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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, Cuff Parade,
Mumbai- 400 005

F NO. 195/1455/12-RA/412.

Date of Issue: 6th December 2017

ORDER NO. 18/2017-CX (WZ) /ASRA/Mumbai DATED 6th December 2017
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s. KBC Steel, 302, 3rd Floor, Simaran Plaza, 3rd& 4th Cross
Road, Next to Hotel Regal Enclave, Khar (W), Mumbai-400052.

Respondent : Commissioner of Central Excise (Appeals-II), Mumbai-400051.

Subject : Revision Applications filed, under section 35EE of the Central
Excise Act, 1944 against the Orders-in-Appeal No. US/ 486/
RGD/ 2012 dated 10.08.2012 passed by the Commissioner of
Central Excise (Appeals-II), 3rd floor, GST Bhavan, BKC, Bandra
(East) Mumbai-400051.



ORDER

This revision application is filed by M/s. KBC Steel, 302, 3rd Floor, Simaran Plaza, 3rd & 4th Cross Road, next to Hotel Regal Enclave, Khar (W), Mumbai-400052 (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/486/RGD/2012 dated 10.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone - II upholding the Order-in-Original No. 2536/11-12/DC (Rebate)/ Raigad dated 28.03.2012 passed by the Deputy Commissioner of Central Excise (Rebate), Raigad, thereby rebate claims of Rs. 6,61,498/- were rejected and a penalty of Rs. 5,000/- was imposed on the ground that the applicant has changed address of rebate sanctioning authority by using white ink and certification of self-sealing was not there in ARE-1.

2. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds that:-

2.1 this was the first time that they had filed a rebate claim and as they were not aware of the export procedure, they committed some procedural lapses which are condonable, but the rejection of the rebate claim for procedural lapses defeats the very purpose of the incentive schemes declared by the Government of India.

2.2 the applicant have been denied the opportunity to put up their defense with respect to the notice and thereby the principles of natural justice have been violated;

2.3 There was no dispute regarding the export of goods. The Tribunals and Government of India have taken a consistent view that when the export of



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goods is established the substantial right of the refund should not be denied. The applicant have produced copy of the ARE-1 duly certified by the Customs Authority that the goods have been exported along with all other necessary documents.

2.4 The changing of rebate sanctioning authority's address or not giving self-sealing certificate in the document are no such serious lapses to reject the rebate claim and such procedural lapse can be condone.

2.5 There was no allegation of any fraud on Government's money. Therefore, there is no breach of any rule of Central Excise to attract Rule 27 of the Central Excise Rules, 2002. Filing claim with some deficiency, is not punishable under the Excise Act or Rules made there under.

3. A Personal hearing was held in this case on 22.11.2017 and Shri Huzefa Shakir, Company Secretary of the Revision Applicant, appeared for hearing on behalf of the applicant and reiterated the submission filed with Revisionary Authority and he submitted series of case laws in their support along with photocopies of 6 ARE-1s and its corresponding Bank Realization Certificate (BRC), Bill of Lading, Shipping Bill, export invoice. In view of above, it was prayed that the Order-in-Appeal be set aside and Revision Application be allowed.

4. 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. On perusal of records, Government observes that the applicant's rebate claim made under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 - C.E.(NT) dated 06.09.2004 was rejected on the ground as mentioned supra.



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5. Government notes that the only contention of the Department for rejecting the rebate claim was that the applicant has (i) changed the address of the Rebate sanctioning Authority in the ARE-1 by using white ink at later stage and (ii) for not furnished the self-sealing certificate on the body of ARE-1s. It is also noted that Department was silent on one aspect of Show Cause Notice i.e. Assessable value in ARE-1s / invoices are more than the F.O.B Value shown in Shipping bills' and no speaking order was issued.

6. Government notes that in impugned Order-in-Original, it has been observed by the original authority that the Applicant has filed a rebate claims along with (i) Original, duplicate and triplicate copies of ARE-1s, (ii) Central Excise invoice under which the export goods were removed from the factory of manufacture, (iii) Self attested copies of shipping bill, bill of lading and Mate receipt and (iv) Commercial invoice. And the only deficiency was found as mentioned in para-1 above, on the basis of which the rebate claims were rejected. It has been noted that in Order-in-Original, there is no objection in relation to duty payment and export of such paid goods and regarding any authentication of ARE-1s.

7. Government observes that the applicants exported the goods and filed rebate claim under Rule 18 of the Central Excise Rules, 2002 read with the Notification No. 19/2004-C.E. (N.T.); dated 6-9-2004. The applicant has contended that there were procedural lapses, which can be condoned if the authority is convinced that the duty of Central Excise has been paid and goods have been actually exported and for this they relied upon various case laws.

