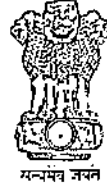


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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**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. 195/71/14-RA | 2853 Date of Issue: 28.05.2021

ORDER NO. 190/2021-CX (SZ) /ASRA/MUMBAI DATED 29.04.2021 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 CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Caparo Engineering India Pvt. Ltd.

Respondent: Commissioner of Central Excise & Customs(Appeals), Surat-II

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against Order-in-Appeal Nos. 263-265/2013. (M-IV) dated 02.12.2013 passed by the Commissioner of Central Excise (Appeals), Chennai

ORDER

This Revision Application has been filed by M/ Caparo Engineering India Pvt. Ltd., T-1, T-2 Sipcot Inddial Park, Phase-II, Sanguvarchatam, Kancheepuram, Tamil Nadu - 602 106 (hereinafter referred to as "the Applicant") against the Orders-in-Appeal Nos. 263-265/2013 (M-IV) dated 02.12.2013 passed by the Commissioner of Central Excise (Appeals), Chennai.

2. The case in brief is that the Applicant, manufacturer of Alloy Steel Forings(machined/un machined) and Aluminum Die Casting falling under Chapter Sub-heading 87089900 and 760442100of the Central Excise Tariff Act, 1985 had filed three rebate claims on the duty paid in their Cenvat Credit Account under Rule 18 of the Central Excise Rules, 2002 in respect of the duty paid on the goods cleared to other countries and SEZ located at various places in India. The Range Officer, Poonamallee Range-V in his verification reports dated 16.03.2011, 18.03.2011 and 03.05.2011 recommended sanction of the claims. On scrutiny of the claim documents, it was observed that in respect of few ARE-1 the exporter had not furnished the duplicate copies of the ARE-1. After due process of law, the Original Authority sanctioned refund and rejected a portion of the claim as being not eligible for rebate under Rule 18 of Central Excise Rules, 2002 as the duplicate copies of the said ARE-1s were not filed. Aggrieved, the Applicant then filed appeal with the Commissioner of Central Excise (Appeals), Chennai. The Commissioner(Appeals) vide Orders-in-Appeal Nos. 263-265/2013 (M-IV) dated 02.12.2013 upheld the Orders-in-Original and rejected their appeals. The details are given below:

Sr.No.	Rebate claim amount (Rs)	OIO No & date	Amount sanctioned (Rs)	Amount rejected	Nos. of ARE-1 not submitted	OIA No & dt
1	25,70,012/- dt 25.01.11 in r/o 45 ARE-1s	142/2011-RF dt 12.9.11	23,44,514/-	15,171/-	151 dt 6.5.10 184 dt 22.5.10 159 dt 17.7.10	263-265/2013 (M-IV) dated 02.12.2013

2	25,55,733/- dt 04.2.11	143/2011-RF dt 21.9.11	21,79,750/- in cash and 3,33,508/- as credit in Cenvat account	41,475/-	214 dt 10.6.10
					218 dt 11.6.10
					229 dt 17.6.10
					239 dt 24.6.10
					253 dt 30.6.10
3	32,70,286/- dt 16.3.11 in r/o 75 ARE-1s	150/2011-RF dt 5.10.11	30,18,610/- in cash and 2,20,848/- as credit in Cenvat account	30,831/-	405 dt 9.9.10
			Total	87,477/-	

3. Aggrieved, with that part of rejection of their claims, the Applicant filed the current Revision Application on the following grounds:

- (i) The lower authorities had rejected the three rebate claims on the only ground that the Applicant had not furnished Duplicate copies of the ARE-1s while filing rebate claims of the excisable goods exported on payment of duty under Rule 18 of Central Excise Rules, 2002. The Applicant reiterated their submissions made in their Appeal dated 19.11/2011 before the Commissioner(Appeals).
- (ii) The Commissioner (Appeals) had passed the impugned Orders-in-Appeal dated 02.12.2013 by altogether ignoring the law governing the procedure laid down under Notification No 19/2004-CE(N.T) dated 06.09.2004 and Chapter 8 of CBEC's Central Excise Manual. The Sub-Para (XV) of Para 3 of the Notification No. 19/2004-CE (N.T) which speaks as under:

"...the officer of customs was required to forward the duplicate copy of ARE-1 either by post or by handing over to the exporter in tamper proof sealed cover for handing over the same to the officer specified the application from whom the exporter wants to claim rebate".

As per practice, at the end of SEZ Customs Officer, the Customs Officer had returned the Original and Quadruplicate copies of ARE-1s to the Applicant but not the Duplicate copies. It was incumbent on the part of the Custom Officer to forward the same either to the Assistant

Commissioner having jurisdiction over the exporter's factory or handing over the same to the Applicant. Therefore insisting filing of duplicate copies of ARE-1s by the Applicant to the rebate claim authority was definitely illegal and contrary to the provisions of Notification No.19/2004-CE(N.T).

