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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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ORDER NO. 204 / 2021-CX (WZ) / ASRA /Mumbai DATED 25.5.2021 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 THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Shalina Laboratories Pvt. Ltd.

Respondent : Commissioner of Central Excise, Raigad

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BC/56/RGD(R)/2013-14 dated 13.05.2013 passed by the passed by the Commissioner of Central Excise(Appeals), Mumbai-III.

ORDER

This revision application is filed by M/s Shalina Laboratories Pvt. Ltd., 96, Maker Chambers VI, Nariman Point, Mumbai 400 021(hereinafter referred to as 'the applicant') against the Order-in-Appeal No. BC/56/RGD(R)/2013-14 dated 13.05.2013 passed by the passed by the Commissioner of Central Excise(Appeals), Mumbai-III.

2.1 The applicant is a merchant exporter who had filed five rebate claims under Rule 18 of the CER, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 for refund of rebate of duty paid on the exported goods. The rebate claims were rejected by the Deputy Commissioner(Rebate), Central Excise, Raigad vide his OIO No. 2375/12-13/DC(Rebate)/Raigad dated 19.12.2012.

2.2 Being aggrieved by the OIO, the applicant filed appeal before the Commissioner(Appeals). The Commissioner(Appeals) discussed the various grounds and proceeded to decide the case on merits. The Commissioner(Appeals) found that the declaration at Sr. No. 4 in ARE-1 had not been done by the applicant in respect of two claims and that the certification was necessary to decide the eligibility to rebate as availment of certain benefits would have lead to double benefits which are not allowed. In so far as the contentions regarding non-mention of self-sealing and self-certification on ARE-1's are concerned, he found that para 3(a)(ii) of Notification No. 19/2004-CE(NT) dated 06.09.2004 lays down this requirement and that they become all the more important when exports are under various schemes or if post export benefits could accrue. The appellate authority averred that such self-certification was especially necessary in circumstances where the applicant has not provided any declaration at Sr. No. 4 of ARE-1. He affirmed the rejection of the rebate claims on the premise that unsealed goods cleared for export could not be correlated with the goods actually exported.

2.3 In response to the submissions regarding rejection of the rebate claims for mention of wrong address of the Office where the applicant intended to file rebate claim, the Commissioner(Appeals) observed that this was in clear violation of mandatory requirement laid down in Para 8.2 of Chapter 8 of the CBEC Manual of Supplementary Instructions, 2005 read with Rule 18 of the CER, 2002. He averred that this requirement was all the more important as there was every possibility of rebate being claimed at two different places for the same consignment of exported goods. He observed that the applicant had claimed that they intended to file their claim before DC(Rebate), Raigad but did not agree with this claim as they had referred to

authorities other than DC(Rebate), Raigad at Sr. No. 1 of their ARE-1's. With regard to the rejection of rebate claims by the original authority on the ground that they had not submitted BRC(Bank Realisation Certificate), the Commissioner(Appeals) on going through Notification No. 19/2004-CE(NT) dated 06.09.2004 observed that it nowhere mentions any requirement of BRC or any other document evidencing receipt of export proceeds for grant of rebate. On examining para 8 of Chapter 8 of the CBEC Manual of Supplementary Instructions, 2005, the Commissioner(Appeals) found that there was no mention of requirement of BRC or any other document evidencing receipt of export proceeds for grant of rebate. She therefore held that rejection of rebate on this ground was not correct. However, since BRC could be considered as corroborative evidence for proof of export , the Commissioner(Appeals) held that the applicant ought to have produced/submitted it in their own interest which they failed to do.

2.4 The Commissioner(Appeals) found that neither the Notification No. 19/2004-CE(NT) dated 06.09.2004 nor the para 8.3 of Chapter 8 of the CBEC Manual of Supplementary Instructions, 2005 mentions any requirement of Mate Receipt for grant of rebate. Therefore, she held that the submission of Mate Receipt was not a mandatory requirement for grant of rebate and hence the rejection of rebate on this ground was not correct. However, since the Mate Receipt could be considered as corroborative evidence for proof of export, Commissioner(Appeals) held that the exporters ought to have produced/submitted it in their own interest which they failed to do. Regarding non-submission of declaration under Rule 18 stating that no separate claim for rebate had been made with other authorities, no drawback of duty claimed, undertaking to refund rebate in case of excess or erroneous payment made etc., the Commissioner(Appeals) observed that these are only safeguards to eliminate fraudulent rebate claims and are not mandatory requirements specified in Rule 18 or the notifications issued thereunder. Hence, the rejection of rebate claim on this count was not justified.

