we hold that the mere non-production of the ARE-1 form would not ipso facto result in the invalidation of the rebate claim. In such a case, it is open to the exporter to demonstrate by the production of cogent evidence to the satisfaction of the rebate sanctioning authority that the requirements of Rule 18 of the Central Excise*

Rules, 2002 read together with the notification dated 6 September, 2004 have been fulfilled. As we have noted, the primary requirements which have to be established by the exporter are that the claim for rebate relates to goods which were exported and that the goods which were exported were of a duty paid character. We may also note at this stage that the attention of the Court has been drawn to an order dated 23 December, 2010 passed by the revisional authority in the case of the Petitioner itself by which the non-production of the ARE-1 form was not regarded as invalidating the rebate claim and the proceedings were remitted back to the adjudicating authority to decide the case afresh after allowing to the Petitioner an opportunity to produce documents to prove the export of duty paid goods in accordance with the provisions of Rule 18 read with notification dated 6 September, 2004 [Order No. 1754/2010-CX, dated 20 December, 2010 of D.P. Singh, Joint Secretary, Government of India under Section 35EE of the Central Excise Act, 1944]. Counsel appearing on behalf of the Petitioner has also placed on the record other orders passed by the revisional authority of the Government of India taking a similar view [Garg Tex-O-Fab Pvt. Ltd. - 2011 (271) E.L.T. 449] and Hebenkraft - 2001 (136) E.L.T. 979. The CESTAT has also taken the same view in its decisions in Shreeji Colour Chem Industries v. Commissioner of Central Excise - 2009 (233) E.L.T. 367, Model Buckets & Attachments (P) Ltd. v. Commissioner of Central Excise - 2007 (217) E.L.T. 264 and Commissioner of Central Excise v. TISCO - 2003 (156) E.L.T. 777.

17. *We may only note that in the present case the Petitioner has inter alia relied upon the bills of lading, banker's certificate in regard to the inward remittance of export proceeds and*

certification by the customs authorities on the triplicate copy of the ARE-1 form. We direct that the rebate sanctioning authority shall reconsider the claim for rebate on the basis of the documents which have been submitted by the Petitioner. We clarify that we have not dealt with the authenticity or the sufficiency of the documents on the basis of which the claim for rebate has been filed and the adjudicating authority shall reconsider the claim on the basis of those documents after satisfying itself in regard to the authenticity of those documents. However, the rebate sanctioning authority shall not upon remand reject the claim on the ground of the non-production of the original and the duplicate copies of the ARE-1 forms, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled. For the aforesaid reasons, we allow the Petitions by quashing and setting aside the impugned order of the revisional authority dated 22 May, 2012 and remand the proceedings back to the adjudicating authority for a fresh consideration. The rejection of the rebate claim dated 8 April, 2009 in the first writ petition is, however, for the reasons indicated earlier confirmed. Rule is made absolute in the aforesaid terms.

18. In view of foregoing discussions, it is quite clear that time limitation is to be computed from the initial date of filing such applications as available in relevant office records. Since the said applications are initially claimed to be filed within stipulated time limit i.e. on 04.10.2010, the same are to be treated as filed in time. The applications are to be decided on merit in accordance with law treating the same as filed in time provided on verification of original records the applicant's claim of filing applications initially in time is found correct. In view of above position, case is required to be remanded back for fresh consideration.

19. In view of above discussion, Government sets aside impugned order and remands the case back to original authority to decide the same afresh in view of above observations and the rebate sanctioning authority shall not upon remand, reject the claim on the ground of the non-production of the original copy of the ARE-1 form, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

20. Revision application is disposed off in above terms.

21. So, ordered.

10.5.2018

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

ORDER No. 152/2018-CX (WZ) /ASRA/Mumbai DATED, 10-5-2018

To,
M/s Tata Blue Scope Steel Limited,
247 & 250, Hinjewadi, Taluka : Mulshi,
Pune 411 057.

Copy to:

1. The Commissioner of CGST, Pune-I Commissionerate, GST Bhavan,ICE House, Opp. Wadia College, Pune 411 001.
2. The Commissioner of CGST (Appeals-I) Pune, GST Bhavan,ICE House, Opp. Wadia College, Pune 411 001
3. The Deputy / Assistant Commissioner Division II (Pimpri Division), CGST Pune-I Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

True Copy Attested

10/5/18

एस. आर. हिरूलकर
S. R. HIRULKAR