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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. 195/29/WZ/2018-RA / 211

Date of Issue: 17.01.2023

ORDER NO. 18/2023-CEX (WZ)/ASRA/MUMBAI
DATED 16.01.2023 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. Eskay International (Exporter)

Respondent : The Commissioner of CGST, Gandhinagar

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.- AHD-
Excus-003-App-0128-17-18 dated 23.09.2017 passed by the
Commissioner(Appeals),Central Tax, Ahmedabad.

ORDER

The Revision Application has been filed by M/s. Eskay International (Exporter) (hereinafter referred to as "Applicant") against Order-in-Appeal No.- AHD-Excus-003-App-0128-17-18 dated 23.09.2017 passed by the Commissioner(Appeals),Central Tax, Ahmedabad.

2. The facts of the case are that the Applicant, a merchant exporter, had filed a rebate claim of Rs. 3,06,717/- On 13.02.2017 under rule 18 of CER, 2002 read with Notification No. 19/2004-CE dated 06.09.2004. A show cause notice dated 14.03.2017 was issued to the Applicant which was decided by the Adjudicating Authority vide OIO No.18/Reb/CE/AC/2017 dated 24.04.2017. Adjudicating Authority rejected the rebate claim on the ground that Applicant had not provided the relevant documents such as i) original and duplicate copies of ARE-1 duly endorsed by the officer of customs, ii) Proper NOC of the Manufacture, iii) Declaration by the exporter; prescribed in Section 11B of Central Excise Act, 1944 read with Notification No. 19/2004-C.E.(NT) dated 06.09.2004. Aggrieved by the OIO, the Applicant filed appeal with the Commissioner(Appeals),Central Tax, Ahmedabad, who vide Order-in-Appeal No.- AHD-Excus-003-App-0128-17-18 dated 23.09.2017 rejected their appeal and upheld the OIO. Appellate Authority observed that the ARE-1, which is an essential document for claiming of rebate, was not prepared by the Manufacturer in the instant case and the reason for not preparing it was not submitted by the Applicant.

3. Being aggrieved and dissatisfied with the impugned orders in appeal, the applicant had filed this revision Application on the following grounds:

- i. The Ld. Commissioner (Appeals) erred in rejecting the appeal and upholding the order passed by the Assistant Commissioner only on the premise that the original copy of ARE-1 was not produced to substantiate rebate claim and therefore, it was difficult to establish the fact that the said duty paid goods cleared from the factory of the manufacturer was exported. The Ld. Commissioner (Appeals) ought to have considered that various documents submitted along with the

- rebate claim establish the fact that the said duty paid goods cleared from the factory of the manufacturer were exported.
- ii. They have complied with all the conditions prescribed under notification
 - iii. In the present case, the Applicant produced all the documents except original copy of ARE-1 as the same was not given to the Applicant. As all other documents were produced, the Ld. Commissioner (Appeals) ought to have considered for claiming rebate claim. The Ld. Commissioner (Appeals) ought to have appreciated that in order to qualify for grant of rebate under Rule 18, the mandatory conditions which are required to be fulfilled are:
 - a. The goods have been exported;
 - b. Duty have been paid on the goods
 - iv. Production of are-1 form in original and duplicate is procedural and non production of such form doesn't deprive their right to claim rebate unless production of the sufficient documentary materials would establish the identity of the goods exported and the duty paid character of the goods.
 - v. The Ld. Commissioner (Appeals) ought to have appreciated that the Applicant directly exported the goods from factory of the manufacturer. Descriptions and quantity of the goods, mentioned in the invoice issued by the supplier matches/tallies with description of invoice issued by the Applicant for export of goods. It is further submitted that details of transportation provided under invoice issued by the supplier proves that the goods were cleared form the factory of the supplier for Mundra to export to out of India.
 - vi. The Ld. Commissioner (Appeals) ought to have appreciated the disclaimer certificate issued by the supplier wherein the supplier certified that they paid Central Excise Duty on the goods cleared under Invoice No. 2015011110 dated 20.02.2016 and did not claim any central excise rebate on sale of such goods.
 - vii. The Ld. Commissioner (Appeals) ought to have appreciated that in several decisions, it has been held that the production of the requisite

