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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 195/53-55/WZ/2018-RA / 2051

Date of Issue: 04.04.2023

ORDER NO. 200-2023 / 2023-CX (WZ) / ASRA/MUMBAI DATED 30.03.2023 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 Lanxess India Pvt Ltd,
LANXESS House, Plot No A-162-164,
Road No 27, MIDC, Wagle Estate,
Thane (West) 400 604

Respondent: The Commissioner of Central Excise, Bharuch

Subject : Revision Applications filed under Section 35EE of Central Excise
Act, 1944 against the Order-in-Appeal No. VAD-EXCUS-002-
APP-287-2017-18 dated 04.08.2017 passed by the
Commissioner (Appeals), Central GST & Central Excise,
Vadodara

ORDER

The Revision Applications have been filed by the M/s Lanxess India Pvt Ltd, LANXESS House, Plot No A-162-164, Road No 27, MIDC, Wagle Estate, Thane (West) 400 604 (hereinafter referred to as the 'Applicant') on behalf of their manufacturing unit i.e M/s Lanxess India Pvt Ltd, Plot No 748/2/S, 748/4/B, GIDC, Ankleshwar against the Order-in-Appeal No. VAD-EXCUS-002-APP-287-2017-18 dated 04.08.2017 passed by the Commissioner (Appeals), Central GST & Central Excise, Vadodara.

2.1. Brief facts of the case are that the Applicant filed three rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004 CE (NT) dated 06.09.2004, for the duty paid on goods exported. While processing the rebate claims, it was observed that the Applicant had not furnished the submitted the copy of the Bill of Lading. The details of the ARE-1 are as under:

| Sr No | ARE-1 No and date | Invoice No and date | Amount of rebate claimed |
|-------|-----------------------|-----------------------------|--------------------------|
| 1 | 2816 dated 05.06.2015 | 09BSI02816 dated 05.06.2015 | 1,73,531/- |
| 2 | 2794 dated 28.05.2015 | 09BSI02794 dated 28.05.2015 | 94,528/- |
| 3 | 2817 dated 05.06.2015 | 09BSI02817 dated 05.06.2015 | 42,270/- |

2.2. Letter dated 20.11.2015 and reminder dated 05.01.2016 was issued to the Applicant for complying with the deficiency but no reply was received. As the Bill of Lading was not submitted by the Applicant and the same was required under Para 8.3 of Chapter 8 of CBEC's Excise Manual of Supplementary Instructions 2005, the the original authority rejected the three claims vide the impugned Orders-in-Original Nos ANK-II/AC/4841 to 4843/Rebate/ 2015-16 dated 28.03.2016 as the conditions/procedures of Section 11B of the Central Excise Act, 1944 read with Supplementary Instructions, 2005 were not fulfilled by the Applicant.

3. Being aggrieved with the impugned order, the Applicant filed an appeal before the Commissioner (Appeals), CGST & Central Excise, Vadodara. The Applicant also filed the corrected and amended copy of the Bill of Lading No.

HLCUAM2150552221 and HLCUAM2150651271 before the Appellate Authority and requested that the non mention/wrong mention of the Shipping Bill number on the Bill of Lading was a procedural lapse and may be condoned. The Appellate Authority vide Order-in-Appeal No. VAD-EXCUS-002-APP-287-2017-18 dated 04.08.2017 rejected the appeal filed by the Applicant. While rejecting the appeal, the Appellate Authority observed that the Bill of Lading is a required document as stipulated under Section 11B of the Central Excise Act, 1944 and as prescribed at para 8.3 of Chapter 8 of the CBEC's Central Excise Manual of Supplementary Instructions. The AA also observed that the Applicant was ineligible for rebate as they did not fulfil the conditions prescribed for grant of rebate/refund under the Notification No 19/2004-CE dated 06.09.2004

4. Being aggrieved by the Orders-in-Appeal, the Applicant has filed the Revision Applications on the following grounds:

4.1. That the AA has erred in rejecting the rebate claim without analysing the facts and data available on record

4.2. That the AA has denied the rebate claim merely due to non mentioning of the shipping number on the Bill of Lading when other related export documents were substantial enough to establish the export and payment of duty

4.3. That all the relevant documents were submitted to substantiate their claim but the bill of lading which was also submitted, did not mention the shipping bill number, which was inadvertence on the part of the shipping line company.

