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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, Cuffe Parade,
Mumbai- 400 005

F.No. 195/403/2013-RA /2702 Date of Issue: 09.04.2021

ORDER NO. 176 /2021-CX (WZ)/ASRA/MUMBAI DATED 31.03.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHARWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s USV Ltd.

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

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BC/429/RGD(R)/2012-13 dated 29.11.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III.

ORDER

This Revision Application is filed by the M/s USV Ltd., Arvind Vithal Chowk, B.S.D. Marg, Govandi, Mumbai 400 088 (hereinafter as "the Applicant") against the Order-in-Appeal No. BC/429/RGD(R)/2012-13 dated 29.11.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-III.

2. The issue in brief is that the Applicant, merchant exporter had procured excisable goods from the manufacturer. They exported the goods so procured from M/s Sterling Lab, manufacturer and filed following rebate claim as indicated below:

R.C. No. & dt	Amt claimed (Rs.)	ARE-1 No & dt	Shipping Bill No & dt	Bill of Lading No. & dt
3053 dt 17.5.12	14,953	103/2011-12 dt 04.01.12	7288979 dt 27.01.12	EMUMUM11S0029880 dt 31.01.12

On processing the claim, the Appellant was issued Deficiency Memo Cum Show Cause Notice Cum Call vide letter dated 13.08.2012. The Deputy Commissioner(Rebate), Central Excise, Raigad vide Order-in-Original No. 1473/12-13/DC(Rebate)/Raigad dated 04.09.2012 rejected the rebate claim on the following grounds:

(i) Certification of self sealing not made on copies of ARE-1;

(ii) Disclaimer Certificate not submitted;

(iii) Declaration at Sr. No, 3 & 4 of ARE-1 not scored out properly;

(iv) Particulars of Authority with whom claim shall be filed was not shown correctly in ARE-1.

3. Aggrieved, the Appellant then filed an appeal with the Commissioner of Central Excise (Appeals), Mumbai-III. The Commissioner(Appeals) vide Order-in-Appeal No. BC/429/RGD(R)/2012-13 dated 29.11.2011 agreed with the findings of the adjudicating authority. Further, it was also found that two amounts i.e. Rs. 15,838/- and Rs. 14,953/- had been shown as amount of rebate claimed in column No. 11 of the said ARE-1 and no

explanation had been given by the Applicant for the said discrepancy. Hence the appeal was rejected.

4. Being aggrieved, the Applicant then filed the current Revision Application on the following grounds:

(i) The Impugned order disallowed rebate of Rs. 14,953/- (Rs. 885/- pertains to Free goods not pressed – Total Rs, 15,838/-) on procedural grounds without disputing the facts that duty paid goods so removed by the manufacturer were exported and export proceeds thereof were realized by the Applicant.

(ii) Government in ample number of cases had observed that rebate /drawback etc. are export-oriented schemes and unduly restricted and technical interpretation of procedure etc. is to be avoided in order not to defeat the very purpose of such schemes which serve as export incentive to boost export and earn foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical breaches. Thus the impugned order is erroneous to this effect by being against the settled policy of the Government not export taxes, as being issued without any basis liable to be set aside for the following reasons in particular & rebate be sanctioned.

(iii) First reason of denial was that authorized person of the manufacturer had not certified on all copies of ARE-1 that goods have been sealed in his presence. In this regard, the Applicant submitted that:

(a) From the declaration made by the manufacturer on its letter head is undisputed fact that the goods covered by ARE-1 No. 103/22-12 dated 04.01.2012 was checked by the authorized signatory and with sealed under lead seal under his supervision and cleared under self removal.

(b) The Shipping Bill Nos. 7288979 and 7292167 both dated 27.01.2012 confirm that the consignment was not opened for

physical examination by customs. Meaning thereby that the consignment covered by ARE-1 No 103/11-12 dated 04.01.2012 was intact sealed by the authorized signatory of the manufacturer.

