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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, Cuff Parade,
Mumbai- 400 005

F. NO. 195/256/2019-RA 1910 **Date of Issue: 31.03.2023**

ORDER NO. 85/2023-CX (WZ) /ASRA/Mumbai DATED 31.03.2023 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 BASF India Limited,
Plot No. 4B, Dahej Industrial Estate,
Taluka Vagra, Dist Bharuch 392 130

Respondent: Commissioner of GST and Central Excise, Vadodara

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. VAD-EXCUS-002-APP-71-2019-20 dated 28.05.2019 passed by the Commissioner, GST and Central Excise,(Appeals), Vadodara

ORDER

This Revision Application is filed by M/s BASF India Limited, Plot No. 4B, Dahej Industrial Estate, Taluka Vagra, Dist Bharuch 392 130 (hereinafter referred to as the "Applicant") against the Order-in-Appeal No. VAD-EXCUS-002-APP-71-2019-20 dated 28.05.2019 passed by the Commissioner, GST and Central Excise, (Appeals), Vadodara.

2. Brief facts of the case are that the Applicant is engaged in the manufacture of excisable goods falling under chapter 34 of the Central Excise Tariff Act, 1985. The Applicant had filed a rebate claim on 22.03.2018 for Rs. 10,43,763/-, alongwith the documents prescribed under Notification No 19/2004-CE(NT) dated 06.09.2004. During the scrutiny of the documents, it was noticed that the shipping bill number on the reverse of the original ARE-1 was not correct. The discrepancy/error was informed to the Applicant vide letter dated 15.05.2018 and the Applicant vide letter dated 21.05.2018 requested to withdraw the subject documents for necessary correction but vide letter dated 24.05.2018, all the relevant documents were returned back to the Applicant. The Applicant resubmitted the withdrawn documents after necessary corrections, on 25.06.2018, which was then returned to the Applicant stating that the rebate claim was time barred. Pursuant to following the provisions of the law, the Adjudicating Authority vide Order-in-Original No. DIV-VII/BRH/410/R/18-19 dated 18.03.2019 rejected the claim as being barred by limitation of time.

3. Being aggrieved by the Order-in-Original, the Applicant filed an appeal before the Commissioner, GST and Central Excise, (Appeals), Vadodara who vide Order-in-Appeal No.VAD-EXCUS-002-APP-71-2019-20 dated 28.05.2019 rejected the appeal and upheld the Order-in-Original passed by the Adjudicating Authority.

4. Being aggrieved with the impugned Order-in-Appeal, the Applicant has filed this Revision Application on the following grounds :

4.1. That the AA has summarily rejected the contentions of the Applicant and has proceeded to mechanically reject the appeal of the Applicant and that not a single case law or argument advanced by the Applicant in their appeal have been distinguished or discussed by the AA in the findings of the impugned order. The Applicant has relied upon the following case laws

(i) Cyril Lasardo (Dead) vs. Juliana Maria Lasarado.[2004 (7) SCC 431]

(ii) Shukla & Brothers reported at [2010 (254) ELT 6 (SC)]

4.2. That the AA in the impugned order has relied upon incorrect and illegal findings to uphold the rejection of the rebate claim filed by the Applicant and has held that the Applicant did not file the rebate claim as soon as the Let Export Order dated 11.04.2017 was passed and the export related documents were received by the Applicant but filed the rebate claim on 22.03.2018 without proper documents;

4.3. That it is not the case of the AA that the rebate claim was filed for the first time beyond the time limit of one year. Admittedly, the rebate claim was filed on 22.03.2018, i.e. within one year of the time limit prescribed under Section 11B of the Central Excise Act, 1944;

4.4. That the rebate claim cannot be denied on the ground that the same was not filed immediately upon the receipt of the export elated documents when the law prescribes a time limit of one year for filing the rebate claim;

4.5. That all the required documents were filed with the claim and the only defect in the rebate claim was that the shipping bill number endorsed by the Customs department at the back of the original ARE-1 was not matching with the shipping bill but the AA stated that the Applicants did not file the supporting documents and was incomplete, which is incorrect;

4.6. That the defect could not be rectified without withdrawing the document and getting it corrected by the Customs department;

4.7. That Para 2.4 of the CBEC's Excise Manual of Supplementary Instructions are not applicable to this case as the issue concerns correcting a defect caused by the customs department and no a case of non filing of required documents;

