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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.195/515/013-RA / 2790

Date of Issue: 06.05.2021

ORDER NO. 155/2021-CX (WZ)/ASRA/MUMBAI DATED 30.03.2021
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT,
1944.

Applicants : M/s Symphony Comfort Systems Ltd.,
(Now known as Symphony Limited)
Village - Thal, Taluka - Kadi,
District- Mehsana, Gujarat- 382- 798.

Respondents : Commissioner of CGST, Gandhinagar.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.
SRP/213/VAPI/2012-13 dated 09.01.2013 passed by the
Commissioner (Appeals), Central Excise, Vapi.



ORDER

This Revision Application is filed by M/s Symphony Comfort Systems Ltd., (Now known as Symphony Limited), Village – Thal, Taluka – Kadi, District- Mehsana, Gujrat- 382- 798 (hereinafter referred to as “the Applicant”) against the Order-in-Appeal No. SRP/213/VAPI/2012-13 dated 09.01.2013 passed by the Commissioner (Appeals), Central Excise, Vapi.

2. The issue in brief is that the applicant engaged in manufacture of “Evaporated air Coolers” falling under Chapter Sub Heading No. 84796000 of the first schedule to the Central Excise Tariff Act, 1985. The applicant had exported coolers of different types under the claim for rebate in terms of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004. The applicant had filed 5 rebate claims for total amount of Rs. 5,36,031/- (Rupees Five Lakh Thirty Six Thousand Thirty One Only) in respect of the duty paid on the goods exported by them.

3. The Rebate Sanctioning Authority vide Order in Original No. 3568/REBATE/2012-13/SILVASSA-III dated 28.03.2012 rejected the impugned rebate claims on the grounds that the applicant failed to submit Original & Duplicate Copies of ARE-1 duly endorsed by the Customs authorities in all the above mentioned five rebate claims.

4. Aggrieved by the impugned order in original, the applicant filed an appeal before Commissioner (Appeals), Central Excise, Vapi. The Appellate Authority vide Order in Appeal No. SRP/213/VAPI/2012-13 dated 09.02.2013 rejected the appeal filed by applicant and upheld the order in original. The appellate authority while passing the impugned order in appeal observed that :-

4.1 There is no dispute that the applicant had failed to submit original copy of the original and duplicate copy of ARE-1 showing endorsement of the customs authority regarding actual export of goods.

4.2 The appellate authority had relied upon following judgements :-

- a) Varinda Overseas Ltd. 2012(281) ELT 129 (GOI)
- b) Bajaj Electricals Ltd. 2012(281) ELT 146 (GOI)



4.3 The case of Garg Tex-O-Feb 2011 (271) ELT 449 (COI) is not applicable to this case as the applicant failed to reconstruct the ARE-2 and submit duly endorsed ARE-1 as in that case.

5. Being aggrieved by the impugned Order in Appeal, the applicant filed instant Revision Application on the following grounds:-

5.1 Rebate claim filed under Rule 18 of the Central Excise Rule, 2002 read with Notification No. 19/204-CE (NT) dated 06.09.2004 cannot be denied to the applicant merely on procedural / technical lapse.

5.2 They have produced copy of office copies of Original and Duplicate ARE-1 supported by the copies of shipping bills, Bank Realization Certificates and also proof of the fact the duty has been paid on the goods exported.

5.3 On the basis of documents supporting the claim, there cannot be even iota of doubt that the goods have been exported and also that the goods exported had suffered duty.

5.4 Both the lower authorities had not denied the fact of clearance of goods from factory, duty paid nature of exported goods and subsequent its export.

5.5 When the core aspect of Rule 18 of Central Excise Rules, 2002 was completed by them, the duty paid on the exported goods should be refunded.

5.6 The Appellate Authority had wrongly placed reliance of the decision of Varinda Overseas Ltd.-2012 (281) TLE 129 (GOI) and Bjaja Electricals LTd - 2012 (281) ELT 146 (GOI) in the facts of the present case.

6. A Personal hearing in this case was held on 18.02.2021 through video conferencing and Shri Uday Joshi, Advocate appeared online for hearing on behalf of the applicant. He informed that he original and duplicate copies of ARE-1 were lost for which FIR & affidavit have been submitted. There being no doubt on duty payment & export of goods, their, substantive claim should not be denied.