- (iii) As per provision under Para 8 of Chapter 8 of the CBEC'S Manual, the Applicant had properly filed the necessary documents mentioned under Para 8.3 of Chapter 8 of CBEC'S Manual with their three Rebate claims to the Rebate Sanctioning Authority.
- (iv) The responsibility of the Applicant was limited to the extent of filing the Original copies of ARE-1s bearing endorsement of exportation of goods by the Customs Officer, Bill of Lading, Shipping Bills, Export Invoice and Disclaimer Certification. The Applicant had discharged their responsibility properly and in accordance with the procedure laid down under Notification and the CBEC's Manual *ibid*. The Applicant should not be punished for the fault on the part of the Customs Officers in discharge of his duties.
- (iv) The letters issued by Appraiser Customs, Indore SEZ to the Superintendent having jurisdiction over the Applicant's factory forwarding copies of ARE-1's bearing certificates of rewarehousing in the consignee unit i.e. M/s Cumin Technologies India Ltd. in SEZ as is evident from the Original copy of ARE-1s and letters received from the Appraiser Customs, Indore SEZ that goods in respect of which rebate claims had been filed had been exported. The said letters along with copies of ARE-1's bearing certificate of rewarehousing are as valid good documents as the Duplicate copy of ARE-1s. Such letters along with ARE-1 copy is a sufficient proof in itself that the goods have been exported.
- (v) The applicant has filed a single Revision Application in respect of Common impugned Orders-in-Appeal No 263- 265/2013(M-IV) dated 02.12.2013 as the issue is identical that the Applicant had not filed Duplicate copies of ARE-1s.

- (vi) There was gross violation of principles of natural justice. The Rebate sanctioning Authority had passed all the three Order-in-Original ibid arbitrarily rejecting the rebate claims without issuing Show Cause Notices to the Applicant. Therefore, all three said Order-in-Original are not maintainable. Further the Commissioner (Appeals) had not taken into consideration the case laws relied on by the Applicant. The Applicant's case is squarely covered within the ratio of the case laws relied on by them.
- (vii) The Applicant prayed that the Orders-in-Appeal dated 21.09.2011 be set aside with consequential refund of Rs. 87,477/-.

4. Personal Hearing was fixed on 28.05.2018 and 15.10.2019. No one appeared on behalf of the Applicant and on behalf of the Respondent, the Commissioner of GST and Central Excise, Chennai Outer vide letter dated 11.10.2019 submitted the written submission. A final hearing the matter was fixed on 18.03.2021 or 25.03.2021. On 25.03.2021, Shri Ayyadurai, Assistant Manager appeared online on behalf of the Applicant. He submitted that their rebate claims were rejected on the ground that duplicate copy of ARE-1 was not submitted. He further submitted that all other documents were submitted and fact of duty paid goods exported is not in doubt and requested to allow the export.

5. The Respondent, Commissioner of GST and Central Excise, Chennai Outer vide letter dated 11.10.2019 submitted the following written submission:

- (i) The duplicate copies of ARE-1s which are to be received from the concerned Custom House of the concerned authorized officer in terms of the procedure prescribed under Notification No. 19/2004-CE (NT) 06.09.2004 were not received by the sanctioning authority. A letter cum notice was issued by the sanctioning authority to the Applicant. The Applicant had replied stating that they could not obtain the duplicate copies of the ARE-1s.

- (ii) The Notification No.19/2004-CE NT dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002, had prescribed procedures and conditions for the export as well as the acceptance of proof of export on the basis of the documents received from the different parties namely Customs Department, the Exporter and the Range Officer. These procedures and conditions are not merely formalities but indicate the essence of the requirements for claiming rebate.
- (iii) Under the similar circumstances, the Apex Court had held that such procedures are substantial and cannot be ignored, in the case of M/s. Hari Chand Shri Gopal & Others [2010 (260) ELT 3 (SC)]. In the said case, the issue involved was whether a manufacturer of a specified final product is eligible to get the benefit of exemption from remission of Excise duty under Chapter X of Central Excise Rules on specified intermediate goods as per Notification No. 121/94-CE dated 11.08.1994, if captively consumed for manufacture of final products on the ground that the records kept by it at the recipient end would indicate its "intended use" and "substantial compliance" of the procedure set out in Chapter X of Central Excise Rules. The Hon'ble Court had held that the observation of the Tribunal that the procedure laid down under Chapter X is meant only for establishing the receipt of goods and utilization thereof by the recipient is not correct. The judgment further held that the Tribunal completely overlooked the object and purpose of the procedure laid down under Chapter X.
- (iv) On the basis of the ratio evolved by the Hon'ble Supreme Court in the above case and in the light of the prescribed procedures for export, the sanctioning authority had held that under Central Excise Law there is no scope for sanction of rebate without comparing the quantities, duties indicated in the respective original, duplicate copies with the endorsement of the Customs officer and that of the triplicate copies filed with the range immediately on export. Accordingly, the rebate claim were partly rejected.

