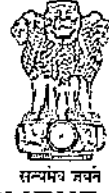


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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

F.No. 195/755/2013-RA | 2877

Date of Issue: 28.05.2021

ORDER NO. 187 /2021-CX (WZ)/ASRA/MUMBAI DATED 29.04.2021
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 Parmar Brothers

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

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. YDB/861/M-
II/2010 dated 21.12.2010 passed by the Commissioner of
Central Excise (Appeals), Mumbai-II.

ORDER

This Revision Application was filed by the M/s Parmar Brothers, Plot No. 6, Safed Pool, Andheri-Kurla Road, Kurla (West), Mumbai 400 072 (hereinafter as "the Applicant") against the Order-in-Appeal No. YDB/861/M-II/2010 dated 21.12.2010 passed by the Commissioner of Central Excise (Appeals), Mumbai-II.

2. The issue in brief is that the Applicant, had filed a rebate claim on 29.06.2009 for Rs, 2,52,328/- (Rupees Two Lakhs Fifty Two Thousand Three Hundred and Twenty Eight Only) in respect of the goods falling under Chapter Sub-Heading No. 841989910 of Central Excise Tariff Act, 1985 under Rule 18 of the Central Excise Rules, 2002. The Applicant had filed the claim in Form 'C' along with self-attested copies of the following supporting documents:

- (i) Excise Invoice Nos. 10,11 and 12 all dated 28.04.2009.
- (ii) Original & duplicate copies of ARE-1 Nos. 04/09-10, 5/09-10 & 6.09-10 all dated 28.04.2009 (in original) duly endorsed by the Customs Officers and the Triplicate copies duly endorsed by the Range Officers.
- (iii) Shipping Bill Nos. 7287854, 7287865 and 7287860 all dated 28.04.2009.
- (iv) Bill of Lading No. PLL/MUM/JBL/000404 dated 13.05.2009.
- (v) Export Invoice Nos. EXP/PB/01/2009-10, EXP/PB/02/2009-10 and EXP/PB/03/2009-10 all dated 15.04.2009.
- (vi) Mate Receipt Nos. STR/00003903, STR/00003902 and STR/00003901 of M/s Star Shipping Services (I) Pvt Ltd. Mumbai Region.
- (vii) Form SDF pertaining to Shipping Bill Nos. 7287854, 7287865 and 7287860 all dated 28.04.2009.
- (viii) Certificate of foreign inward remittance Sr.No. 665651 issued by HDFC Bank Ltd.

The said claim was sent to the Range Superintendent for his verification report, who then submitted the verification report in which the correctness and admissibility of the rebate claim had been certified and reported that duty in respect of the export goods was paid vide RG23A Part E.No.46,47 & 48 dated 28.04.2009. The Assistant Commissioner, Central Excise, Powai Division, Mumbai-II Commissionerate vide Order-in-Original No. Ref/RR/27/09-10 dated 24.09.2009 sanctioned the rebate claim of Rs. 2,52,328/- in cash under the provision of Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended under Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002.

3. Aggrieved, the Department filed an appeal with the Commissioner of Central Excise (Appeals), Mumbai-II on following grounds:

- (i) The Applicant had not submitted duplicate copies of Invoices Nos. 10,11 and 12 all dated 28.04.2009 under which the goods were exported.
- (ii) The description of the goods mentioned on ARE-1 Nos. 4, 5 & 6 all dated 28.04.2009 did not tally with the description shown in Shipping Bill Nos. 7287854, 7287865 and 7287860 all dated 28.04.2009 i.e. in the ARE-1s description mentioned as "(1) Diesel Column with bottom kettle (2) Kerosene column with accessories, whereas in the three Shipping Bills it was mentioned as (1) Fabricated steel/Hardware/structure/articles Diesel Column with bottom kettle (2) Fabricated steel/ Hardware/structure/articles Naphtha column with bottom kettle, respectively. Moreover in the ARE-1s the CSH was mentioned as 84198910 and whereas in the Shipping Bill it was mentioned as CSH 73269099.
- (iii) On the back side of ARE-1 No. 4 dated 28.4.2009, the name of the ship has been modified by correction but the same have not been certified by Customs authorities.