(c) The Mate Receipts Nos 26950271 and MR No 26950274 both dated 05.02.2012 for Shipping Bill Nos. 7288979 and 7292167 both dated 27.01.2012 specifically confirms that shipment was taken in container no TRLU8250718 (40) having A/seal No 298839 & C/seal No 809137.

(d) The Bill of Lading No EMUMUM11S0029880 dated 31.01.2012 clearly mentions above Shipping Bill Nos. 7288979 and 7292167 both dated 27.01.2012 along with C/seal No. 809137 & container No. TRLU8250718 (40) for shipping the shipment by S.S.vessel APL Colombia.

(e) The customs officer had certified PART B on the Custom copy of ARE-1 No 103/11-12 dated 04.01.2012 that the shipment was shipped under his supervision under Shipping Bill Nos. 7288979 and 7292167 dated 27.01.2012 by APL Colombia which left JNPT on 05.02.2012 and certified that above mentioned consignment has been duly identified and passed the and frontier by MR No. 26950271 and MR No. 26950274 both dated 05.02.2012.

(f) Bank Certificate of Exports & Realization in Appendix 22A clearly certifies that goods were exported under Shipping Bill No. 7288979 dated 27.01.2012 under Bill of Lading No EMUMUM11S0029880 dated 31.01.2012. Freely convertible foreign exchange of $38,580/- was realized by the Applicant on 31.05.2012.

(g) When Shipping Bills prepared establish linkage with ARE-1, Central Excise invoices mention of ARE-1 No. & Date, Shipping bill are linked with Mate Receipt which is further linked with Bill of Lading for exporting the goods in question and foreign currency was realized. Thus it is undisputed fact that the goods were in fact

sealed by the authorized signatory of the manufacturer and the sealed container was exported without being opened by the customs official. When this fact of export sealing under his supervision was certified on letterhead of the manufacturer by the authorized signatory, merely because the said certificate was missing on ARE-1 should not result into denial of otherwise valid rebate claim.

(iv) Second reason of denial of rebate claim being that declaration at Sr. No. 3 & 4 of ARE-1 was not scored out properly. The Applicant submitted that the lower appellate authority had not given any findings though the same was taken in the Appeal before Commissioner(Appeals) (details para 3 of the Order-in-Appeal). Further this mistake was rectified by way of separate letter mentioning the options exercised while claiming the said rebate claim, being given to this effect by the Manufacturer. Thus had been correctly mentioned when ARE-1 is read with the said letter, the rebate claim was allowable.

(v) Third reason being particulars with whom claim shall be filed was not shown correctly in ARE-1. When no evidence was brought on records to prove that the Applicant did file second rebate claim with any other rebate sanctioning authority (like Hosur Division for e.g.) by making multiple sets of ARE-1 No 103/11-12 dated 04.01.2012 and both the Excise & Custom authority have signed on multiple sets of the said ARE-1. Merely alleging possibility of double benefit to them when all the original ARE-1 copies were filed with the Rebate sanctioning authority is without any basis. More so when factually only one rebate claim was filed by them as the Range Superintendent of the Manufacturer had given duty payment certificate to the Superintendent of Central Excise & Customs (Tech-1) in Chembur-II Division under whose jurisdiction they fall. Otherwise the said payment certificate would have been given to the rebate sanctioning authority with whom the rebate was pending. Thus the mistake be

condoned & rebate be allowed when duty paid goods were in fact exported & convertible foreign currency was realized by the Applicant.

(vi) It is settled position in law to condone the procedural lapses when substantive requirement of goods being exported on payment of Excise duty along with realization of foreign currency was fulfilled while allowing the export benefit to the exporter. In this they relied on few case laws:

(a) In Re : Garg Tex-O-Fab Pvt. Ltd. [2011 (271) ELT 449 (GOI);
(b) In Re : Sanket Industries Ltd. [2011 (268) ELT) 125 (GOI);
(c) In Re : P.K. Tubes & Fittings Pvt. Ltd., [2012 (276) ELT 113 (GOI)];
(d) In Re : Ace Hygiene Products Pvt. Ltd. [2012 (276) ELT 131 (GOI)]);
(e) In Re : Vinergy International Pvt. Ltd., 2012 (278) ELT 407 (GOI)].