- (v) Further, Sub-clause 8.4 to clause 8 of the CBEC's Supplementary Instructions, reads as follows: -

"After satisfying himself that the goods cleared for export under the relevant ARE-1 applications 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 '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 nay 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. "

- (vi) In view of the foregoing, the original sanctioning authority and the appellate authority had rightly part-rejected the rebate claims filed by the Applicant due to non-submission of the Duplicate copies of ARE-1s and there is no infirmity in the orders passed by them.
- (vii) The Respondent prayed that the revision application filed by the Applicant may be dismissed as devoid of merits and thus render justice.

5. 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. On perusal of the records Government observes that the Commissioner(Appeals) had rejected the Applicant's rebate claims for non-furnishing of Duplicate copies of ARE-1s. The Applicant had submitted the original and Triplicate copy of all the ARE-1s, related EP copy of Shipping Bills, related Bills of Lading and Export Invoices, the respective Duplicate copies of ARE-1s duly endorsements by the Customs Officer have also been received except below mentioned ARE-1s :

Sr.No.	OIO No & date	Amount rejected	Nos. of ARE-1 not submitted
1	142/2011-RF dt 12.9.11	15,171/-	151 dt 6.5.10
			184 dt 22.5.10
			159 dt 17.7.10
2	143/2011-RF dt 21.9.11	41,475/-	214 dt 10.6.10

			218 dt 11.6.10
			229 dt 17.6.10
			239 dt 24.6.10
			253 dt 30.6.10
3	150/2011-RF dt 5.10.11	30,831/-	405 dt 9.9.10
	Total amount	87,477/-	

Further, the Range Officer, Poonamallee Range-V in his verification reports dated 16.03.2011, 18.03.2011 and 03.05.2011 respectively had recommended sanction of the claims. The Government notes that evidence of duty payment and export of goods have been submitted by the Applicant and it was not disputed by rebate sanctioning authority. Rebate claim was rejected only on technical/ procedural grounds.

7. 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.

8. 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*.**

9. 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 aforesaid order of Hon'ble High Court of Bombay.

10. Government finds that ratios of aforesaid Hon'ble High Court orders are squarely applicable to the issue in question. Government in the instant case finds that the Appraiser Customs, SEZ Pithampur vide letters dated 22.06.2010, 22.07.2010 10.08.2010 22.06.2010, 19.11.2010 respectively addressed to the Superintendent, Central Excise, Poonamallee Range-V have submitted that the ARE-1 issued by M/s CAPARO ENGINEERING INDIA P. LTD. supplies against the invoice and goods have been admitted in full into the Indore SEZ Pithampur, and copies of ARE-1s duly endorsed by the Authorised officer was forwarded as laid down in Rule 30(4) of the SEZ Rule 2006. And the Range Officer, Poonamallee Range-V in his verification reports dated 16.03.2011, 18.03.2011 and 03.05.2011 respectively had recommended sanction of the claims. Further all related documents of the

said ARE-1s furnished by the Applicant indisputably prove that duty paid goods under claim for rebate have been exported and hence the rebate claim should not have been denied only on grounds of non-production of duplicate copy of ARE-1s particularly when the same was not handed over to the Applicant by the Custom Officer, In-charge of SEZ Pithampur. Government condones the non submission of the duplicate copy of ARE-1s as procedural lapse and the Applicant is entitled to the rebate totaling to Rs. 87,477/-

12. In view of above, Government sets aside the impugned Orders-in-Appeal Nos. 263-265/2013 (M-IV) dated 02.12.2013 passed by the Commissioner of Central Excise (Appeals), Chennai.

13. The revision application is allowed in with consequential relief.

Shrawan
29/4/21
(SHRAWAN KUMAR)

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

ORDER No 190 /2021-CX (SZ) /ASRA/Mumbai Dated 29.04.2021

To,
M/ Caparo Engineering India Pvt Ltd.,
T-1, T-2 Sipcot Inddial Park, Phase-II,
Sanguvarchatam, Kancheepuram,
Tamil Nadu - 602 106.

Copy to:

1. The Commissioner of Central Goods & Central Excise, CGST Building, Opp. Gandhi Baugh, Chowk Bazar, Surat - 395 001.
2. Shri S. Gokarnesan, Advocate, 148, Sabari Nivas, Arigna Anna Main Road, Thiruverkadu Co-operative Nagar, Thiruverkadu, Chennai 600 077.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file.
5. Spare Copy