4.8. That as per Part IV of Chapter 8 of the CBEC's Excise Manual of Supplementary Instructions, 2005, a time limit of 15 days for pointing out any deficiency in the rebate claim is prescribed and the defect should have been pointed out to the Applicants before the expiry of the period of limitation but the sanctioning authority has taken more than 45 days to point out the defect;

4.9. That the entire case of the Department to reject the rebate claim on the grounds of limitation, is that the earlier rebate claim dated 22.03.2018 was withdrawn by the Applicants and the re-submission of documents on 25.06.2018, which is erroneous as vide their letter dated 21.05.2018 they only requested to withdraw the relevant document i.e. ARE-1 No. 006/2017-18 dated 07.04.2017 inasmuch as the same required correction to be made by the Customs department and not the entire rebate claim;

4.10. That the rebate claim was never withdrawn by the Applicants, even if the same is considered to be withdrawn for the sake of argument, then for the purposes of Section 11B of the Central Excise Act, 1944 the date of filing of the rebate claim on 22.03.2018 is the relevant date and not 25.06.2018 when the same was re-submitted after corrections.

4.11. That the defect pointed out in the rebate claim by the Ld. Assistant Commissioner vide letter dated 15.05.2018 pertains to the shipping bill number mentioned at the back of the ARE-1 No. 006/2017-18 dated 07.04.2017. The Applicants submit that the shipping bill number at the back of the ARE-1 No. 006/2017-18 dated 07.04.2017 is filled by the Customs officer and not the Applicants and the same could be rectified by the Customs authorities only and not the Applicants.

4.12 That substantive benefit of rebate of duty paid on exported goods cannot be denied on the grounds of procedural lapse like incorrect shipping

bill number at the back of the ARE-1 when other conditions for claiming rebate under Rule 18 of the Central Excise Rules, 2002 stand fulfilled and the rejection of the rebate claims on technical grounds would defeat the purpose of the schemes to incentivize exports as desired by the Government. The scheme of rebate being a benevolent one, must be interpreted liberally. Reliance is placed on the decision of the Hon'ble High Court of Madras in the case of Ford India Pvt. Ltd. v. Assistant Commissioner of Central Excise - 2011 (272) ELT 353 (Mad. HC).

4.13 That the AA and OAA have not given any findings on the judgment of the Hon'ble High Court of Gujarat in the case of Raj Petro Specialities v. Union of India - 2017 (345) ELT 496 (Guj.)and have relied upon certain case laws where it has been held that the condition for limitation for filing of rebate claim is not a procedural condition and is a substantive condition and the said judgments have no relevance in the present case. In the instant case the mis-match between the shipping bill no. endorsed at the back of the ARE-1 by the Customs department and the shipping bill no. on the shipping bill is a technical defect and a procedural lapse and the rebate claim filed on 22.03.2018 is required to be treated as complete in all respects. It is not the contention of the Applicants that the condition of limitation is required to be waived off as a procedural lapse. It is the contention of the Applicants that there is no delay in filing of the rebate claim inasmuch as the mis-match in the shipping bill nos. caused by the Customs officer is a technical lapse and cannot be relied upon to deny the substantive benefit of rebate. The rebate is liable to be sanctioned to the Applicants on the above grounds.

4.14 That the entire exercise is revenue neutral as the Applicants are eligible for refund or re-credit of excise duty paid on export of goods and that it is settled law that in case of denial of rebate claim where payment of excise duty and export of the goods is not in dispute, the amount of rebate so denied is eligible for re-credit. Reliance is placed on the decision of the Hon'ble Joint Secretary to the Govt. of India in the case of In Re: Balkrishna Industries Ltd. [2011 (271) E.L.T. 148 (G.O.I.)]

4.15. That the re-credit arising out of the rejection of the rebate claim by the impugned order is liable to be refunded to the Applicants in cash in terms of Section 142 of the CGST Act, 2017

5. Personal hearing in the case was scheduled for 10.11.2022 or 23.11.2022, 14.12.2022 or 11.01.2023. Ms Payal Nahar, Advocate appeared online for the hearing on 11.01.2023 on behalf of the Applicant. She submitted that the rebate claim was submitted within one year and that the claim was re-submitted after rectifying the discrepancy pointed out by the department. She further informed that Commissioner (Appeals) has taken the later date as date of submission. She mentioned several cases of High Courts and Revisionary Authority where benefit has been allowed in similar cases and requested to allow the application.

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.

