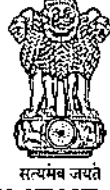


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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

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

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F.No.195/305/2013-RA | 2873

Date of Issue: 28/05/21

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ORDER NO. 186/2021-CX (WZ)/ASRA/MUMBAI DATED 29.4.2021 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 THE CENTRAL EXCISE ACT, 1944.

Applicants : M/s Elecon Engineer Co. Ltd.

Respondent : Commissioner, Central Excise, Raigad.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. US/903/RGD/2012-13 dated 14.12.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

## ORDER

The Revision Application has been filed by M/s Elecon Engineer Co. Ltd., Dist. Anand- 388 120 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. US/903/RGD/2012-13 dated 14.12.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai wherein he rejected the appeal filed by Applicant.

2. The issue in brief is that the Applicant is engaged in the manufacture of excisable goods falling under Chapter 84 of the CETA, 1985 and availing Cenvat credit facility under Cenvat Credit Rules, 2004. They are also holding Service Tax Registration. The Applicant had filed 04 rebate claims totaling to Rs. 8,13,439/- under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. They were issued Deficiency Memo-cum-SCN vide letter F.No. V/15- /Reb/Elecon/2011/5709 dated 18.05.2012 and the Deputy Commissioner(Rebate), Central Excise, Raigad Commissionerate issued Deficiency Memo-cum-SCN vide Order-in-Original No. 740/11-12/DC(rebate)/Raigad dated 31.05.2012 rejected the rebate claims as the conditions for the grant of rebate under Notification No. 19/2004-CE(NT) were not fulfilled on the following grounds :

- (i) Triplicate copies of the ARE-1 are not enclosed with claim Nos. 6923, 6924, 6925 dated 14.07.2011.
- (ii) Duty payment certificate not produced from jurisdictional Central Excise officers in respect of claim No. 6925 dated 14.07.2011 and 4984 dated 20.06.2011.
- (iii) Signature of Master of vessel is not appearing on the Shipping Bill.
- (iv) Name of the claimant/ Authorized signatory not declared in Annexure-A.
- (v) Rebate filing authority address mentioned wrong in the ARE-1.
- (vi) Self sealing and supervision certificate in respect of export goods was not produced.

- (vii) Bank Realization Certificate have not been produced along with claim No. 6924.

Aggrieved, the Applicant, then filed appeal with Commissioner(Appeals), who vide Order-in-Appeal No. US/903/RGD/2012-13 dated 14.12.2012 upheld the Order-in-Original No. 740/11-12/DC(rebate)/Raigad dated 31.05.2012 rejecting the rebate claims on the grounds of non-submission of triplicate copies of ARE-1s and non-production of self-sealing and supervision certification and rejected the appeal

3. Being aggrieved, the Applicant filed this Revision Application on the following grounds:

- (i) The impugned order is ex-facie bad in law and contrary to the provisions of law.
- (ii) All the so-called discrepancies stood well explained/ clarified vide their letter dated 06.06.2012, however, the Order-in-Original stood passed before the same. It was inconceivable for an exporter situated in rural area of Gujarat to comply with a Deficiency Memo which was issued only on 18.05.2012 before 31.05.2012, when the order itself stood passed. The Adjudicating authority had not granted them sufficient time and opportunity at all to explain their case. The Memo dated 18.05.2012 was received by them only somewhere in the last week of May 2012 and before the compliance could be made, the order already stood passed. They did seek to adjourn the hearing, however, the same was not taken note of in the impugned order. Had sufficient time been granted, the defense submissions would have been on records, which would have resolved all the doubts. Hence requested that they be given opportunity to justify why their rebate claim should be allowed.
- (iii) The Assistant Commissioner, Central Excise, Customs & Service Tax, Division Anand vide his letter F.No. V/30-34/MP/Tech/2010/Pt.III dated 11.07.2012, had clarified that Maritime Commissioner is the correct authority to claim the rebate and hence, even on merits, the authorities at Raigad were competent authorities to grant the rebate.
- (iv) The issue on hand was not covered vide the decision in the case of IN Re: Agrawal Marbles & Industries Pvt. Ltd. [2011 (267) ELT 411(GOI)] inasmuch

as it is not the case as if no ARE-1 copy was submitted by the Applicant for claiming rebate benefit. The issue on hand was much different, which stands clarified vide the above communication to the lower authorities. The Applicant has no grievance against that portion of the order, which is already in their favour, whereby certain procedural irregularities stand condoned.