- (iv) The adjudicating authority had wrongly sanctioned the rebate claim for Rs. 2,52,328/-

The Commissioner(Appeals) vide Order-in-Appeal No. YDB/861/M-II/2010 dated 21.12.2010 set aside the Order-in-Original and the Applicant's appeal was rejected.

4. Being aggrieved, the Applicant then filed an appeal before the Hon'ble CESTAT, Mumbai. The Hon'ble CESTAT vide Order No. A/241/13/SMB/C-IV dated 15.03.2013 held that the CESTAT has no jurisdiction to hear the matter as the matter is covered by first proviso to Section 35B(1) of the Central Excise Act, 1944. Hence the Applicant's appeal was dismissed as withdrawn with liberty to file Revision Application before the appropriate authority.

5. The Applicant filed the current Revision Application with Condonation of Delay (COD) application on the following grounds:

- (i) All the three duplicate copies of Central Excise invoices (meant for transporters) bearing Nos. 10,11 & 12 all dated 28.04.2009 were available with the Applicant at the time of rebate claim and also at the time of adjudication. At the time of personal hearing, the same were produced before the Commissioner(Appeals) and the same had been got verified by the officers of appeal section.
- (ii) As regards the description of the goods mentioned on ARE-1 Nos. 4, 5 & 6 all dated 28.04.2009 did not tally with the description shown in Shipping Bill Nos. 7287854, 7287865 and 7287860 all dated 28.04.2009), the Applicant submitted that the shipping bills were prepared by the shipping agent well in advance and the shipping agent had mentioned the description as

(1) fabricated steel/Hardware/structure/articles diesel column with bottom kettle

(2) fabricated steel/Hardware/structure/articles kerosene column with bottom kettle and

(3) fabricated steel/Hardware/structure/articles Naphtha column with bottom kettle

respectively instead of mentioning (1) diesel column with bottom kettle, (2) kerosene column with bottom kettle and (3) Naphtha column with bottom kettle with accessories. From the above it can be seen that the description shown on ARE-1 tallies with the description shown on the respective shipping bill. Even the custom officer who examined the consignments has also certified the description and as such allowed the exports.

- (iii) As regards Chapter-Sub Heading shown in the Central Excise invoices and ARE-1s as 84198910 and CHS shown in the Shipping Bills as CSH 73269099, the Applicant clarified that the CHS Nos shown on invoices and ARE-1s (i.e. 84198910) is correct which tallies with the Tariff Heading shown in the Central Excise Tariff Act 1985 (5 of 1986). In this regard the shipping agent had also clarified the same vide his letter dated 27.01.2010.
- (iv) As regards the objection that on the back side of ARE-1 No. 4 dated 28.4.2009, the name of the ship has been modified by correction but the same have not been certified by Customs authorities, the Applicant submitted that in ARE-1 No.4/09-10 dated 25.04.2009 shipped on 28.04.2009, the vessel name is shown as "CSAV CANTABRIAN" after cancelling out Emirates shipping. It is a fact that the cancellation is not certified by the authorities. However, at the bottom, the Superintendent of Customs has signed the endorsement by affixing round Seal. Further consignment covered by ARE-1 Nos. 4/09-10, 5/0910 & 6/09-10 all dated 28-04-2009 were shipped by vessel "CSAV CANTABRIAN" only on 12th May 2009 which can be seen from the back side of ARE-1s. The mistake crept in due to clerical error without having any intention whatsoever which may be condoned.