7. Government has carefully gone through the relevant case records, written submission and perused the impugned Order-in-Original and Order-in-Appeal.

8. The Government observes that the applicant had filed 5 rebate claims involving an amount of rebate claim to the tune of Rs. 5,36,031/- for the goods



exported by them. The impugned rebate claims were rejected by the adjudicating authority on the grounds that the applicant could not produce the original and duplicate copies of ARE-1 which are mandatory documents required to be submitted along with rebate claims under Notification No. 19/2004-CE (NT) dated 06.04.2009 read with Rule 18 of the Central Excise Rules, 2002.

9. On perusal of the records it is observed that the applicant had filed copies of following documents along with the rebate claims.

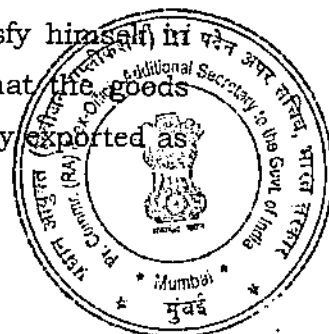
- i) Shipping bills
- ii) Bill of Lading.
- iii) Mate Receipts.
- iv) Central Excise Invoice under Rule 11 of CER, 2002.
- v) Bank Realization Certificates

9.1 It is also observed that the applicant could not file the original copies of Original and Duplicate copies of ARE-1s duly endorsed by the Customs Authorities as the same were lost in transit by the staff person of their CHA for which they have filed FIR with the respective police station and produced the copy of certificate to that effect issued by the officers of the Police Station.

9.2 It is noted that, the applicant has furnished the copies of relevant BRCs for verification to the rebate sanctioning authority which is also mentioned by the appellate authority in para 6 of the impugned order in appeal. Thus it is clear that export proceeds had been realised within stipulated period and the same appears to be in order as per the self attested copy of BRC enclosed by them with the instant revision application.

9.3 On perusal of relevant pages of the Cenvat Credit Register submitted by the applicant along with Revision Application, it is observed that they have debited the appropriate duty through debit entry in the Cenvat Credit Register.

10. The Government notes that the Manual of Instructions that have been issued by the CBEC specifies the documents which are required for filing a claim for rebate. Among them is the original / duplicate copy of the ARE-1, the invoice and self-attested copy of shipping bill and bill of lading. Further paragraph 8.4 of the said Manual specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported as



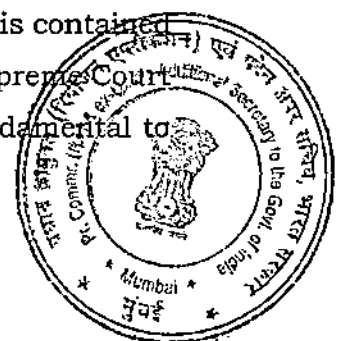
evident from the original and duplicate copies of the ARE-1 form duly certified by customs. The second is that the goods are of a duty paid character as certified on the triplicate copy of the ARE-1 form received from the jurisdictional Superintendent of Central Excise. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

10.1 The Government holds that in order to qualify for the grant of a rebate under Rule 18, the mandatory conditions required to be fulfilled are that the goods have been exported and duty had been paid on the goods.

10.2 Hence, the deficiencies pointed out by the adjudicating authority while rejecting the rebate claims for the amount of Rs. 5,36,031/- are merely procedural infractions and the same should not result in the deprivation of the statutory right to claim a rebate particularly when the substantial compliance has been done by the applicant with respect to conditions and procedure laid down under relevant notifications / instructions issued under Rule 18 of the Central Excise Rules, 2002. However, the rebate for Rs. 5,36,031/- would be subject to the satisfaction of the authority on the production of sufficient documentary material that would establish the identity of the goods exported and the duty paid character of the goods.

10.3 In several decisions of the Union Government in the revisional jurisdiction as well as in the decisions of the CESTAT, the production of the relevant forms has been held to be a procedural requirement and hence directory as a result of which, the mere non- production of such a forms would not result in an invalidation of a claim for rebate where the exporter is able to satisfy through the production of cogent documentary evidence that the relevant requirements for the grant of rebate have been fulfilled. In the present case, no doubt has been expressed whatsoever that the goods were not exported goods.