- (v) The Applicant shall produce reasons as regards denial of rebate on the ground of not having followed self-sealing procedural, as mentioned at Para 5 of the impugned order, at the time of personal hearing, Suffice, it to say, there was no material breach of the mandatory legal requirements in this regard.
- (vi) They prayed that the impugned order be set-aside and the Revision Application grants the rebate claimed for along with interest.

4. Personal hearing in the case was fixed for 18.01.2018, 05.02.2018 and 26.02.2018. On 26.02.2018 the hearing was attended by Shri R.C. Saxena, Advocate on behalf of the Applicant. Since the Applicant had not submitted TR-6 Challan of Rs. 1,000/- the case was adjourned. The Applicant vide letter 03.03.2018 along with the additional submissions, submitted the e-receipt challan and requested waiver of hearing. Since there was change in the Revisionary Authority, personal hearing was fixed on 26.08.2019, 02.02.2021, 16.02.2021, 19.03.2021 and 26.03.2021. On 26.03.2021, the hearing was attended by Shri R.C. Saxena, Advocate on behalf of the Applicant. He appeared online and reiterated earlier submissions. He submitted that his rebate was not considered by the Appellate Authority on two grounds i.e. Triplicate copy of ARE-1 not submitted and no evidence of self sealing. He submitted that there is no dispute regarding duty paying, realization of proceeds, export of goods. He stated that they would be making additional submission on the matter.

5. The Applicant submitted the following additional submissions:

- (i) The Para 1 of Order-in-Original clearly mentions that the Applicant had submitted the Original ARE-1 endorsed by the officer of Customs and

Duplicate ARE-1 received in sealed envelope duly endorsed by officers of Customs.

- (ii) The rebate claim had been rejected on grounds of non-submission of Triplicate copy of ARE-1. The triplicate copy is required to be sent by the jurisdictional Central Excise officer to the rebate sanctioning authority. Non-submission of the triplicate copy of ARE-1 by the Applicant cannot be fatal to its claim for rebate inasmuch as the original copy of ARE-1 and the duplicate copy of ARE-1 shows sufficient proof of the sealing procedure carried out by the exporter.
- (iii) The impugned order relies upon the order passed by the Hon'ble Revisionary Authority in the case of Agrawal Marbles & Industries Pvt. Ltd. [2011 (267) ELT 411]. In the referred case, the facts were that the party had neither followed the sealing and certification by the Department nor the self sealing procedure. In the facts of the Applicant's present case, when the original ARE- 1 and the duplicate ARE-1 received in the sealed envelope are admittedly submitted, the compliance with procedure under Para 3(iv) of Notification No.19/2004-CE (NT) was fully complied with. This was not the case in the case relied upon in the impugned order. The facts of the other case relied upon in the impugned order 2012(275) ELT 496 (GOI) are different than the facts of the Applicant's case. In view of the factual and legal position, the impugned order is liable to be set aside so far as above ground is concerned.
- (iv) Undertaking of self sealing and supervision certificate is manifestly available in the original copy of ARE-1 and duplicate copy of ARE-1 which have been admittedly submitted by the Applicant. The Applicant further submitted that because the original copy of ARE-1 and duplicate copy of ARE-1 which were admittedly presented would never have been signed and certified by the Customs officers if the Applicant had not attested the ARE-1 original and duplicate. It is not the case of the Department that the original copy and duplicate copy of ARE-1 duly attested by the Applicant was certified in the absence of the Applicant. Such is also not the allegation against the Applicant. The reliance placed in the impugned order of the order of the

Hon'ble Revisionary Authority in the case of Bronze Logistics Pvt. Ltd. [2012 (275) ELT 504] is not applicable in the facts of the present case inasmuch as in that case the Applicant had not submitted the original copy of ARE-1 and duplicate copy of ARE-1

(v) The Applicant prayed that their application be allowed in the interest of justice.