2.5 With regard to the findings in the OIO regarding the difference in the chapter sub-headings of goods in the shipping bills and the ARE-1/excise invoices, the Commissioner(Appeals) held that it was clear that the goods cleared for export vide ARE-1/invoice were not the same goods exported under the relevant shipping bill. She averred that this discrepancy did not permit the rebate sanctioning authority to grant rebate. In this regard, the Commissioner(Appeals) placed reliance upon the GOI Order No. 871/11-CX dated 04.07.2011 wherein the revision application filed by M/s Synergy Technologies was rejected. It was further averred that submission of proper documents was a mandatory requirement for filing rebate claim. Further,

since the applicant was a merchant exporter they would be well aware of the provisions of the CEA, 1944. Since the manufacturer was the best judge of the classification of the goods manufactured by them, the applicants ought to have exported the goods on the basis of the excise documents provided by the manufacturer. The Commissioner(Appeals) therefore concluded that it was imperative on the part of the applicant to ensure that the chapter sub-heading of the goods manufactured and exported by them and mentioned in the ARE-1/invoices tallied with the description of the same goods shown in the shipping bills. Not following these conditions were not procedural lapses but violation of the mandatory requirements and amounted to not following the conditions itself.

2.6 The Commissioner(Appeals) placed reliance upon the judgments in the case of Steel Strips[2011(269)ELT 257(Tri-LB)] and Hari Chand Shri Gopal[2010(260)ELT 3(SC)] to hold that it was settled law that a person who claims exemption or concession was required to establish that he was entitled to that exemption or concession. These decisions also made clear that at times some latitude could be shown if the failure to comply is in respect of some requirements which are directory in nature and non-compliance would not affect the essence or substance of the notification granting benefit. However, mandatory requirements of the conditions must be obeyed or fulfilled exactly. In the light of these findings, the Commissioner(Appeals) concluded that the rebate claims were required to be rejected in their entirety and rejected the appeal filed by the applicant vide OIA No. BC/56/RGD(R)/2013-14 dated 13.05.2013.

3. Aggrieved by the OIA No. BC/56/RGD(R)/2013-14 dated 13.05.2013, the applicant filed revision application on the following grounds :

(a) The applicant submitted that not filing declaration at Sr. No. 4 of ARE-1 regarding availment of notification/export incentive scheme in respect of 2 claims would not be fatal to their rebate claims as the applicant had specifically mentioned in ARE-1's that the goods are exported under claim of rebate and no other claims were made either in the shipping bill or ARE-1.

(b) The applicant further stated that there was no way that they could have claimed rebate from two authorities. They submitted that filing of original ARE-1 alongwith rebate claim was mandatory and that it was not possible for any exporter to produce original ARE-1 before two authorities and claim rebate twice. It was averred that the appellate authority was in error to hold that compliance of procedure was a statutory condition and failure to comply thereto leads to fraud and availment of additional/double benefit.

(c) The applicant claimed that the rebate sanctioning authority had failed to clear their other claims where there was no procedural error.

(d) It was submitted that the authorities below had erred in holding that there was no endorsement on ARE-1 that export goods were removed by following self-sealing procedure in four claims out of the total five claims. The applicant submitted that the goods had been self-sealed and the customs authorities had verified the same. Moreover, the excise authorities had verified the triplicate, quadruplicate and quintuplicate copies of ARE-1 and that they could not have verified the original copy of the ARE-1 as it goes alongwith the goods to customs for clearance of the goods.

(e) The applicant averred that the DC and Commissioner(Appeals) had erred in rejecting the claim for not mentioning the name and address of the authority before whom the rebate claim was proposed to be filed. They stated that they had intended to file the rebate claims before the Deputy Commissioner of Central Excise(Rebate), Raigad and had accordingly filed the rebate claims before the said officer. They further stated that not mentioning the name and address of the authority before whom the applicant proposed to file the rebate claims could not render the ARE-1 improper and that the deficiency was curable without it affecting their right to claim rebate.