6.1 In the instant case, the rebate claim was rejected on the sole ground that the claim which was originally filed within the stipulated time limit was returned back to the Applicant as the Shipping Bill number mentioned on the reverse of the Original ARE-1 was not matching with the number on the Shipping bill and the Applicant resubmitted the same after getting the defect rectified by Customs after the prescribed time limit of one year from the date of export.

6.2. In this regard, the Government finds 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 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.

6.3. Government observes that from the records of the case it is evident that the deficiency regarding the Shipping bill number mentioned on the reverse of the original copy of ARE-1 not matching with the Shipping bill number, was issued to the Applicant on 15.05.2018 i.e after 45 days by which time the claim was already beyond one year from the export of goods and there was no way the Applicant could have resubmitted the claim within one year as the deficiency was issued.

6.4. Government also observes that the endorsements on the reverse of the ARE-1 are made by the customs officer and the Applicant has no control over the same and besides in the instant case the error in only on the ORIGINAL copy of the ARE-1.

6.5. Government notes that the Applicant had submitted the documents viz. original and duplicate copy of the ARE-1, export invoice and packing list, Self attested copy of the shipping bill, self-attested copy of the bill of lading, undertaking for submission of bank realisation certificates and Central Excise Invoices in respect of the said consignment exported by them. These collateral documents were sufficient to ascertain whether the goods cleared under said ARE-1 had been exported or otherwise. The erroneous mention of the shipping bill number was only restricted to the original ARE-1. Further, in case of any doubt arising with the adjudicating authority the genuineness of the

document could have been referred to the Customs Authorities and Central Excise Authorities and could have been verified.

6.6. Government observes that returning of the entire claim for correction of an error in the shipping bill number in one of the documents and then rejecting the claim on the grounds of limitation of time after the Applicant re-submitted the document with the corrections, is gross depravity of justice and is not just and proper, particularly as the error was by the department and the Applicant had no control over the same. Further, it also on record that the said deficiency/error was pointed out to the Applicant after the lapse of one year of export and the department expected the corrected document to the submitted within one year of export.

7.1. Government also notes that there a catena of judgements where the Tribunal and the Courts have held that time limit provided under Section 11B must be computed from date of original filing of rebate claim and not from date of re-submission. The Hon'ble High Court of Gujarat in the judgement in the case of Special Civil Application No 7815 of 2014 in the case of M/s Apar Industries Ltd vs. UOI [2016(333) E.L.T. 246(Guj), has held that the time Limit provided under Section 27 of the Customs Act. 1962/Section 11B of the Central Excise Act, 1944 must be computed from the date of original filing of rebate claim and not from the date of resubmission of the claim after rectification of mistake/defects. Para 6 of the said judgement states as under:

> *"6.....The Department, therefore should have treated the original applications/declarations of the petitioner as rebate claims. Whatever defects, could have been asked to be cured. When the petitioner represented such rebate applications in correct form, backed by necessary documents, the same should have been seen as a continuous attempt on part of the petitioner to seek rebate. Thus seen, it would relate back to the original filing of the rebate applications, though in wrong format. These rebate applications were*

thus made within period of one year, even apply in the limitation envisaged under Section 27 of the Customs Act."

7.2 Further, in the instant case, the deficiency can at best be considered as a procedural error which does not affect the status of the export or the rebate claim filed by the Applicant. Government notes that 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 form 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. It is also observed that, in the present case, no doubt has been expressed whatsoever regarding export of the goods and duty payment.

7.3. Also, it is observed 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. 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."

8. In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. VAD-EXCUS-002-APP-71-2019-20 dated 28.05.2019 passed by the Commissioner, GST and Central Excise,(Appeals), Vadodara and allows the revision application.

9. The Revision Application is disposed of in terms of the above.

Shrawan 24/3/23

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

ORDER No.185/2022-CX (WZ) /ASRA/Mumbai DATED 24.03.2023

To,
M/s BASF India Limited,
Plot No. 4B, Dahej Industrial Estate,
Taluka Vagra, Dist Bharuch 392 130

Copy to:

1. The Commissioner of CGST, Vadodara-II, GST Bhavan, Subhanpura, Vadodara 390 023
2. The Commissioner of CGST, Vadodara Appeals, Central Excise Building, 6th Floor, Race Course Circle, Vadodara 390 007
3. Lakshmikumaran & Sridharan, Attorneys, B-334, 3rd Floor, Sakar-VII, Nehru Bridge Corner, Ashram Road, Ahmedabad 380 009
4. Sr. P.S. to AS (RA), Mumbai
5. Notice Board
6. Spare Copy.