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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.195/911/013-RA / 2796

Date of Issue: 06.05.2021

ORDER NO. 156/2021-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 Deepak Nitrite Ltd.
Plot No. 4-12, GIDC Estate,
Nandesari, Vadodara- 391 340.

Respondents : Commissioner of CGST, Vadodara-I.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. VAD-EXCUS-
001-APP-319-13-14 dated 22.08.2013 dated 09.01.2013 passed
by the Commissioner (Appeals), Central Excise, Vadodara.



ORDER

This Revision Application is filed by M/s Deepak Nitrite Ltd. Plot No. 4-12, GIDC Estate, Nandesari, Vadodara- 391 340. (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. VAD-EXCUS-001-APP-319-13-14 dated 22.08.2013 dated 09.01.2013 passed by the Commissioner (Appeals), Central Excise, Vadodara.

2. The issue in brief is that the applicant engaged in manufacture of 'goods falling under Chapter 29 of Central Excise Tariff Act, 1985. The applicant had filed rebate claim for Rs. 4,43,162/- (Rupees Four Lakh Forty Three Thousand One Hundred Sixty Two Only) seeking rebate of duty paid on excisable goods exported under ARE-1 No. 393 dated 03.02.2012 under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004.

3. On scrutiny of the impugned rebate claim, the Rebate Sanctioning Authority observed that the applicant have not submitted the original and duplicate copies of ARE-1 as well as the Central Excise Invoice No. NDSE 11/413 dated 03.02.2012. the claimant while filing the rebate claims mentioned that these documents were lost in transit. The rebate sanctioning authority vide order in original No. Reb/635/AC.DIV-IV/MI/2012-13 dated 31.01.2013 rejected the impugned rebate claim.

4. Being aggrieved by the Original Order, the applicant filed an appeal before the Commissioner (Appeals), Central Excise, Vadodara. The appellate authority vide Order in Appeal No. VAD-EXUS-001-APP-319-13-14 dated 22.08.2013 rejected the appeal 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 In the instant case, the comparison of original , duplicate and triplicate copy of ARE-1 was not at all possible as the original and duplicate copies of ARE-1 duly endorsed by the Customs authorities were not available.

4.2 The applicant should have filed FIR with the police authorities or initiated any other suitable action to trace out the original documents.



4.3 Non submission of original and duplicate copies of ARE-1 cannot be treated as technical or procedural lapse.

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

5.1 The impugned goods were cleared under cover of Central Excise Invoice and under ARE- 1 No. 393 dated 03.02.2012, which facts are not in dispute.

5.2 The impugned goods were also undisputedly exported under the cover of Shipping Bill No. 7399547 dated 02.02.2012.

5.3 They have produced Customs Certified copies of ARE-1 and invoice for export along with other proof such as Bill of Lading, Mate Receipt etc. evidencing payment of duty and exports having taken place in support of their rebate claim.

5.4 The ideal of producing customs certified copies is to ensure that goods have actually been exported. When otherwise the very same customs authorities are certifying ARE-1, but not the "original" or "duplicate" copy thereof, such technicality should not result in denial of the substantial benefit to the applicant.

6. A Personal hearing in this case was held on 24.02.2021 through video conferencing and Shri Lakshmi Ganapathi and Shri Hitesh Mundra, Advocate appeared online for hearing on behalf of the applicant. They informed that rebate claim was denied merely on the ground of non submission of ARE-1 Original and Duplicate copies. They requested to allow rebate as there is no dispute regarding export of duty paid goods.

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 a rebate claim involving an amount of rebate claim to the tune of 4,43,162/- for the goods exported by them. The impugned rebate claim was rejected by the adjudicating authority on the grounds that the applicant could not produce the original and duplicate copies of ARE-1 and Excise Invoice 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) Customs Certified copies of Original & Duplicate copies of ARE-1.
- v) Customs Certified copy of export invoice.

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 transporter.

9.2 It is noted that, the applicant has furnished the certified copy of relevant BRC i.e. in respect of Shipping Bill No. 7399547 dated 02.02.2012s for verification to the along with instant Revision Application.

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. 4,43,162/- 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. 4,43,162/- 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. The Government opines that, in the absence of relevant central excise invoice, the duty paid nature of the exported goods in the instant case could have been verified by the rebate sanctioning authority by obtaining / calling for duty payment certificate in respect of impugned goods cleared from the jurisdictional Central Excise Authorities. However, no such efforts appear to have been made by the rebate sanctioning authority before rejecting the impugned rebate claim.

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 :-

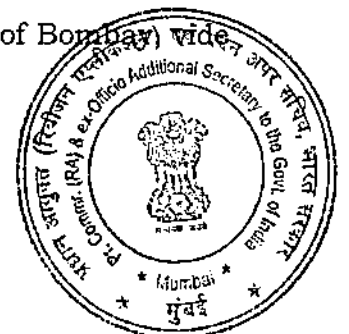
16. *However, it is evident from the record that the second claim dated 20 March, 2009 in the amount of Rs. 2.45 lacs which forms the subject matter of the first writ petition and the three claims dated 20 March, 2009 in the total amount of Rs. 42.97 lacs which form the subject matter of the second writ 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 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.*

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 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 rational of aforesaid Hon'ble High Court orders are squarely applicable to the instant case in so far as the matte of sanction of rebate claim of Rs. 4,43,162/-.

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. 4,43,162/- 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. VAD-EXCUS-001-APP-319-13-14 dated 22.08.2013 dated 09.01.2013 passed by the Commissioner (Appeals), Central Excise, Vadodara



and remands the case back to Original Authority. The Original Authority is directed to carry out verification of impugned rebate claims for Rs. 4,43,162/- 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 or central excise invoice. 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.

ORDER No. 156/2021-CX (WZ)/ASRA/Mumbai DATED 30.03.2021.

To,
M/s Deepak Nitrite Ltd.
Plot No. 4-12, GIDC Estate,
Nandesari, Vadodara- 391 340.

Copy to:

1. The Commissioner of CGST, Vadodara-I Commissionerate, GST Bhavan, Race Course Circle, Vadodara - 390007(Gujarat).
2. The Commissioner of CGST, Vadodara Appeals, 6th floor, Central Excise Building, Race Course Circle, Vadodara - 390007(Gujarat).
3. The Deputy Commissioner, CGST, Vadodara Division-I, 5th Floor, GST Bhavan, Race Course Circle, Vadodra-390007.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

ATTESTED

CP. R. JOSHI
अधीक्षक

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

