



**REGISTERED
SPEED POST**

**F.No. 195/843/10-RA-Cx
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

14, HUDCO VISHALA BLDG., B-WING
6th FLOOR, BHICAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue.. 28/2/13

~~ORDER NO. 177 113 G, DATED 24.07.2010 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF
INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.~~

Subject : Order in Revision Application filed, under Section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No.PKS/221/Bel/2010 dated 20.07.2010 passed by Commissioner of Central Excise (Appeals), Mumbai-III,

Applicant : M/s Super Industries, Mumbai.

Respondent : The Commissioner of Central Excise, Mumbai-III

ORDER

This Revision Application is filed by M/s Super Industries, Mumbai against the Order-in-Appeal No. PKS/221/Bel/2010 dated 27.07.2010 passed by Commissioner of Central Excise (Appeals), Mumbai-Zone-II with respect of Order-in-Original passed by Assistant Commissioner(Rebate), Central Excise, Mumbai-III.

2. Brief facts of the case are that applicant M/s Super Industries a merchant exporter, have filed their six (6) rebate claims of Rs.563883/- on goods exported under the claim of rebate under Rule 18 of the Central Excise Rules, 2002. Out of six rebate claims, the lower adjudicating authority denied four rebate claims of Rs.200821/- on the grounds that the applicants have purchased goods alleged to have exported, through a series of transactions involving traders, first stage dealers and the manufacturers, ~~that no APEs were prepared at the time of clearance of goods from the manufacturer premises, and also that the procedure for exports, as described under Notification No.19/04-CE(NT) dated 6.9.04 issued under Rule 18 of the Central Excise Rules, 2002 have not been followed.~~ The original authority sanctioned the remaining two rebate claims of Rs.363062/-.

3. Aggrieved by Order-in-Original, applicants have filed their appeal before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned order-in-appeal, the applicant, party has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following main and subsequently submitted grounds:-

4.1 All the relevant documents required to be filed with the export of the goods were verified by the customs authorities, who did not find any deficiencies and did not have any objection for documents and hence they allowed the export duly endorsed by them. Thereafter the applicants have filed the rebate claim

within stipulated time of one year under section 11(B) of the Central Excise Act, 1944.

4.2 The respondent did not dispute about the export of the goods on verification of the documents filed with the rebate claims. It means export has taken place and the respondent have agreed with the same. The respondent has not pointed out any fraud in the claim of the applicant. It is submitted that the signatures of the manufacturers and Range Supdt. were obtained on ARE-1 before export of the goods but after clearance from the factory and not after export of the goods as alleged by the respondent in his order dated 27.07.2010. The applicant submit that it was procedural lapses on the part of the them and applicants still adhre to their stand. The procedural lapses could be condoned in the light of various judgments of the Hon'ble Tribunals and Apex Court which are highlighted here below:-

- (i) ~~HMM Ltd. Vs. Administrative Bangalore City Corporation 1997 (91) ELT 27(SC)~~
- (ii) 2007(219) ELT 317 –Ambadi Enterprises.
- (iii) 2006(204) ELT 632(GOI) M/s Modern Process Printers Vs. GOI.
- (iv) 2006(ELT 1027(GOI) Cotfab Export.
- (v) 2006(205) ELT 1093 (GOI) CCE Vs Sidharth Soya Products.
- (vi) 2003(203) ELT 321 (GOI) Barot Exports.
- (vii) 2001 (137) ELT 454 (Tri. Kolkota)
- (viii) 1999 (105) ELT 30 (Mad.) Ashok Layland Ltd.
- (ix) 1993(66) ELT 497 (T) T.I. Eydes of India.
- (x) 1991 (53) ELT 558 (GOI) Shantilal and Bhansali
- (xi) 1993 (67) ELT 759 (GOI) F Ahmad and Co.
- (xii) 1994 (72) ELT 311 (T) Datta Engg. Works.

4.3 The respondent failed to appreciate that in terms of para 9.4 of the Circular No. 81/81/94 CX dated 25.11.1994 issued under F.No. 209/18/93 Cx-6 (Pt.) the rebate sanctioning authority should have pointed out deficiency if any in the claim within 15 days of lodging the same and asked the exporters to rectify the same within 15 days. Queries/deficiencies shall be pointed out at one go and piecemeal queries should be avoided. The claim of rebate of duty on export of

goods should be disposed of within a period of two months. Sanctioning authority was failed to give and opportunity to the applicants to rectify the queries/deficiency before rejection of the claims in the light of above circular. However, the applicants on their own have rectified deficiencies if any wherever necessary before export of the goods. As per para 11.1 of the said circular the Collector/Commissioner is empowered to condone/relax any condition relating to rebate of excise duty on the goods exported for reasons to be recorded in writing if he is satisfied that the goods have actually been exported. In the instant case Commissioner (Appeals) has not considered the provisions envisaged in the said circulars before rejecting the appeal of the applicants.

4.4 The various judgments cited in the order of the Commissioner (Appeals) (i) Tullow India Operations Ltd. 2005(189) ELT GOI (ii) Compack Pvt. Ltd. (2005) 189 ELT 3 (iii) 2005 (181) ELT 145 (iv) ~~Ambay Cements (2004) 178 ELT 55 (v) Indian Aluminium Company 1991 (55) ELT 454~~ are in respect of the specific exemption in terms of Notifications issued under section 5(A) of the Central Excise Act 1944 and those exemptions are conditional and conditions envisaged therein are mandatory hence appears to be not applicable to the Notification No. 19/2004-CE(NT) dated 06.09.2004 issued for following procedures of export. Interpretation of statute-exemption and refund-condition precedent - distinction to be made between a procedural condition of technical nature and a substantive condition- Non-observance of the former condonable while that of the later not condonable as likely to facilitate commission of fraud and introduce administrative inconveniences.- As held in the case of Mangalore Chemicals & Fertilizers Ltd. Vs. Deputy Commissioner 1991 (55) ELT 437 (SC).