5. Personal hearing was fixed for 14.03.2018, 06.08.2018 and 22.08.2019, but no one appeared for the hearing. Still in view of a change in the Revisionary Authority, hearing was granted on 08.01.2021, 15.01.2021, 22.01.2021 and 25.02.2021, however none appeared for the hearing. Hence the case is taken up for decision based on records on merits.

6. 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.

7. Government observes that the rebate claim amounting to Rs. 14,954/- filed by the Applicant was rejected by the Original Authority on the following grounds:

(i) Certification of self sealing not made on copies of ARE-1;
(ii) Disclaimer Certificate not submitted;
(iii) Declaration at Sr. No, 3 & 4 of ARE-1 not scored out properly;
(iv) Particulars of Authority with whom claim shall be filed was not shown correctly in ARE-1.

8. Government notes that the Notification No.19/2004-CE(NT) dated 06.09.2004 which grants rebate of duty paid on the goods, laid down the

conditions and limitations in paragraph (2) and the procedure to be complied with in paragraph (3). The fact that the Notification has placed the requirement of "presentation of claim for rebate to Central Excise" in para 3(b) under the heading "procedures" itself shows that this is a procedural requirement. Such procedural infractions can be condoned.

9.1 In respect of issue regarding Certification of self sealing not made on copies of ARE-1 No. 103/22-12 dated 04.01.2012, Government observes that Para (3)(a)(xi) relating to procedure of Notification No. 19/2004-C.E. (N.T.) dated 06.09.2004 provides that

> *"(xi) Where the exporter desires self-sealing and self-certification for removal of goods from the factory or warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit of the goods or the owner of warehouse or a person duly authorized by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify on all the copies of the application that the goods have been sealed in his presence, and shall send the original and duplicate copies of the application along with the goods at the place of export, and shall send the triplicate and quadruplicate copies of the application to the Superintendent or Inspector of Central Excise having jurisdiction over the factory or warehouse within twenty four hours of removal of the goods;"*

9.2 Government observes that in the instant case, the impugned goods were cleared from the factory under *"ARE-1 No. 103/22-12 dated 04.01.2012 "* and *"(Self Removal Procedure)"* without sealing by Central Excise officers and without certification about the goods cleared from the factory under self-sealing and self-certification procedure and therefore the conditions and procedure of sealing of goods at the place of dispatch were not followed. Government however observes that failure to comply with the provision of self-sealing and self-certification was laid down in para 3(a)(xi) of the Notification No. 19/2004-C.E. (N.T.) dated 06.09.2004 is condonable if exported goods are co-relatable with goods cleared from factory of manufacture or warehouse and sufficient corroborative evidence is available to correlate exported goods with goods cleared from the factory.

9.3 Government finds that

(a) Part-B –Certification by the Customs Officer of the ARE-1 No. 103/22-12 dated 04.01.2012 shows Shipping Bill No. *7288979 dated 27.01.2012* and *7292167 dated 27.01.2012*, by S.S./Flight No. *APC Colombia* which left on the *JNPT* day of *5/2/12* and *M/R NO. 26950271, 26950274* both dated *5/02/2012.*

(b) The Shipping Bill No. "*7288979 /27.01.2012*" shows ARE-1 No. *"103"* dated *"04/01/2012"*, Vessel Name *"APL Columbia"*, Container No. "*TRLU8250718*", Invoice No. & date *105B 25/01/2012.* The Mate Receipt No: "*26950271*" SL date: "*05/02/2012*" shows S/Bill No: "*7288979*" S/B date : *"27/01/2012"*, Received for shipment on Board the *"APL COLOMBIA"*, Shipper : *M/S USV LTD*, Container No. *TRLU8250718.*

(c) The Shipping Bill No. "*7292167 / 27.01.2012*" shows ARE-1 No. "103" dated "04/01/2012", Vessel Name *APL Columbia*, Container No. "*TRLU8250718*", Invoice No. & date "*105A 25/01/2012*". The Mate Receipt No: *26950274* SL date: "*05/02/2012*" shows S/Bill No: "*7292167*" S/B date : *"27/01/2012"*, Received for shipment on Board the *"APL COLOMBIA"*, Shipper : "*M/S USV LTD*" and Container No. "*TRLU8250718*".