(f) With regard to the rejection of rebate claim for non-submission of BRC, the applicant submitted that in their reply to Deficiency Memo itself they had undertaken to produce the BRC within sixty days from the date of sanction of rebate claims. They further stated that there was no requirement in law to file a separate undertaking for production of BRC. They also submitted that they had filed BRC alongwith the appeal preferred before the Commissioner(Appeals).

(g) The applicant submitted that the DC & Commissioner(Appeals) had erred in holding that the applicant had failed to produce mate receipt. They averred that it was not a document required to be submitted alongwith rebate claims. They stated that they had submitted all the required documents as specified in Chapter 8 of the CBEC Manual. They further stated that mate receipt is issued only when goods are exported by ship and that airway bill is issued when goods are exported by air. The applicant pointed out that wherever mate receipt was not applicable, they had submitted airway bill alongwith rebate claim. They further emphasised that the DC & Commissioner(Appeals) had never disputed the duty paid character of the goods and the fact of export.

(h) In so far as the rejection of the rebate claims on the ground that the chapter sub-heading of goods mentioned in the shipping bills were different from the chapter sub-heading mentioned in the ARE-1 is concerned, the applicant stated that the lower authorities had failed to appreciate that the

description of the goods mentioned in the ARE-1 and the shipping bill was the same. Moreover, all other details like ARE-1 No. and exporters details were matching. The applicant further averred that it was not open to the DC and Commissioner(Appeals) to sit in appeal against the order of assessment made on the goods in ARE-1 and that they were bound by the law to sanction rebate to the extent of duty paid in the ARE-1. The applicant stated that the minor variations in chapter sub-heading was due to the fact that these details were filled by the clearing and forwarding agent who did not have much idea about the classification chapter heading. It was further submitted that chapter heading mentioned in the ARE-1 prepared by the applicant was the same as the chapter heading mentioned in the invoice prepared by the manufacturer.

(i) The applicant submitted that there was no dispute about the fact that the goods referred to in the ARE-1 were duty paid and had actually been exported by the applicant and that proof of export had been furnished to the satisfaction of the lower authorities. They averred that once the duty paid character of the goods and the fact of export was clear of doubt, the rejection of the rebate claim was erroneous and liable to be set aside.

(j) The applicant averred that filing of original ARE-1 alongwith rebate claim was a mandatory requirement and hence it was not possible for the exporter to produce original ARE-1 before two authorities and claim rebate twice.

(k) The applicant prayed that the impugned OIA be set aside and that the Department be directed to sanction and grant rebate alongwith interest for the period after three months from the date of filing the rebate claims till the date of actual payment at the rate prescribed under Section 11B of the Act.

4.1 The applicant was granted personal hearings on 16.10.2018 and 03.12.2019. The representatives of the applicant reiterated their submissions in the revision applications filed by them and also submitted that substantive benefits could not be denied for procedural lapses. The applicant also filed identical written submissions dated 16.10.2018 and 03.12.2019. The applicant has substantially reiterated the grounds made out in their revision application. Regarding the declaration at Sr. No. 4, the applicant submitted that even if the declaration had not been expressly made by oversight in the ARE-1, the fact that the export has not been made under Advance Licence or under Drawback Scheme can be duly verified from the shipping bills and therefore the rejection of the rebate claims on this account is unjustified. In so far as the mention of the wrong address of officer before whom the rebate was intended to be filed, the applicant submitted that it was an inadvertent error and hence requested the revisionary authority to condone it. The applicant submitted that a similar

rebate application made by them in the past had been rejected by the Maritime Commissioner of Central Excise, Mumbai-I vide OIO No. 2300/MTC-R/2015-16 dated 06.02.2016 on similar grounds. However, on appeal by the applicant against the said order, the Commissioner of Central Excise(Appeals-I) had allowed their appeal vide OIA No. SK/99/M-I/2017 dated 21.04.2017. The applicant further submitted that they being regular exporters, denial of the refund would result in undue hardship to them.

