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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. 195/695/13-RA/2685 Date of Issue: 09.04.2021

ORDER NO. 167/2021-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 CENTRAL
EXCISE ACT,1944.

Applicant : M/s. Tirupati Engineering.

Respondent: Commissioner of Central Excise (Appeals), Mumbai Zone-I

Subject : Revision Applications filed, under Section 35EE of Central
Excise Act, 1944 against Order-in-Appeal No. BR/143/Th-
I/2013 dated 28.02.2013 passed by the Commissioner of
Central Excise (Appeals),Mumbai Zone-I.

ORDER

This Revision Application has been filed by M/s. Tirupati Engineering, 4/17, Ramakrishna Nagar, On Easter Express Highway, New RTO, Thane (West), Mumbai 600 604 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. BR/143/Th-I/2013 dated 28.02.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I.

2. The case in brief is that the Applicant, had filed rebate claim of Rs 1,01,970/- dated 26.02.2012 in respect of ARE-1 No. EL-01/2010-11 dated 31.03.2011. On scrutiny of the claim it was noticed that in the ARE-1 they had mentioned the name of "Commissioner of Central Excise, Kolkata-V" for claiming the rebate claim. Hence the Applicant was issued Show Cause Notice dated 11.04.2012 as to why the said rebate claim should not be rejected on the ground that the same had not been filed with proper authority. The Applicant vide their letter dated 25.04.2012 submitted that they had by mistake put-up the name of "Commissioner of Central Excise, Kolkata-V" although the goods had been exported through Nhava Sheva Port and requested to condone their mistake. The adjudicating authority Deputy Commissioner, Central Excise, Kalyan-II Division vide Order-in-Original No. R-539/2012-13 dated 23.08.2012 rejected the rebate claim on the grounds that the Applicant had not submitted the Triplicate copy of the ARE-1 and the Applicant had failed to follow the mandatory requirement for claiming the rebate claim. Aggrieved, the Applicant filed appeal before the Commissioner of Central Excise (Appeals), Mumbai Zone-I. The Commissioner(Appeals) vide Order-in-Appeal No. BR/143/Th-I/2013 dated 28.02.2013 rejected their appeal and upheld the Order-in-Original.

3. Aggrieved, the Applicant filed the current Revision Application on the following grounds:

- (i) The Applicant in clear terms had requested the original adjudicating authority to condone the error of inadvertence mention of a different office address, with who they intend to file rebate claim in the ARE-1

filed with the rebate claim, when there were no legal constraints to do so considering the essential and undisputed fact of subject duty paid goods been exports, the Commissioner(Appeals) had rejected the rebate claim in sheer disregard to settled law on the issue. In this they relied on few case laws:

- (a) GOI Order No. 886/06 dated 29.09.2006 in the matter of M/s A.A. Cotton Mills, Salem;
- (b) CCE Nagpur Vs M/s Murli Agro Products Ltd. [2006 (200) ELT 0175 (GOI)];
- (c) GOI Order No 267/05 in the matter of M/s Bhagirath Textiles Ltd.;
- (d) UOI Vs A.V. Narasumhalu [1983 ELT 1534 (SC.)];
- (e) Suksha Internation Vs UOI [1989 (39) ELT 503 (SC.).

Therefore, it is quite evident that such a 'human error' is condonable, when the duty paid goods are exported and concerned foreign currency was realized.

- (ii) Going beyond the scope of SCN dated 11.04.2011, the original adjudicating authority had violated Principle of Natural Justice, when he had rejected the rebate claim for ground other than what was raised in the show cause notice. Therefore, it is clear and evident that the adjudicating authority had traversed beyond the scope of the SCN to pass the impugned Order-in-Original dated 23.08.2012 and created a new case subsequently, which was not there earlier in the SCN. In this they relied on following case laws:

- (a) Saurabh Organics Pvt Ltd Vs CCE Thane [2012 (275) ELT (Tri. Mumbai)];
- (b) Primex Sales Vs CC(I) Mumbai [2011 (274) ELT 458 (Tri. Mumbai)]
- (c) Nahar Spinning Mills Ltd Vs CCE Bhopal [2010 (256) ELT 92 (Tri. Del.)];
- (d) Haver Standard India P. Ltd. Vs CCE Vadodara [2009 (245) ELT 216 (Tri. Ahmd.)].

- (iii) The Commissioner(Appeals) also did not attempt to rectify what was done in the impugned Order-in-Original. The Applicant submitted that

Notification 19/04-CE(NT) required the triplicate copy of the ARE-1 to be compared with its original and duplicate copy. But when it was lost and the FIR to this effect along with quadruplicate copy of ARE-1 were also submitted along with the rebate claim, none of the lower authorities had considered this fact. Whereas the Revisionary Authority in various situations had considered those cases. They relied on the following case laws:

- (a) IN RE : GSL (INDIA) Ltd [2012 (276) ELT 116 (GOI)];
- (b) IN RE : Garg Tex-O-Fab Pvt. Ltd [2011 (271) ELT 449 (GOI)];
- (c) IN RE : Sanket Industries Ltd [2011 (268) ELT 125 (GOI)]

Therefore, it was evident that the impugned orders passed by both the lower authorities are bad in law, hence need to be set aside and quashed.

- (iv) The Applicant prayed that the Order-in-Appeal be set aside and hold that the Applicant are entitled for the claimed rebate.

4. Personal Hearing was fixed for 11.06.2018, 22.08.2019 and 01.10.2019, but no one attended the hearing. Since there was a change in the Revisionary Authority, hearing were granted on 07.01.2021, 14.01.2021, 21.01.2021 and 25.02.2021, however none appeared for the hearing. Hence the case is decided on merits.