- forms has been held to be procedural requirement and hence, as a result of which, the mere non-production of such form would not result in invalidate of a claim for rebate where the exporter is able to satisfy through the production of cogent documentary evidences that the relevant requirements for grant of rebate has been fulfilled.
- viii. The Ld. Commissioner (Appeals) erred in observing in the impugned order that the Applicant claimed drawback under Duty Drawback Scheme with Serial No. 6903A which means the Applicant claimed duty drawback which includes Customs and Excise duties. The Ld. Commissioner (Appeals) ought to have appreciated that the Applicant claimed rebate of Central Excise Duty on finished goods whereas claimed drawback on excisable materials used in manufacture of such products. Rule 18 read with Notification No. 19/2004-CE(NT) (supra) does not debar the Applicant to claim rebate in the case where the Applicant claimed drawback effect on exported goods.
- ix. The Applicant submits that the Applicant filed rebate claim on 20.02.2017. In terms of provisions of Section 11AB, rebate claim was required to be sanctioned within 3 months. In case, rebate has not been sanctioned within 3 months, the Applicant is entitled for interest. In the present case, the Applicant has not been granted rebate within the stipulated time and hence, the Applicant is entitled to get interest on the refund amount in terms of Section 11BB of the Central Excise Act.
- x. The Ld. Commissioner (Appeals) erred in not appreciating the object and purpose underlined the procedures 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 have been exported and the duty has been paid. In the present case, both the conditions have been complied with. The Ld. Commissioner (Appeals) erred in distinguishing the decision of UM Cables Ltd. Vs. Union of India reported in 2013 (293) ELT 651 (Bom.) and Kaizen Plastomould Pvt. Ltd. Vs. Union of India reported in 2015 (330) ELT 40 (Bom.) only on the premise that in both these cases ARE-1 was

produced but original and duplicate copies of ARE-1 was not available. The Ld. Commissioner (Apepals) ought to have appreciated that merely ARE-1 was not available, does not mean that duty paid goods cleared from the factory of the manufacture was not exported. The Applicant produced all requisite documents, except ARE-1 to substantiate their case that duty paid material was exported

xi. In view of above, Applicant requested to:

a) quash and set aside the impugned Order-in-Appeal No. AHM-EXCUSS-003-APP-0128-17-18 dated 22.09.2017 passed by the Commissioner (Appeals) of Central Excise;

b) direct the Respondents to sanction and disburse the rebate claim of Rs. 3,06,717/- with interest in terms of provisions of Central Excise Act, 1944

4. Personal hearing in this case was fixed for 02.11.2022, Mr. Sagar Chand Jain, proprietor appeared online and submitted that their rebate claim was rejected merely on the ground that ARE-1 was not produced. He submitted that there is no doubt on export of duty paid goods. He requested to allow their application.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original, Order-in-Appeal and the Revision Application.

6. Government observes that the issue to be decided in the instant case is whether the non-preparation of Form ARE-1 can be a reason for denying rebate under Rule 18 of Central Excise Rules,2002.

7. Government first proceeds to examine the statutory position with regard to the documents required for sanction of a rebate claim.

7.1 Rule 18 provides that Central Government may by notification grant rebate of duty on goods exported subject to conditions and limitations if any and subject to fulfilment of procedure as specified. Notification 19/2004-

C.E. (N.T.), dated 6-9-2004 as amended issued under Rule 18 provides that the rebate sanctioning authority will compare the original copy of ARE-1 submitted by exporter with the duplicate copy received from Customs authorities and triplicate from the Excise authorities.

7.2 Also the provisions specified in Chapters 8 (8.3) & (8.4) of CBEC Basic Excise Manual as Supplementary Instructions are applicable in this case, which reads as under:-

“8. Sanction of claim for rebate by Central Excise

8.3 The following documents shall be required for filing claim of rebate:-

- (i) A request on the letterhead of the exporter containing claim of rebate, ARE-1 nos. dates, corresponding invoice numbers and dates amount of rebate on each ARE-1 and its calculations.*
- (ii) Original copy of ARE-1.*
- (iii) invoice issued under Rule 11.*
- (iv) self-attested copy of shipping bill and*
- (v) self-attested copy of Bill of Lading*
- (vi) Disclaimer Certificate [in case where claimant is other than exporter]*

8.4. After satisfying himself that the goods cleared for export under the relevant ARE-1 application mentioned in the claim were actually exported, as evident by the original and duplicate copies of ARE-1 duly certified by Customs, and that the goods are of duty paid character as certified on the triplicate copy of ARE-1 received from the jurisdictional Superintendent of Central Excise (Range Office) the rebate sanctioning authority will sanction the rebate, in part or full. In case of any reduction or rejection of the claim an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued.”