4.2 Due to change in the revisionary authority, the applicant was again granted an opportunity to be heard on 09.12.2020. Shri Sushil Agrawal and Shri Satendra Gupta appeared for hearing in virtual mode and reiterated their submissions dated 16.10.2018. They also placed reliance upon the OIA No. SK/99/M-I/2017 dated 21.04.2017 of the Commissioner(Appeals) in a similar matter and sought relief.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Appeal and Orders-in-Original. The issue involved in the revision application is the admissibility of the rebate claims filed by the applicant in respect of five ARE-1's. These rebate claims have been rejected by the original authority as well as the Commissioner(Appeals). The rebate claims have been rejected on five grounds which are inherently procedural.

6.1 The first ground on which the rebate claims have been rejected is that the applicant has not made the declaration required at Sr. No. 4 of ARE-1 in two claims. It has been averred that this declaration is necessary to decide the eligibility of rebate and to prevent availment of double benefits. The applicant was also alleged to have failed to provide self-certification. On going through the ARE-1's, Government finds that the applicant has specifically mentioned that the goods are being exported under claim of rebate. The applicant has not claimed any other benefit in their ARE-1 or in the shipping bills filed by them. Needless to say, if the applicant intended to claim any benefit other than rebate, it would have been reflected in the shipping bills filed by them. It is therefore not true that the Department had no other way to ascertain if the applicant was availing other benefits. The contention of the original authority and the appellate authority that the failure to make this declaration would allow the applicant to claim double benefits is not justified. Therefore, this ground for rejection does not sustain.

6.2 The next ground made out for rejection of the rebate claims is the failure of the applicant to submit the BRC. Government finds that there is no requirement of producing BRC in the relevant notification or the instructions issued by the CBEC for grant of rebate. Be that is it may, this

ground has been rendered redundant by the passage of time and the fact that the applicant has submitted that they are in possession of the BRC's for all of these exports. Hence, this ground does not merit further discussion. The rejection of the rebate claims for want of mate receipts is another ground which does not have any basis in the relevant notification or the instructions issued by the CBEC. Hence, the rejection of the rebate claims on this ground cannot be sustained. It would also be pertinent to note that three of the ARE-1's out of the total five ARE-1's concern export by air where the question of submitting mate receipt would not arise.

6.3 The other issues raised by the original authority and the appellate authority is that there were differences in the classification headings of the exported goods in the shipping bills vis-a-vis the ARE-1's/excise invoices. Government finds that the description of the goods mentioned in the ARE-1 and relevant shipping bill is the same. Moreover, all the other details like ARE-1 No. and exporter details match. The chapter headings mentioned in the ARE-1 prepared by the applicant match with the chapter heading mentioned by the manufacturer in the invoice prepared by them. The submission of the applicant that these variations were due to the fact that these details were filled by the clearing and forwarding agent appears to be plausible. To put it plainly, the fact of the goods cleared for export from the manufacturers premises to the port of export can be corroborated from the fact that the description of the goods in the ARE-1/excise invoice and the shipping bills are the same. Hence, this ground taken by the original authority and the appellate authority to reject the rebate claims is untenable.

7.1 Government now takes up the issue of mentioning of wrong address of office where the applicant intended to file rebate claims. The lower appellate authority has expressed the view that this act was in violation of the mandatory requirements as per laid down in para 8.2 of Chapter 8 of the CBEC Manual of Supplementary Instructions, 2005 read with Rule 18 of the CER, 2002. It has further been opined that this requirement was important because there was a possibility of rebate being claimed at two different places for the same consignment of exported goods. Government observes that two ARE-1's viz. ARE-1 No. 639/11-12 dated 22.02.2012 & ARE-1 No. 19/2011-12 dated 25.01.2012 pertain to export by sea through JNPT. Admittedly, the applicant has mentioned the wrong office and address of rebate sanctioning authority in both these ARE-1's. Due to the fact that the export has taken place through JNPT port, the Commissioner of Central Excise, Raigad would have been the Maritime Commissioner for these exports and hence these ARE-1's should have correctly mentioned the office and address of Maritime Commissioner, Raigad as the office and address

before whom the rebate claims would be filed. However, the contention of the original authority and the lower appellate authority that the failure to mention the correct office and address leaves open the possibility of the rebate being claimed at two different places for the same consignment of goods is too far fetched because the applicant was mandatorily required to file original ARE-1 alongwith rebate claim. The question of filing two rebate claims for the same consignment would arise only on presumption of fraud being committed by the exporter. By contending that the applicant could file two rebate claims for the same goods, the lower authorities have proceeded with the presumption of fraud without any investigation or evidence. Fraud is a very serious offence and such surmises cannot be used very loosely.

