

SPEED POST
REGISTERED POST



**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. 195/184/WZ/2018-RA

1709

Date of Issue:

20.08.2023

ORDER NO.

171 /2023-CEX (WZ)/ASRA/MUMBAI

DATED 23.03.2023 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.

Applicant : M/s. Vishvam Automobiles

Respondent : Principal Commissioner of CGST, Vadodara Commissionerate

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.- VAD-
Excus-001-App-121-18-19 dated 27.06.2018 passed by the
Commissioner GST & Central Excise, Appeals, Vadodara.

ORDER

This Revision Application has been filed by M/s. Vishvam Automobiles (hereinafter referred to as "Applicant") against Order-in-Appeal No.- VAD-Excus-001-App-121-18-19 dated 27.06.2018 passed by the Commissioner GST & Central Excise, Appeals, Vadodara.

2. The facts of the case are that the Applicant, a merchant exporter, had filed rebate claims under rule 18 of CER, 2002 read with Notification No. 19/2004-CE dated 06.09.2004, which was rejected by the Adjudicating Authority vide OIO No. Div/VII/23-25/Refund/2017-18 dated 17.12.2017 mainly on the ground of non-submission of ARE-1. Aggrieved by the OIO, the Applicant filed appeal with the Commissioner GST & Central Excise, Appeals, Vadodara, who vide Order-in-Appeal No.- VAD-Excus-001-App-121-18-19 dated 27.06.2018 rejected their appeal and upheld the OIO.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application on the following grounds:

- i. the impugned order is arbitrary and non speaking order.
- ii. the department has rejected the rebate claims on the ground that correlation of goods is not possible without ARE-1 which is not correct and in spirit of the policy of Government to allow export incentives to the exporters.
- iii. applicant have produced other documents which clearly proves that the same goods which were cleared by the manufacturer from the factory for domestic sale have been exported by the Applicants.
- iv. As regards the jurisdiction to file rebate claim with the Maritime Commissioner or AC/DC having jurisdiction over the manufacturer's factory, the applicants submit that initially when the claim was submitted, the department could have guided the applicants to file claim with the Maritime Commissioner instead of dealing with the claim which was not within their jurisdiction. Raising the issue of jurisdiction at the later stage is therefore illegal.

- v. The applicants submit that the department has failed to appreciate that the applicants were having stuffing permission of the Customs department for stuffing from the warehouse. Therefore, it cannot be said that the applicants have blankly exported the goods, the only lapse has been is the non-issuance of ARE- 1 and that is because the goods have not been exported by the applicants directly from the factory or the warehouse of factory and as it is evident from the documents, the goods have been exported from the warehouse.
 - vi. Applicant has placed reliance on various case laws.
 - vii. In view of above, Applicant requested to allow the refund amount and set aside the impugned OIA.
4. Personal hearing in this case was scheduled on 21.11.2022. Shri Shivam Mishra, Consultant appeared online on behalf of the Applicant and submitted that their claim were rejected on the ground of non-submission of ARE-1, jurisdiction and place of removal not being registered. He submitted that goods were exported from warehouse which is registered. He further submitted that claims were filed in the jurisdiction of warehouse from where goods were exported.
5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original, Order-in-Appeal and the Revision Application.
6. Government observes that the main issue in the instant case is whether the non-preparation of Form ARE-1 can be reason for denying rebate under Rule 18 of Central Excise Rules,2002.
7. Government first proceeds to examine the statutory position with regard to the documents required for sanction of a rebate claim.
- 7.1 Rule 18 provides that Central Government may by notification grant rebate of duty on goods exported subject to conditions and limitations if any and subject to fulfilment of procedure as specified. Notification 19/2004-C.E. (N.T.), dated 6-9-2004 as amended issued under Rule 18 provides that the rebate sanctioning authority will compare the original copy of ARE-1

submitted by exporter with the duplicate copy received from Customs authorities and triplicate from the Excise authorities.

7.2 Also the provisions specified in Chapters 8 (8.3) & (8.4) of CBEC Basic Excise Manual as Supplementary Instructions are applicable in this case, which reads as under:-

"8. Sanction of claim for rebate by Central Excise

8.3 The following documents shall be required for filing claim of rebate:-

(i) A request on the letterhead of the exporter containing claim of rebate, ARE-1 nos. dates, corresponding invoice numbers and dates amount of rebate on each ARE-1 and its calculations.

(ii) Original copy of ARE-1.

(iii) invoice issued under Rule 11.