From the above, Government notes that original copy of ARE-1 and Excise invoice among other documents are essential documents for claiming rebate. Any non-submission of documents in the manner prescribed thus imparts a character of invalidity to the rebate claim. Also, in the absence of the original copies of ARE-1 duly endorsed by the Customs, the export of the same duty paid goods which were cleared from the factory cannot be

established, which is a fundamental requirement for sanctioning the rebate under Rule 18 read with Notification 19/2004-C.E. (N.T.), dated 6-9-2004.

8. Government notes that the applicant has relied on the various judgments/Orders regarding procedural relaxation on technical grounds. Government observes that in all these case-laws the exporter had prepared the prescribed documents and complied with the laid down procedure. However, while filing rebate claim they could not submit original and duplicate copy of ARE-1 for various reasons such as:

- o Documents lost by CHA. FIR filed.
- o Documents lost in transit.
- o Documents lost/misplaced.

Therefore, on the basis of triplicate/extra copy of ARE-1 and other related documents, authenticity of export and other verifications were possible, which is the main emphasis in these case laws. However, in the instant case the applicant had not prepared ARE-1 at all and had not informed the Central Excise authorities about the export being carried out by them, though it was a requirement for claiming rebate. It therefore implies that they have simply skipped the procedure and want the Department to overlook it in the light of relied upon case laws. In other words, the point which needs to be emphasized is that when the applicant seeks rebate under Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, which prescribes compliance of certain conditions, the same cannot be ignored altogether.

9. Government place reliance on the judgment by Hon'ble High Court of Chhattisgarh in the case of Triputi Steel Traders [2019 (365) E.L.T. 497 (Chhattisgarh)] wherein at para 24 it is held that:-

"24. Upon such consideration we are, therefore, inclined to hold that ordinarily, the requirements of fulfilment of pre-conditions as stated in Rule 18 read with relevant notification, as mandated are required to be fulfilled to avail rebate. However, in exceptional cases it is open for the assessee to prove claim of rebate by leading other collateral documentary evidence in support of

entitlement of rebate. As we have noticed, it would only be an exception to the general rule and not a choice of the assessee to either submit ARE-1 document or to lead collateral documentary evidence. We would further hold that where an assessee seeks to establish claim for rebate without ARE-1 document or for that matter without submission of those documents which are specified in relevant notifications he is required to clearly state as to what was that reason beyond his control due to which he could not obtain ARE-1 document. In cases of the nature as was noticed in the decision of U.M. Cables Limited, the assessee would be required to file at least affidavit of having lost the document required to be submitted to claim rebate. It will then be a matter of enquiry by the authorities as to whether the reason assigned by the assessee are acceptable to allow him to lead collateral documentary evidence in support of its claim of rebate. But we wish to make it clear that under no circumstances, it can be treated as parallel system as it is not established procedure under the law."

10. In view of the findings recorded above, Government upholds the Order-in-Appeal No.- AHD-Excus-003-App-0128-17-18 dated 23.09.2017 passed by the Commissioner(Appeals),Central Tax, Ahmedabad and rejects the Revision Application in hand.

Shrawan
16/11/23

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

ORDER No. 18/2023-CEX (WZ) /ASRA/Mumbai Dated 16.10.2023

To,

1. M/s. Eskay Internationals(Exporter), Ho. I-158, Ashok Vihar, Phase-I, Delhi-110052.
2. The Commissioner of CGST & C.Ex., Gandhinagar, 2nd Floor, Custom House, Near All India Radio, Navarangpura, Ahmedabad-380009.

Copy to:

1. The Commissioner of Central Tax (Appeals), 7th Floor, Gst Building, Near Polytechnic, Amabavadi, Ahmedabad- 380015
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.