10.4 Thus, the Government further observes that 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. vs. 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. 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."

10.5 In this regard Government observes that while deciding the identical issue, 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) reported as TIOL 386 HC MUM CX. = 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 the 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.



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.

10.6 Government also observes that Hon'ble High Court, Gujarat in Raj Petro Specialities Vs Union of India [2017(345) ELT 496(Guj)] also while deciding the identical issue, relying on aforesaid order of Hon'ble High Court of Bombay, vide its order dated 12.06.2013 observed as under:

7. "Considering the aforesaid facts and circumstances, more particularly, the finding given by the Commissioner (Appeals), it is not in dispute that all other conditions and limitations mentioned in Clause (2) of the notifications are satisfied and the rebate claim have been rejected solely on the ground of non-submission of the original and duplicate ARE1s, the impugned order passed by the Revisional Authority rejecting the rebate claim of the respective petitioners are hereby quashed and set aside and it is held that the respective petitioners shall be entitled to the rebate of duty claimed for the excisable goods which are in fact exported on payment of excise duty from their respective factories. Rule is made absolute accordingly in both the petitions".

10.7 Government finds that rationale of aforesaid Hon'ble High Court orders are squarely applicable to the instant case in so far as the matter of sanction of rebate claim of Rs. 5,36,031/-.

10.8 The Government holds that when the bonafides of export can be proved on the basis of collateral documents, the rebate claim should not be withheld solely on the ground of non production of original / duplicate copies of ARE1s. The Government holds that ends of justice will be met if the case is remanded back to the original adjudicating authority for the limited purpose of verification of these claims with directions that he shall reconsider these claims for rebate on the basis of the aforesaid documents submitted by the applicant after satisfying itself in regard to the authenticity of corroborative documents and duty payment nature of goods. The applicant are also directed to submit all documents evidencing duty paid nature of the exported goods. Impugned Order in Appeal is modified to the above extent.



10.9 In view of discussions and findings elaborated above, Government holds that impugned rebate claims for Rs. 5,36,031/- are admissible in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/04-CE (N.T.) dated 06.09.04 subject to verification by original adjudicating authority of the relevant documents pertaining to impugned exports and verification of duty payment particulars certified by the jurisdictional Central Excise Range officer.

11. In view of the above discussion and findings, the Government sets aside the impugned Order-in-Appeal No. SRP/213/VAPI/2012-13 dated 09.01.2013 passed by the Commissioner (Appeals), Central Excise, Vapi and remands the case back to Original Authority. The Original Authority is directed to carry out verification of impugned rebate claims for Rs. 5,36,031/- filed by the applicant on the basis of the above directions. However, the rebate sanctioning authority shall not upon remand, reject the claim on the ground of the non-production of the original and duplicate copy of the ARE-1 form. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

12. The Revision application is allowed on above terms.

Shrawan
30/3/21
(SHRAWAN KUMAR)

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

ATTESTED

ORDER No. 155/2021-CX (WZ)/ASRA/Mumbai DATED 30.03.2021.

To,
M/s Symphony Comfort Systems Ltd.,
(Now known as Symphony Limited)
Village - Thal, Taluka - Kadi,
District- Mehsana, Gujrat- 382- 798.

(P. R. JOSHI)
अधीक्षक

Superintendent
रिवीजन एप्लीकेशन
Revision Application
मुंबई इकाई, मुंबई
Mumbai Unit, Mumbai

Copy to:

1. The Commissioner of CGST, Gandhinagar Commissionerate, 2nd floor, Customs House, Near All India Radio, Navarangpura, Ahmedabad - 380 009.
2. The Commissioner of CGST, Ahmedabad Appeals, 5th floor, CGST Bhavan Revenue Marg, Opp. Polytechnic, Ambawadi, Ahmedabad- 380 015.
3. The Deputy Commissioner, CGST, Mehsana Division: 2nd Floor, Sardar Patel Vyapar Sankul, Mal Godoun Road, Mehsana-384002.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