8. Government finds that the applicant prepared the ARE-1 under claim of rebate and paid applicable duty at the time of removal of goods. The original



authority i.e. Deputy Commissioner, who rejected the claim initially, has not found any deficiency regarding the payment of Central Excise duty on the export goods and the export of goods. Once, it has been accepted that exported goods have suffered duty at the time of removal and those goods are actually been exported, then there is no reason to deny rebate. Government finds force in contention of applicant that they have made the procedural mistake by making some correction in ARE-1s and by not furnishing the certification on the body of ARE-1s regarding self-sealing. These procedural lapses in ARE-1s form cannot be a basis for rejecting the substantial benefit of rebate claim. Under such circumstances, the rebate claims cannot be rejected merely for procedural lapses. These procedural lapses could have been rectified at the initial stage of exports, when the documents are submitted for verification to the Jurisdictional Range Officer before export and at the port of export.

9. Government also observes that, the applicant had cleared the goods on the basis of ARE-1 which were duly endorsed by the concerned Range Officer and corresponding Shipping Bill, Bill of Lading, Bank Realisation Certificate (BRC), are evidence itself that the goods were properly exported. When there is no ambiguity in the export of the duty paid goods, the rebate of duty paid under Rule 18 of the Central Excise Rules cannot be denied to applicant merely on the ground of technical lapses. Moreover, the Government does not find any Malafide on the part of Applicant for making correction of address of rebate sanctioning authority in ARE-1s with white ink and for not furnishing the certificate of Seal-sealing in ARE-1s. The Government notes that as there was no mens-rea on the part of the applicant and all documents had been submitted for verification of the contents mentioned therein, hence imposition of Penalty is not warranted.



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10. Further, it is now a trite law while sanctioning the rebate claim that the procedural infraction of Notification / Circulars etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. These procedures are prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is clearance on payment of duty and subsequent export to the satisfaction of the proper officer. As long as this requirement is met, other procedural deviations can be condoned. Such a view has been taken in *Birla VXL* - 1998 (99) E.L.T. 387 (Tri.), *Alfa Garments* - 1996 (86) E.L.T. 600 (Tri), *Alma Tube* - 1998 (103) E.L.T. 270, *Creative Mobous* - 2003 (58) RLT 111 (GOI), *Ikea Trading India Ltd.* - 2003 (157) E.L.T. 359 (GOI), and a host of other decisions on this issue.

11. In view of the discussions above and keeping in mind the observations of Hon'ble Supreme Court in judgments cited supra and catena of decisions of Hon'ble CESTAT/Govt. of India that when substantive fact of actual export is not disputed. The Government feels that denial of export relief in this case on the sole ground of technical lapses is not justified.

12. Government holds that neither genuineness of the export nor duty paid character of goods is in doubt. Mere modification of address of rebate sanctioning authority or non-furnishing of self-sealing certificates are held to be procedural and technical lapses and on the basis of which the benefit of rebate claims cannot be denied. Since there is no malafide on the part of applicant, the imposition of penalty is not justified.

13. In view of above circumstances, Government sets aside the impugned Orders-in-Appeal dated 10.08.2012 and allow the revision application. The



penalty of Rs. 5,000/- (Rupees Five thousand only) imposed upon by the original authority and upheld by the Commissioner (Appeals) is also set aside.

14. Further Government, directs the Original authority to pass the appropriate speaking order on the impugned rebate claims after following principles of natural Justice.

15. Revision application thus succeeds in above terms.

16. So ordered.

Ashok Kumar Mehta
06/12/17

ASHOK KUMAR MEHTA
Principal Commissioner (RA) & Ex-Officio
Additional Secretary to Government of India
Mumbai

ORDER No. 18/2017-CX (WZ) /ASRA/Mumbai DATED 06.12.2017

To,
M/s. KBC Steel,
302, 3rd Floor, Simaran Plaza,
3rd & 4th Cross Road, Next to Hotel Regal Enclave,
Khar (W), Mumbai-400052.

True Copy Attested

Sankarsan Munda

SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex. (R 4)

Copy to:

Belapur

1. The Commissioner of GST & CX, ~~Raigad~~ Raigad Commissionerate.
2. The Commissioner, Central Excise, (Appeals) -II, 3rd Floor, GST Bhavan, BKC, Bandra (E), Mumbai-400051. *(Belapur)*
3. The Deputy / Assistant Commissioner (Rebate), Central Excise building, Plot no. 1, Sector-17, Khandeshwar, Navi-Mumbai -410206.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