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. On perusal of the records, Government observes that the Applicant had filed 04 rebate claims totaling to Rs. 8,13,439/- under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The Commissioner(Appeals) vide Order-in-Appeal No. US/903/RGD/2012-13 dated 14.12.2012 had rejected the rebate claims on the grounds of non-submission of triplicate copies of ARE-1s and non-production of self-sealing and supervision certification and also for not submission of the Duty Payment Certificate from the Central Excise Authorities indicating the debit entries of the duty payment which are essential to prove the duty payments. Government notes that the Applicant vide their letter No. T323/MHE/Refund-claim/2012-13 dated 06.06.2012 stated that –

“\* *Triplicate copy of ARE 1 is misplaced/ lost of claim no. 6923, 6924, 6925 dated 4.07.2011. – We had already submitted indemnity Bond along with our refund claim. We are enclosing Xerox copy of Indemnity bond for your ready reference as per Annexure 1.*

\* *We had already submitted ER-1 of KEI Industries Ltd which is shown that duty paid on claim No. 6925 dtd 14.07.2011 and 4984 dtd 20.06.2011. We are enclosing Xerox copy of ARE-1 of relevant month for your reference as per Annexure-II*

\* .....

\* .....

\* .....

\* *Undertaking of Self sealing and supervision certificate mention in ARE-1 which is already submitted to you along with all above refund claim as Annexure IV.”*

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. 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.*

10. 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 aforestated order of Hon'ble High Court of Bombay.

11. Government finds that ratio of aforesaid Hon'ble High Court orders is squarely applicable to the issue in question. Government in the instant case notes that the Applicant in their rebate claims had submitted the Original and Duplicate copies (in sealed envelope) of the ARE-1s, Shipping Bills, Bill of Lading and Mate Receipt. Therefore, the documents furnished by the Applicant indisputably prove that duty paid goods under claims for rebate have been exported and hence the rebate claim should not have been denied only on grounds of non-production of Triplicate copy of ARE-1s particularly when the same are lost, and Indemnity Bond along had been submitted with their refund claims. Hence the procedural lapse of not producing the Triplicate cate of ARE-1s is condoned.

12. In respect of Self sealing and supervision certificate not given, the Applicant submitted that undertaking of self sealing and supervision certificate is manifestly available in the Original and duplicate copies of the ARE-1 which have been admittedly submitted by the Applicant because the Customs Officers would never have signed and certified the Original and duplicate copies of the ARE-1 if the Applicant had not attested them. Government finds that the Applicant had submitted the undertaking of Self sealing and supervision certificate mention in ARE-1s as Annexure IV to their claims. Further, Government finds that the Applicant in their rebate claims had submitted the ER-1 of KEI Industries Ltd which shown that duty paid on claim No. 6925 dated 14.07.2011 and 4984 dated 20.06.2011. 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. With the above observations, Government remands the matter to the original authority for the limited purpose of verification of the claim with directions



that he shall reconsider the claims for rebate on the basis of the 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.

14. In view of above, Government sets aside the impugned Order-in-Appeal No. US/903/RGD/2012-13 dated 14.12.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai and the matter is remanded to the Original Adjudicating Authority.

15. The revision application is allowed in terms of above with consequential relief.

*Shrawan*  
29/4/21  
(SHRAWAN KUMAR)

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

ORDER No. 186/2021-CX (WZ)/ASRA/Mumbai Dated 29.4.2021

To,  
M/s Elecon Engineer Co. Ltd.,  
Anand Sojitra Road,  
Vallabh Vidyanagar,  
Dist. Anand- 388 120

Copy to:

1. The Commissioner, Central Excise, (Appeals) Raigad.
2. Shri Trivedi & Gupta, Advocate, G-1, Janak Apartment, 9, Sevak Nagar, B/H, Gautamnagar, Race Course Circle, Vadodara-390 007.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. ~~Spare Copy.~~