(iv) self-attested copy of shipping bill and

(v) self-attested copy of Bill of Lading

(vi) Disclaimer Certificate [in case where claimant is other than exporter]

8.4. After satisfying himself that the goods cleared for export under the relevant ARE-1 application mentioned in the claim were actually exported, as evident by the original and duplicate copies of ARE-1 duly certified by Customs, and that the goods are of duty paid character as certified on the triplicate copy of ARE-1 received from the jurisdictional Superintendent of Central Excise (Range Office) the rebate sanctioning authority will sanction the rebate, in part or full. In case of any reduction or rejection of the claim an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued."

From the above, Government notes that original copy of ARE-1 and Excise invoice among other documents are essential documents for claiming rebate. Any non-submission of documents in the manner prescribed thus imparts a character of invalidity to the rebate claim. Also, in the absence of the original copies of ARE-1 duly endorsed by the Customs, the export of the same duty paid goods which were cleared from the factory cannot be established, which is a fundamental requirement for sanctioning the rebate under Rule 18 read with Notification 19/2004-C.E. (N.T.), dated 6-9-2004.

8. Government notes that the applicant has relied on the various judgments/Orders regarding procedural relaxation on technical grounds. Government observes that in all these case-laws the exporter had prepared the prescribed documents and complied with the laid down procedure. However, while filing rebate claim they could not submit original and duplicate copy of ARE-1 for various reasons such as:

- o Documents lost by CHA. FIR filed.
- o Documents lost in transit.
- o Documents lost/misplaced.

Therefore, on the basis of triplicate/extra copy of ARE-1 and other related documents, authenticity of export and other verifications were possible, which is the main emphasis in these case laws. However, in the instant case the applicant had not prepared ARE-1 at all and had not informed the Central Excise authorities about the export being carried out by them, though it was a requirement for claiming rebate. It therefore implies that they have simply skipped the procedure and want the Department to overlook it in the light of relied upon case laws. In other words, the point which needs to be emphasized is that when the applicant seeks rebate under Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, which prescribes compliance of certain conditions, the same cannot be ignored altogether.

9. Government place reliance on the judgment by Hon'ble High Court of Chhattisgarh in the case of Triputi Steel Traders [2019 (365) E.L.T. 497 (Chhattisgarh)] wherein at para 24 it is held that:-

"24. Upon such consideration we are, therefore, inclined to hold that ordinarily, the requirements of fulfilment of pre-conditions as stated in Rule 18 read with relevant notification, as mandated are required to be fulfilled to avail rebate. However, in exceptional cases it is open for the assessee to prove claim of rebate by leading other collateral documentary evidence in support of entitlement of rebate. As we have noticed, it would only be an exception to the general rule and not a choice of the assessee to either submit ARE-1 document or to lead collateral documentary evidence. We would further hold that where

an assessee seeks to establish claim for rebate without ARE-1 document or for that matter without submission of those documents which are specified in relevant notifications he is required to clearly state as to what was that reason beyond his control due to which he could not obtain ARE-1 document. In cases of the nature as was noticed in the decision of U.M. Cables Limited, the assessee would be required to file at least affidavit of having lost the document required to be submitted to claim rebate. It will then be a matter of enquiry by the authorities as to whether the reason assigned by the assessee are acceptable to allow him to lead collateral documentary evidence in support of its claim of rebate. But we wish to make it clear that under no circumstances, it can be treated as parallel system as it is not established procedure under the law."

10. In view of the findings recorded above, Government upholds the Order-in-Appeal No.- VAD-Excus-001-App-121-18-19 dated 27.06.2018 passed by the Commissioner GST & Central Excise, Appeals, Vadodara and rejects the impugned Revision Application.

Shravan Kumar
23/3/23
(SHRAWAN KUMAR)

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

ORDER No. *171* /2023-CEX (WZ) /ASRA/Mumbai Dated *23.03.23*

To,

1. M/s. Vishvam Automobiles, 901/902, Skymark Apartment, Sama Savali Road, Vemali, Vadodara-390008.
2. The Principal Commissioner CGST, GST Bhavan, Race Course Circle, Vadodara- 390007.
3. Amar Legal(Advocate), 303, Jolly Bhavan-2, New Marine Line, Churchgate, Mumbai- 400020.

Copy to:

1. The Commissioner GST & C.Ex(Appeals), Vadodara, GST Bhavan, Ist Floor, Annexe, Race Course Circle, Vadodara – 390007.
2. Sr. P.S. to AS (RA), Mumbai.
3. ~~Guard file.~~