4.4. That despite the submission of the of the Bill of Lading, the department claimed that the bill of lading was not submitted and that the rectified copy of the bill of lading bearing the correct shipping bill number was submitted but the same was not taken on record;

4.5. That nowhere has it been disputed that the goods were not exported or the duty on the goods were not paid and thus the error of Bill of Lading not containing the shipping bill number is a curable mistake;

4.6. That merely due to a minor defect in some documents, substantial benefit cannot be denied when all the statutory conditions were fulfilled;

The Applicant has relied upon the following case laws in support of their contention

- (i) Mangalore Chemicals and Fertilizers Ltd vs. DC CEx. [1991(55) E.L.T 437(SC)]
- (ii) UM Cables Ltd vs. UOI [2013(293) E.L.T. 641(Bom)]
- (iii) In RE: Scomed Pharma Pvt Ltd vs. UOI [2014(314) E.L.T. 949(GOI)]
- (iv) Raj Petro Specialitiee vs. UOI [2017(345) E.L.T. 496(Guj)]

4.7. That the procedures mentioned under Notification No 19/2004 dated 06.09.2004 were for facilitating rebate claim and cannot be raised to mandatory requirements;

4.8. That the decision relied upon by the AA is are related to the interpretations of exemption notification whereas the instant case was related to duty rebate of duty paid on export and hence the case cited by AA is not relevant to the instant case;

4.9. That the rebate claim cannot be rejected due to procedural lapses, as rebate/drawback are export oriented schemes and merely technical interpretations of procedure etc is to be avoided if the substantive fact of export having been made is not in doubt.

The Applicant has also relied upon the following decisions in support of their contentions

- (i) Zandu Chemicals Ltd vs. UOI [201(315)E.L.T 520(Bom)]
- (ii) IN RE: A.G. Entreprises [2012)376) E.L.T 127 (GOI)]
- (iii) IN RE: Audler Fastners [2007(216) E.L.T. 465 GOI]]
- (iv) Neptunus Power Plant Services [2015)321) E.L.T.160(GOI)]
- (v) In RE: Ran's Pharma Corporation [2014(314) E.L.T953(GOI)]
- (vi) Cotfab Exports [2006 (205) W.L.T 1027(GOI)]

5. Personal hearing was scheduled in this case on 12.10.2022 or 02.11.2022 or 12.01.2023. Shri Arun Sawant, Advocate and Shri Sandip Deshmukh, Advocate appeared for the personal hearing on 12.01.2023, on behalf of the Applicant. The submitted that there have been minor errors in documentation which were submitted before Commissioner (Appeals). They

requested to allow their claim as there is no doubt on export of duty paid goods.

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

7. In the instant case, Government observes that the rebate claim was initially rejected by the OAA solely on the ground that the Applicant had not submitted the bill of lading with the rebate claim. The Appellate Authority has also rejected the appeal on the same presumptions despite the corrected Bills of Lading being submitted to the Appellate Authority and the AA having recorded the same in the Order-in-Appeal.

7.1. Government notes that the Manual of Instructions that have been issued by the CBEC specifies the documents which are required for filing a claim for rebate. Among them is the original / duplicate / triplicate copy of the ARE-1, the Excise Invoice and self-attested copy of shipping bill and Bill of Lading etc. Further paragraph 8.4 of Chapter 8 of the said Manual specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported as evident from the original and duplicate copies of the ARE-1 form duly certified by customs. The second is that the goods are of a duty paid character as certified on the triplicate copy of the ARE-1 form received from the jurisdictional Superintendent of Central Excise. The object and purpose underlying the procedure 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 were exported and that the goods which were exported were of a duty paid character.

7.2. Government holds that in order to qualify for the grant of a rebate under Rule 18, the mandatory conditions required to be fulfilled are that the goods have been exported and duty had been paid on the goods. In the instant case,

rebate claim was rejected only on the ground that the Bill of Lading was not submitted by Applicant at the time of filing the claim.

7.3. Government notes that the Bills of Lading were initially not submitted by the Applicant as the Shipping Bill number was not mentioned or wrongly mentioned on the same. On rectification of the error, the Bills of Lading were submitted before the Appellate Authority. However, from the documents, it is evident that the lower authorities have not expressed an iota of doubt about the export of goods and payment of duty which are mandatory conditions for sanction of the rebate claim. No lacuna regarding the eligibility of claim has been noticed or discussed by the lower authorities.

7.4. In view of above, Government holds that the deficiency pointed out by the lower authorities is merely a procedural infraction and the same should not result in the deprivation of the statutory right to claim a rebate particularly when the substantial compliance has been done by the Applicant with respect to conditions and procedure laid down under relevant notifications / instructions issued under Rule 18 of the Central Excise Rules, 2002.

7.5. Government finds that in several decisions of the Union Government in the revisional jurisdiction as well as in the decisions of the CESTAT, the production of the relevant forms has been held to be a procedural requirement and hence directory as a result of which, the mere non- production of such a forms would not result in an invalidation of a claim for rebate where the exporter is able to satisfy through the production of cogent documentary evidence that the relevant requirements for the grant of rebate have been fulfilled. In the present case, no doubt has been expressed that the goods were not exported or duty payment was not in order.