Government finds the above itself shows that whatever goods had been cleared for export in fact has been exported as all the documents are well correlated. Further, the Notification itself shows the procedural infractions which can be condoned. Hence the procedural lapse of certification of self sealing not made on copies of ARE-1 No. 103/22-12 dated 04.01.2012 is condoned.

10. As regards Disclaimer Certificate not submitted by the Applicant, Government observes that the same was mentioned by the manufacturer on the copies of the ARE-1 *"We have No objection of the rebate claim filed by N/s*

USW LTD." and while replying to deficiency memo the Applicant vide letter dated 24.08.2012 stated that

> *"2. The disclaimer Certificate was already Hand written on all the ARE-1 but improperly, hence the copy of proper & correct disclaimer certificate is attached again as Annexure-II."*

Government finds that as manufacturer M/s Sterling Lab had submitted the disclaimer certificate, on this ground the rebate cannot be denied.

11. As regards Declaration at Sr. No. 3 & 4 of the ARE-1, Government observes that while replying to deficiency memo the Applicant vide letter dated 24.08.2012, had submitted necessary certificate-

> *"3. Our Job worker was inadvertealy miss out to scored out the Declaration at Sr. No. 3 & 4 so the copy of the correct declaration is enclosed as Annexure-III."*

Moreover, GOI in its Order Nos. 154-157/2014-CX dated 21.04.2014 in Re : Socomed Pharma Pvt. Ltd. [2014 (314) ELT 949 (GOI)] had held that even merely ticking a wrong declaration in ARE-form cannot be a basis for rejection substantial benefit of rebate claim - Rule 18 of Central Excise Rules, 2002. Hence on this ground the rebate cannot be denied to the Applicant.

12.1 As regards particulars of Authority with whom claim shall be filed was not shown correctly in ARE-1, Government observes that the Applicant had in the Original and Duplicate copy of the ARE-1 mentioned the address as *"Hosur1 A Range, Hosur 1 Division, Thally Road, Hosur 635109"* and on the Triplicate copy of the ARE-1 the particulars were erased using whitener and the address was mentioned as *"Mumbai Commissionerate, 2nd floor, Estralla Batteries Compund, Dharavi Road, Matunga, Mumbai- 400 009."* The Applicant submitted that

> *"Merely alleging possibility of double benefit to Appellants when all the original ARE-1 copies were filed with the Rebate sanctioning authority is without any basis. More so when factually only one rebate claim was filed by them as the Range Superintendent of the Manufacturer has given duty payment certificate to the Superintendent of Central Excise & Customs (Tech-1) in Chembur-II Division of the Appellants. Otherwise*

the said payment certificate would have been given to the rebate sanctioning authority with whom the rebate was pending. Thus the mistake be condoned & rebate be allowed when duty paid goods were in fact exported & convertible foreign currency was realized by the Applicant."

12.2 Government finds that whatever goods had been cleared for export, in fact has been exported as all the documents are well correlated (details in Para 9.3 above). Further, the Notification No. 19/2004-C.E. (N.T.) dated 06.09.2004 itself shows the procedural infractions which can be condoned. Hence here the mistake of the original details i.e. address of the rebate sanctioning authority, of the being struck out and with help of "white correction fluid" in the Triplicate copy of ARE-1 No. 01 dated 20.12.2011 at Sr.No. 2 of the front page can be condoned. Further, GOI in its Order No. 514/2013-CX. dated 04.06.2013 In Re : Usan Pharmaceuticals Pvt. Ltd. [2014 (311) ELT 1013 (GOI)] had held that:

"There is a force in the pleading of the respondent that this is a clerical mistake in wrong mentioning of rebate sanctioning authority in 5 AREs-1 and same may be condoned. Government in view of the case laws cited by applicant finds that this procedural lapse is condonable as mentioning of wrong rebate sanctioning authority cannot be a valid ground for denying the substantial benefit of rebate of duty paid on exported goods. In these cases, the export of duty paid goods is not in dispute. Department has also not challenged the admissibility of rebate claims to the applicant on merit. Hence in this case the fundamental condition of claiming rebate stands complied with. The rebate claims in respect of these 5 ARE-I allowed by Commissioner (Appeals) is in order and cannot be faulted with."