7.2 The findings recorded in respect of the remaining three ARE-1's lend further credence to the applicants submissions that the mention of wrong office and address is an inadvertent error. Government notes that the remaining three ARE-1's pertain to export by air viz. ARE-1 No. 002/11-12 dated 12.01.2012, ARE-1 No. 006/2011-12 dated 12.01.2012 and ARE-1 No. 01/11-12 dated 25.01.2012. Since the Mumbai Airport does not fall within his jurisdiction, the Maritime Commissioner, Raigad did not have jurisdiction to process these rebate claims. However, these rebate claims have not been rejected for lack of jurisdiction. They have been decided on merits. Neither the original authority nor the appellate authority noticed that the ARE-1's had been filed for export of goods through air cargo and were beyond jurisdiction. The original authority as well as the lower appellate authority have failed to guide the applicant to file these rebate claims before the proper authority. If the applicant has failed to mention the correct office and address of the rebate sanctioning authority, the original authority and the lower appellate authority have equally failed to properly scrutinise the rebate claims and guide the applicant to file their rebate claim before the proper officer. It stands to reason that the Department has an equal responsibility to guide the trade in matters of jurisdiction. It is nobody's case that the applicant deliberately mentioned wrong office and address on the ARE-1's or deliberately filed rebate claims for export through air cargo before Maritime Commissioner, Raigad. Government is therefore inclined to accept the applicants submission that the mention of the wrong office and address for claiming rebate is a genuine mistake and hence this contention of the lower authorities cannot be a ground for rejection of the rebate claims.

8.1 Government finds that the various deficiencies observed by the lower authorities in the instant case are procedural in nature. There is no dispute about the fact that the goods referred to in the ARE-1's were duty paid. In so far as export is concerned, the primary consideration should be verification

of the fact of export. If the factum of export is substantively proved from the documents available for scrutiny, the rebate claims cannot be rejected by having resort to strict interpretation of the procedure. Beneficial provisions like rebate cannot be withheld merely for procedural/technical lapses. If the substantive fact of export is not in doubt, a technical interpretation of procedures laid down is best avoided. In the present case, it is observed from the shipping bills that they have cross entries of the ARE-1's submitted by the applicant confirming the fact of export of the goods covered thereunder.

8.2 Government finds that the judgment of the Hon'ble Supreme Court in the case of Suksha International vs. UOI[1989(39)ELT 503(SC)] which has been relied upon by the applicant is applicable to the facts of the instant case. In that case, their Lordships observed that an interpretation unduly restricting the scope of a beneficial provision is to be avoided so that it may not take away with one hand what policy gives with the other. Similarly in the case of UOI vs. A. V. Narasimhalu[1983(13)ELT 1534(SC)], the Hon'ble Supreme Court held that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice.

9. Government therefore modifies the OIA No. BC/56/RGD(R)/2013-14 dated 13.05.2013 by directing the original authorities to decide admissibility of rebate claims in respect of all five ARE-1's on merits within a period of six weeks from the receipt of this order. The rebate claims which pertain to the export of goods by air should be treated as filed within time limit and the admissibility of rebate be decided on merits by Mumbai East Commissionerate. The original authorities should not reject the rebate claims for procedural lapses pointed out by the original authority and the Commissioner(Appeals) in the impugned order. The revision application filed by the applicant is disposed off in the above terms.

Shrawan 25/5/21

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

ORDER No.204/2021-CX (WZ) /ASRA/Mumbai DATED 25.05.2021

To,
M/s Shalina Laboratories Pvt. Ltd.,
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4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
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