- (v) As regards objection that the adjudicating authority had wrongly sanctioned the rebate claim for Rs. 2,52,328/-, the Applicant submitted that the adjudicating authority had gone through the above facts and got convinced himself and issued the Order-in-Original No. RR/27/09-10 dated 24.09.2009 in favour of the Applicant and therefore prayed that the Order-in-Original issued by the Assistant Commissioner Central Excise Powai Division Mumbai II be maintained.
- (vi) The Commissioner (Appeals) had mentioned in his impugned Order-in-Appeal that the Applicant's lapses are of technical in nature. The two basic criteria for sanction of rebate is payment of duty and export of goods. Both these criteria's have not been disputed in the departmental appeal. The Commissioner (Appeals) has also quoted the case of Indo Euro Textile Pvt. Ltd [1998 (97 ELT 550 (G01))] and has mentioned that the Applicant is eligible for rebate claimed by them.
- (vii) However the Commissioner (Appeals) quoted the case law in the case of COTFAB Exports [2006 (205) ELT 1027 (G01)] and relied on this judgement & set aside the Order-in-Original issued by the Assistant Commissioner Central Excise Powai Division Mumbai II. In the impugned Order-in-Appeal appearing on page No. 2, the Commissioner (Appeals) stated that rebate of duty admissible in such cases and only because of GOI order the Commissioner (Appeals) had set aside the order of Assistant Commissioner though the Applicant's rebate claim is genuine and supported by case law.
- (viii) The Applicant prayed that in such cases benefit may be given to the Applicant and not to the department when it is established that goods have been exported on payment of duty and not disputed by the department.
- (ix) The Applicant prayed that the impugned Order-in-Appeal be set aside and maintain the impugned Order-in-Original with consequential relief.

6. The Applicant delayed filing the Revision Application, details of which is given below:

Sl. No.	OIA No. & dt	CESTAT filed on	CESTAT Order	Date RA / COD recd	No. of delay
1	YDB/861/M-II/2010 dt 21.12.2010 (Recd on 31.12.2010)	25.03.2011	A/241/13/SM B/C-IV dt 08.04.2013 (received on 30.04.2013)	16.07.2013 / 13.02.2014	90 + 71

Appellants filed the Revision Application and the Miscellaneous Application for Condonation of Delay (herein after as 'COD').

7. A Personal hearing was fixed on 03.10.2019 and Shri Mahesh Wala, Tax Consultant attended the hearing on behalf of the Applicant. The Applicant submitted that COD was filed immediately after CESTAT order and reiterated the ground of revision application. All the issues were 'technical' in nature and they are not regular exporter and unintended mistakes occurred. The Order-in-Original was in their favour and be restored. The Applicant requested one week time to submit their written submission. Still in view of a change in the Revisionary Authority, final hearing was granted on 10.12.2020, 04.12.2020, 09.12.2020 and 16.03.2021. The Applicant vide their letter dated 04.12.2020 and email dated 02.03.2021 requested to treat their personal hearing on 03.10.2019 as final hearing submission vide letter dated 04.10.2019.

8. The Applicant vide their letter dated 04.10.2019 submitted their written submission as follows:

- (i) Rebate claim of Rs. 2,52,328/-in respect of the excisable goods cleared on payment of duty under claim of rebate was sanctioned by the Assistant Commissioner, Central Excise, Powai Division, Mumbai-II vide Order-in-Original No. Ref/RR/27/09-10 dated 25.09.2009.
- (ii) The Department filed review application against the above said Order-in-Original before the Commissioner(Appeals), Central Excise, Mumbai-II.