Hence Government condones the procedural lapse of mentioning of wrong rebate sanctioning authority in the face of the ARE-1.

13. Commissioner (Appeals) at Para 9 of the impugned order observed that he found it intriguing that two amounts i.e. Rs.15,838/- and Rs.14,953/- had been shown as amount of rebate claimed in column 11 of the said ARE-1, however, no explanation was given by the Applicant for the discrepancy. Government, however, observes that though the total amount

debited vide Invoice No. 151 dated 04.01.2012 was Rs.15,838/- (as certified by the jurisdictional Supdt of Central Excise, Hosur I Division), the Applicant had filed the rebate claim only for amount of Rs.14,954/-, as is evident from the rebate claim application dated 11.05.2012 (Received by the Department on 17.05.2012) as well as from the Order in Original No. 1473/12-13/DC(Rebate)/Raigad dated 04.09.2012. The Applicant has clarified that duty of Rs.885/- paid (Out of Rs.15,837/-) pertained to Free goods and hence not pressed for rebate. Government finds that the Applicant has filed rebate claim of Rs. 14,954/- (Rupees Fourteen Thousand Nine Hundred and Fifty Four Only).

14. Government finds that the deficiencies observed by the adjudicating authority and Appellate authority are of technical nature. In cases of export, the essential fact is to ascertain and verify whether the said goods have been exported. In case of errors, if the same can be ascertained from substantive proof in other documents available for scrutiny, the rebate claims cannot be restricted by narrow interpretation of the provisions, thereby denying the scope of beneficial provision. Mere technical interpretation of procedures is to be best avoided if the substantive fact of export of duty paid goods is not in doubt. In this regard the Government finds support from the decision of Hon'ble Supreme Court in the case of Suksha International – 1989 (39) ELT 503 (SC) wherein it was held that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In UOI vs. A.V. Narasimhalu – 1983 (13) ELT 1534 (SC), the Apex Court observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. In fact, in cases of rebate it is a settled law that the procedural infraction of Notifications, Circulars etc., are to be condoned if exports have really taken place, and that substantive benefit cannot be denied for procedural lapses. Procedures have been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is the manufacture of goods, discharge of duty thereon and subsequent export.

15. In the light of the detailed discussions hereinbefore, the Government holds that rebate claim is admissible to the Applicant under Rule 18 of Central Excise, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. Hence, the Government holds that detail verification of the rebate by the original adjudicating authority *as* to the evidence regarding payment of duty i.e relevant Invoice and ARE-1 as produced by the Applicant in their rebate claim, has to be taken into consideration. The Appellant is also directed to submit their relevant records/ documents to the original authority in this regard for verification.

16. In view of the above, Government sets aside the impugned Order-in-Appeal No. BC/429/RGD(R)/2012-13 dated 29.11.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-III and remands back the instance case to the original authority which shall consider and pass appropriate orders on the claimed rebate and in accordance with law after giving proper opportunity within eight weeks from receipt of this order.

17. The Revision Application is allowed in terms of above.

Shrawan 31/03/21

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 176 /2021-CX (WZ)/ASRA/Mumbai Dated 31-03-2021

To,
M/s USV Ltd.,
Arvind Vithal Chowk,
B.S.D. Marg,
Govandi,
Mumbai 400 088.

Copy to:

1. The Commissioner of CGST & CX, Belapur, CGO Complex, CBD Belapur, Navi Mumbai - 400 614
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.
4. Spare Copy.