5. Personal hearing scheduled in this case on 29.05.2012, 28.06.2012, 08.08.2012 and 21.12.2012. Hearing scheduled on 21.12.2012 was attended by Shri S.D. Gaikwad and Shri N. Thampan, advocates on behalf of the applicant who reiterated the grounds of revision application.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records, Government observes that the four rebate claims of Rs.200821/- were rejected by adjudicating authority on various grounds. Commissioner (Appeals) upheld the said order. Now applicant has contested the impugned order-in-appeal mainly on the grounds that substantial benefit of rebate claim cannot be rejected for not following the procedure laid down in the Notification issued under Rule 18 of Central Excise Rules 2002.

8. In this case manufacturer exporter claimed to have exported the goods manufactured and cleared by M/s Maharashtra Steamless Ltd.; M/s Mukut Pipes Ltd. etc. for home consumption. Commissioner (Appeals) has upheld the impugned order-in-original for the following reasons:

- a) ~~Export goods have not been certified in original, duplicate and triplicate copies of ARE-1 by authority signatories as required under para 3(xi) of the Notification.~~
- b) ~~Triplicate copy of ARE-1 does not carry verification of the jurisdictional Supdt. The enquiry conducted with the concerned Range Supdt. noticed that the goods in question were cleared for home consumption and that their office has not indorsed in part 'B' of ARE-1.~~
- c) ~~ARE-1 does not show time of clearances of exported goods. Original and duplicate copy of ARE-1 does not indicate details of Central Excise invoices under which the goods were cleared from factory.~~
- d) ~~No certification of the manufacturer of the export, that the export goods have been sealed in their presence."~~

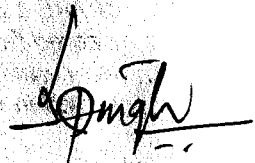
Further respondent department has intimated vide letter F.No.V(PKS/221/Tab. Cell-145/10-11/12-III dated 28.5.12 that no ARE-1 had been prepared at the time of clearance of goods from factory and triplicate copy of ARE-1 prepared subsequently is countersigned by jurisdictional superintendent after a lapse of 7 to 54 days. As per procedure laid down in Notification No.19/04-CE(NT) 2004, the goods to be exported are to be cleared on application in ARE-1 form direct from factory of manufacture. In this case goods are not cleared on ARE-1 from factory of manufacture and goods were originally cleared for home consumption. However, as per CBEC Circular No.294/10/97-CX dated 30.1.97 the condition 2(a) of Notification No.19/04-CE(NT) dated 6.9.04 regarding clearance of goods

for export direct from factory of manufacture is relaxed in certain case where duty paid excisable goods (capable of being clearly identified) which are in original factory packed condition provided the procedure laid down in said circular is followed. In this case the said procedure is not followed. The ARE-1 is not prepared at the time of clearance of goods from the factory, the preparation of ARE-1 subsequently before export will not meet the requirement of Notification No.19/04-CE(NT) dated 6.9.04. In such a situation it cannot be established that duty paid goods cleared from factory of manufacture were in fact exported. The lower authorities have rightly denied the rebate claim on the ground that duty paid nature of goods was not established. The case laws cited by applicant for the proposition that procedural technical lapses are to be condoned, are not of any help to applicant, since in this case the duty paid nature of exported goods cannot be proved which is fundamental requirement ~~for sanctioning rebate claim.~~

~~9. In view of discussion above position, Government holds that rebate claims~~
are rightly rejected by lower authorities. Government finds no infirmity with impugned orders-in-appeal and therefore upholds the same.

10. Revision application is rejected being devoid of merit.

11. So, ordered.

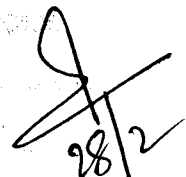


(D.P. Singh)

Joint Secretary (Revision Application)

M/s Super Industries,
17, Majithia Industries Estate,
W.T. Patil Marg, Deonar,
Mumbai - 400088.

(Attested)



(भागवत शर्मा/Bhagwat Sharma)
सहायक आबुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev)
नया दिल्ली/ New Delhi

G.O.I. Order No.177/13-Cx dated 28-02-2013

Copy to:-

1. The Commissioner, Central Excise, Mumbai III Commissionerate, Vardaan Trade Centre, 4th Floor, M.I.D.C. Wagle Industrial Estate, Thane (West) -400604.
2. Commissioner of Central Excise (Appeals), Mumbai-III, Mumbai Zone-II, 5th Floor, C.G.O. Complex, C.B.D. Belapur, Navi Mumbai 400614.
3. The Assistant Commissioner, Central Excise (Rebate) Mumbai-III, Vardaan Trade Centre, 4th Floor, Wagle Industrial Estate, Thane (West) -400604.
4. Shri S.D. Goikwad/Shri N. Thampan Advocates, O/at: AR-1, E-110, Sector-03, Near Airoli Railway Station, Navi Mumbai.
5. PS to JS(Revision Application)
6. Guard File
7. ~~Spore Copy.~~

(Attested)


(B.P. SMARMA)

OSD (Revision Application)

Dear Mr. [Name]

I have your letter of 10/10/64 regarding the [subject] and am sorry to hear that you are having difficulties with the [subject].

The [subject] is a [description] and is [description]. It is [description] and is [description].

I am sorry to hear that you are having difficulties with the [subject]. I will do my best to help you.

I will be in touch with you again in a few days. Please let me know if you have any further questions.

Yours faithfully,

[Name]

[Address]

(10/11/64)

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