- (iii) The Commissioner(Appeals) vide Order-in-Appeal No. YDB/861/M-II/2010 dated 21.12.2010 set aside the Order-in-Original and the Applicant's appeal was rejected.
- (iv) Through oversight they had filed appeal with the CESTAT Mumbai on 25.03.2011 within the stipulate time period of three months. The Hon'ble CESTAT vide Order No. A/241/13/SMB/C-IV dated 15.03.2013 (received on 30.04.2013) ordered that the appeal is dismissed as withdrawn with liberty to file Revision Application before the appropriate authority.
- (v) They filed Revision Application on 16.07.2013 with the Revisionary Authority, New Delhi.
- (vi) The Commissioner(Appeals) in the impugned order has mentioned as under :
- "I have gone through the case records and considered the rival contentions. The grounds of appeal are (1) non submission of original copies of duplicate invoices (2) difference of description and chapter heading mentioned in the ARE-1 and Shipping Bills and (3) non-Certification of correction of name of ship, on the back of ARE-1. I find that all these ground are technical in nature. The two basic criteria for sanction of rebate is payment of duty and export of goods. Both are not disputed in the departmental appeal."*
- (vii) The Commissioner (Appeals) had quoted the case of Indo Euro Textile Pvt Ltd. [1998 (97) ELT 550 (GOI)] and also referred the case law in the case of Cotfab Exports [2006 (205) ELT 1027 (GOI)]. In the Applicant's case all these three grounds are technical in nature. The two basic criteria for the sanction of rebate is payment of duty of goods and export of goods are not in dispute. Hence they are legally eligible for rebate claim by them.
- (viii) The Applicant prayed that the Order-in-Appeal be set aside and the Order-in-Original be maintained.

9. 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.

10. Government first proceeds to discuss the issue of delay in filing the revision application. It is clear that Applicant has filed the revision application after 3 months + 71 days, when the time period spent in proceedings before CESTAT is excluded. As per provisions of Section 35EE of Central Excise Act, 1944 the revision application can be filed within 3 months of communication of Order-in-Appeal and delay up to another 3 months can be condoned provided there are justified reasons for such delay. In view of judicial precedence that period consumed for pursuing appeal bonafidely before wrong forum is to be excluded in terms of Section 14 of Limitation Act, 1963 for the purpose of reckoning time limit of filing revision application under Section 35EE of Central Excise Act, 1944, Government, in exercise of power under Section 35EE of Central Excise Act, 1944 condones the said delay and takes up revision application for decision on merit.

11. On perusal of the records, Government observes that the Applicant, had filed a rebate claim for Rs, 2,52,328/- which was sanctioned by the original adjudicating authority vide Order-in-Original No. Ref/RR/27/09-10 dated 25.09.2009. The Department filed review application against the said Order-in-Original before the Commissioner(Appeals), Central Excise, Mumbai-II.

- (i) The Applicant had not submitted duplicate copies of Invoices Nos. 10,11 and 12 all dated 28.04.2009;
- (ii) The description of the goods mentioned on ARE-1 Nos. 4, 5 & 6 all dated 28.04.2009 did not tally with the description shown in Shipping Bill Nos. 7287854, 7287865 and 7287860 all dated 28.04.2009;

- (iii) On the back side of ARE-1 No. 4 dated 28.4.2009, the name of the ship has been modified by correction but the same have not been certified by Customs authorities.

The Commissioner(Appeals) vide Order-in-Appeal No. YDB/861/M-II/2010 dated 21.12.2010 set aside the Order-in-Original and the Applicant's appeal was rejected.

12. 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.

13. In respect of duplicate copies of Invoices Nos. 10,11 and 12 all dated 28.04.2009 not submitted along with the claims, the Applicant submitted that *"all the three duplicate copies of Central Excise invoices (meant for transporters) bearing Nos. 10,11 & 12 all dated 28.04.2009 are available with the appellants at the time of rebate claim and also at the time of adjudication. In support of appellants claim, the appellants had enclosed Xerox copies of invoices being Nos.10,11 & 12 all dated 28.04.2009. At the time of personal hearing, the same were produced before the Honourable Commissioner(Appeals) and the same have been got verified by the officers of appeal section"*. Government finds that the Applicant have submitted the 'DUPLICATE FOR TRANSPORTER' Invoices Nos. 10,11 and 12 all dated 28.04.2009. Hence the objection raised by the Department is not valid.