5. 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.

6. On perusal of the records, it is observed that the Applicant in support of their rebate claims had produced the set of the following documents:

- (i) Rebate claim application in Form-C;
- (ii) Original copy of ARE-1 No. EL-01/2010-11 dated 31.03.2011
- (iii) Duplicate copy of ARE-1 No. EL-01/2010-11 dated 31.03.2011 duly attested by Customs;
- (iv) Quadruplicate copy of ARE-1 No. EL-01/2010-11 dated 31.03.2011 duly attested by Supdt. C.Ex. R-III, Dn K-II;

- (v) Duplicate copy of Invoice No. 165 dated 31.03.2011;
- (vi) Certified copy of Bill of Lading No. MSCU M 6146676;
- (vii) Certified copy of export invoice No. ELEL/ALG/534-B/10-11 dated packing list.
- (viii) Certified copy of Export Promotion copy of Shipping Bill No. 3144162 dated 07.04.2011;
- (ix) Copy of Mate receipt No. 431926 dated 07.04.2011;
- (x) Disclaimer letter from M/s EMAMI Ltd;
- (xi) Copy of Police Compliant dated 15.12.2011.

7. Government observes that on scrutiny of the claim it was noticed that in the ARE-1 No. EL-01/2010-11 dated 31.03.2011 the Applicant had mentioned the name of "Commissioner of Central Excise, Kolkatta-V" for claiming the rebate claim. Hence the Applicant was issued Show Cause Notice dated 11.04.2012 as to why the said rebate claim should not be rejected on the ground that the same had not been filed with proper authority. The Applicant vide their letter dated 25.04.2012 submitted that they had by mistake put-up the name of "Commissioner of Central Excise, Kolkata-V" although the goods had been exported through Nhava Sheva Port and requested to condone their mistake.

8. Government notes that Para 8 of Chapter of C.B.E.& C Excise Manual of Supplementary instructions stipulates that the rebate can be sanctioned by Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of production of export goods or the warehouse; or Maritime Commissioner and the exporter has to indicate on the ARE-1 at the time of removal of export goods the office and its complete address with which they intend to file claim of rebate. Government notes that the Applicant vide their letter dated 25.04.2012 admitted their mistake and requested to condone the same. Government feels that grounds taken by the lower authorities in rejection of the rebate claim are purely of technical nature. Government notes that such procedural lapse is condonable as mentioning of wrong rebate sanctioning authority cannot be sufficient ground for denying the

substantial benefit of rebate of duty paid on exported goods. Government finds that there are catena of judgments stating that substantive benefit cannot be denied on mere procedural lapse. The Applicant had submitted sufficient documentary evidence to substantiate the fact that the goods in question are excise duty paid and the same have been exported. Further, there is no allegation by the department that goods have neither been exported nor excise duty paid. Hence Government condones the mistake and the rebate claim is admissible.

9. The Commissioner(Appeals) had also rejected the Applicant's rebate claims for non-furnishing of Triplicate copy of ARE-1 No. EL-01/2010-11 dated 31.03.2011. The Applicant submitted that Notification 19/04-CE(NT) required the Triplicate copy of the ARE-1 to be compared with its original and duplicate copy. But when it was lost and the FIR dated 15.12.2011 to this effect along with quadruplicate copy of ARE-1 were also submitted along with the rebate claim, none of the lower authorities had considered this fact. Government notes that evidence of duty payment and export of goods have been submitted by them and it was not disputed by rebate sanctioning authority. Rebate claim was rejected only on technical/ procedural grounds..

10. In this regard it is noticed that while deciding an 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.), observed at para 16 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.

11. Further, the Hon'ble High Court, Gujarat in Raj Petro Specialities Vs Union of India [2017(345) ELT 496 (Guj)] also while deciding the identical issue, relied on aforesaid order of Hon'ble High Court of Bombay.

12. Government finds that ratios of aforesaid Hon'ble High Court orders are squarely applicable to the issue in question. Government finds that the documents furnished by the Applicant indisputably prove that duty paid goods under claim for rebate have been exported. It is incumbent upon the adjudicating authority to verify the documentary evidences furnished by the Applicant as resorting rejection on technical grounds/procedural lapses would not serve the purpose of justice.

13. Government also finds that the grounds of non-furnishing of Triplicate copy of ARE-1 No. EL-01/2010-11 dated 31.03.2011 was not raised in the

Show Cause Notice and hence the lower authorities had traversed beyond the scope of the SCN and created a new case subsequently.

14. With the above observations, Government remands the matter to the original authority for the limited purpose of verification of the claim with directions that the claim for rebate shall be considered on the basis of aforesaid documents submitted by the Applicant. After satisfying the authenticity of those documents, and the fact of export of duty paid goods, the original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

15. In view of above, Government sets aside the impugned Order-in-Appeal No. BR/143/Th-I/2013 dated 28.02.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I and the matter is remanded to the Original Adjudicating Authority.

16. The revision application is allowed in terms of above.

Shrawan
30/3/21
(SHRAWAN KUMAR)

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

ORDER No 167/2021-CX (WZ) /ASRA/Mumbai Dated 30.03.2021

To,
M/s. Tirupati Engineering,
4/17, Ramakrishna Nagar,
On Easter Express Highway,
New RTO, Thane (West),
Mumbai 600 604.

Copy to:

1. The Commissioner of CGST, Thane Commissionerate, Navprabhat Chambers, 4th floor, Ranade Road, Dadar, Mumbai 400 028.
2. Shri R.K. Sharma & Associates Pvt Ltd., 324, Sai Commercial Centre, Station Road, Govandi(East), Mumbai 400 088.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file.
5. Spare Copy