7.6. Government further observes that a distinction between those regulatory provisions which are of a substantive character and those which are merely procedural or technical has been made in a judgment of the Supreme Court in "**Mangalore Chemicals & Fertilizers Ltd. vs. Deputy Commissioner-1991 (55) E.L.T. 437 (S.C.)**". The Supreme Court held that

the mere fact that a provision is contained in a statutory instruction “does not matter one way or the other”. The Supreme Court held that non-compliance of a condition which is substantive and fundamental to the policy underlying the grant of an exemption would result in an invalidation of the claim. On the other hand, other requirements may merely belong to the area of procedure and it would be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes which they were intended to serve. The Supreme Court held as follows:

“The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some other may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve.”

7.7. Further, Government observes that the Hon’ble High Court of Bombay in its judgment dated 24.04.2013 in the case of M/s. U.M. Cables v. UOI (WP No. 3102/2013 & 3103/2013) [TIOL 386 HC MUM CX. = 2013 (293) E.L.T. 641 (Bom.)], at para 16 and 17 of its Order observed that 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.

7.8. Government also observes that Hon’ble High Court, Gujarat in Raj Petro Specialities vs. Union of India [2017(345) ELT 496(Guj)] also while deciding the identical issue, relying on aforesaid order of Hon’ble High Court of Bombay, vide its order dated 12.06.2013 observed as under:

7. *“Considering the aforesaid facts and circumstances, more particularly, the finding given by the Commissioner (Appeals), it is not in dispute that all other conditions and limitations mentioned in Clause (2) of the notifications are satisfied and the rebate claim have been rejected solely on the ground of non-submission of the original and duplicate ARE1s, the*

impugned order passed by the Revisional Authority rejecting the rebate claim of the respective petitioners are hereby quashed and set aside and it is held that the respective petitioners shall be entitled to the rebate of duty claimed for the excisable goods which are in fact exported on payment of excise duty from their respective factories. Rule is made absolute accordingly in both the petitions”.

8. Government finds that ratios of aforesaid Hon'ble High Court orders are applicable to the instant case in so far as the matter of sanction of the rebate claim is concerned.

9. Government further observes that the CBEC vide Para 6 of Circular No. 294/10/97-CS dated 30.01.1997 has issued a clarification to the effect that instructions have been issued to rebate sanctioning authorities not to reject claims on technical grounds. The relevant para 6 is reproduced below:

“6. It has, therefore, been decided that the cases where exporters submit the proof that goods have actually been exported to the satisfaction of the rebate sanctioning authority, and that where goods are clearly identifiable and correlatable with the goods cleared from factory on payment of duty, the condition of exports being made directly from the factory/warehouse should be deemed to have been waived. Other technical deviations not having revenue implications, may also be condoned.”

10. Government notes that the lower authorities have summarily rejected the rebate claim on the grounds of non-submission of one document without any doubt being expressed as to the genuineness of export of goods and discharge of duty for which the rebate was claimed, particularly when the Applicant has claimed that all the documents including the corrected Bills of Lading were submitted before the Appellate Authority. Government observes that it is necessary that the verification of the factual position of export of goods and discharge of duty is required to be done by the Original Authority.

11. In view of the discussions above, Government holds that impugned rebate claims, rejected under Order-in-Original No No. ANK-II/AC/4841 to

4843/Rebate/2015-16 dated 28.03.2016, needs to be remanded back to the Original Authority for the purpose of verification of the export of goods and payment of duty on the exported goods. The Original Authority is also directed that the rebate claim should not be rejected on the grounds of non submission of Bill of Lading. The Applicant shall produce all the documentary evidence of export of goods and duty payment on the goods exported, before the Original Authority.

12. In view of the above, Government modifies the impugned Order-in-Appeal No. VAD-EXCUS-002-APP-287-2017-18 dated 04.08.2017 passed by the Commissioner (Appeals), Central GST & Central Excise, Vadodara and remands the same back to the Original Authority for verification on the lines as discussed above.

13. The Revision Applications are disposed on the above terms.

Shrawan Kumar
30/3/23
(SHRAWAN KUMAR)

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

ORDER NO. 200-202 /2023-CX (WZ) /ASRA/MUMBAI DATED 31.03.2023

To,

M/s Lanxess India Pvt Ltd,
LANXESS House, Plot No A-162-164,
Road No 27, MIDC, Wagle Estate,
Thane (West) 400 604

Copy to:

- 1) The Commissioner of CGST, Vadodara II, GST Bhavan, Race Course Circle, Vadodara 390 007.
- 2) The Commissioner of CGST, Appeals, Vadodara, Central Excise Building, 6th Floor, Race Course Circle, Vadodara 390 007.
3. M/s Lanxess India Pvt Ltd, Plot No 748/2/S, 748/4/B, GIDC, Ankleshwar
- 4) A.B. Nawal & Associates, Cost Accountants, S.No 74-75, 14-17, Suyash Commercial Mall, Above Union Bank, Baner, Pune-411 045.
- 5) Sr. P.S. to AS (RA), Mumbai.

- 6) Notice Board.
- 7) Spare copy.