14. In respect of the issue regarding description of the goods as mentioned in ARE-1 cannot be correlated with the export documents, the Government observes that the shipping bills were prepared by the shipping agent well in advance and the shipping agent M/s K.M. Commercial Services Pvt Ltd. vide their letter dated 27.01.2010 submitted that while preparing Shipping Bills, they had mentioned tariff chapter heading No. of the products as 73269099

instead of correct chapter heading No. 84198910 and also made an extra line wherein it was shown as steel articles in the column of description. The mistake crept due to clerical error otherwise the correct description of the exported goods is as per Central Excise invoices as well as description shown in ARE-1 Nos. 4, 5 & 6 all dated 28.04.2009 and the correct classification is 84198910. Further all the goods mentioned in the ARE-1s have been loaded in ship "CSAV CANTABRIAN" for export Jabel Ali (UAE) and the mistake was not intentional and hence requested to condone the mistake. Government finds that goods 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 mistake of chapter heading made in their Shipping Bills is condonable as it is procedural lapse and the same is condoned.

15. In respect of the issue that on the back side of ARE-1 No. 4 dated 28.4.2009, the name of the ship has been modified by correction but the same have not been certified by Customs authorities, the Applicant submitted that in ARE-1 No.4/09-10 dated 25.04.2009 shipped on 28.04.2009, the vessel name is shown as "CSAV CANTABRIAN" after cancelling out Emirates shipping. It is a fact that the cancellation is not certified by the authorities. However, at the bottom, the Superintendent of Customs has signed the endorsement by affixing round Seal. Further consignment covered by ARE-1 Nos. 4/09-10, 5/0910 & 6/09-10 all dated 28-04-2009 were shipped by vessel "CSAV CANTABRIAN" only on 12th May 2009 which can be seen from the back side of ARE-1s. The mistake crept in due to clerical error without having any intention whatsoever which may be condoned. Government notes that the Shipping Bill Nos. 7287860, 7287854, 7287865 all dated 28.04.2009 shows the vessel name as "EMIRATES SPRING" However the Bill of Lading No. PLL/MUM/JBL/000404 dated 13.05.2009 shows S/B NO: "7287860, 7287854, 7287865 DT 28.04.2009" and Vessel Voyage : "CSAV CANTABRIAN V-914" and the Mate Receipt Nos. STR/00003903, STR/00003902 and STR/00003901 dt. 12.05.2009 of M/s Star Shipping Services (I) Pvt Ltd. Mumbai Region shows "Received for

Shipment on board CSAV CANTABRIAN Voy. 914/W". Government finds that all the documents are well correlated and the vessel name is shown as "CSAV CANTABRIAN" after cancelling out Emirates shipping in the ARE-1 No.4/09-10 dated 25.04.2009 shipped on 28.04.2009. Hence the mistake of the original details being struck out and correction made is also only a procedural lapse and the same is condoned.

16. Government finds that the documents so furnished by the Applicant (details in Para 2 above) prove the fact that goods under claim for rebate have been exported. Government finds that the deficiencies observed by the Appellate Authority are of technical nature. In cases of export, the essential fact is to ascertain and verify whether the said goods were duty paid and the same 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.

17. In view of the above, Government sets aside the impugned Order-in-Appeal No. BC/572/BEL/2012-13 dated 07.02.2013 passed by the Commissioner of Central Excise(Appeals), Mumbai-III and upholds the Order-in-Original No. Ref/RR/27/09-10 dated 24.09.2009 passed by the Assistant Commissioner, Central Excise, Powai Division, Mumbai-II Commissionerate.

11. The Revision Application is allowed with consequential relief, if any.

Shrawan
29/4/21
(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 187/2021-CX (WZ)/ASRA/Mumbai Dated 29.04.2021

To,
M/s Parmar Brothers,
Plot No. 6, Safed Pool,
Andheri-Kurla Road,
Kurla (West),
Mumbai 400 072.

Copy to:

1. The Commissioner of CGST & CX, Mumbai East, 9th floor, Lotus Inforcentre, Parel, Mumbai 400 012.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.
4. Spare Copy.