

REGISTERED SPEED POST



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.195/275/14-RA

3032

Date of Issue:

18/06/21

ORDER NO. 203/2021-CX (WZ)/ASRA/MUMBAI DATED 31.5.2021 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.

Subject :- Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. VAD-EXCUS-001-APP-143-14-15 dated 04.06.2014 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vadodara.

Applicant :- M/s Anam Exports, Anand, Gujarat.

Respondent :- Commissioner of Central Excise, Customs & Service Tax, Vadodara-I

ORDER

This Revision Application has been filed by M/s Anam Exports, Anand, Gujarat (hereinafter referred as the applicant) against the Order-in-Appeal No. ~~VAD-EXCUS-001-APP-143-14-15~~ dated ~~04.06.2014~~ passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vadodara.

2. The brief facts of the case are that the applicant had filed a rebate claim of Rs. 5,02,190/- on 08.10.2013 in respect of export made vide ARE-1 under self sealing & certification. The applicant procured the goods from a dealer, not registered with the Department and therefore, the clearance did not require to be made under ARE-1 as per the procedure. However, the applicant prepared ARE-1 and showed export under self sealing and self certification. The exporter was required to submit copies of ARE-1 except original & duplicate to the jurisdictional Range Superintendent within 24 hours of the removal of goods. Since the applicant was not registered with the Department triplicate copy of ARE-1 was not signed by any Range Superintendent. As per Para 8 of Chapter 8 of CBEC's Central Excise Manual and Notification No. 19/2004 CE Dt. 06.09.2004, every exporter who intends to claim rebate of duty paid on goods exported, requires submitting duty paying document issued to him to establish duty paid character. The applicant did not submit any duty paying document with the rebate claim issued in their favour. In the present case, the applicant exported the goods from Mundra SEZ Port, Mundra, therefore, the rebate claim for the export made through Mundra SEZ Port was incorrectly lodged before the Maritime Commissioner, Vadodara i.e. CCE, Vadodara-1. Therefore, a show cause notice dt. 16.12.2013 and addendum dated 29.01.2014 were issued to the applicant proposing to reject the rebate claim for filing the same with incorrect jurisdiction under rule 18 of Central Excise Rules, 2002 read with provisions of Notification No. 19/2004 C.E. (N.T.) dt. 06.09.2004. After due process of law, the Deputy Commissioner (Tech), Central Excise & Customs, Vadodara-I (adjudicating authority) rejected the rebate claim vide Order in Original No. Rebate/02/Anam/T/13-14 dated 28.03.2014 on the grounds that the rebate was filed with incorrect jurisdictional authority.

3. Being aggrieved with the aforesaid Order in original, the applicant filed appeal before Commissioner (Appeals), Central Excise, Customs & Service Tax, Vadodara, who vide Order-in-Appeal No. VAD-EXCUS-001-APP-143-14-15 dated 04.06.2014 (impugned Order) rejected the appeal filed by the applicant and upheld Order in Original No. Rebate/02/Anam/T/13-14 dated 28.03.2014.

4. Being aggrieved with the impugned Order, the applicant has filed the present revision applications mainly on the following grounds :-

4.1 The Adjudicating authority after satisfying himself with the defence reply dated ~~20.01.2014 in respect of all his queries as raised in the show cause notice~~ dated 16.12.2013 had raised another query by issue of an addendum dated 29.01.2014 wherein the question of filing of rebate claim with the incorrect jurisdiction was raised. The Adjudicating Authority had entertained the rebate claim, processed it and finally rejected that the same on the ground that the same was filed with the incorrect jurisdictional authority. The rebate claim along with the essential documents, including duty paying documents were never returned to them with the direction that the same were filed with the incorrect jurisdictional authority. All the documents filed them are still with the department.

4.2 They under the bona-fide belief based on the following circulars/instructions had filed the rebate claim with the Deputy Commissioner (Technical), Central Excise & Customs, Vadodara - I being the appropriate authority for sanction of rebate claim.

(a) Circular No.500/66/99-CX dated 15.12.1999 issued vide F.No.209/24/99-CX. According to which the Deputy/Assistant Commissioner (Technical) is designated to discharge all and similar functions as are being discharged by the Maritime Commissioner as far as the exports under Rule-18 and Rule-19 of the Central Excise Rules, 2002 are concerned (Annexure-VIII).

(b) Circular No.81/81/94-Cx dated 25.11.1994 gives an option to Merchant Exporter to claim Rebate Claim either from the Maritime Collector or the Jurisdictional Assistant/Deputy Commissioner of Central Excise (Annexure-IX).

(c) Trade Facility No. 03/2011-Central Excise dated 16th June 2011 (Annexure - X) issued by the Additional Commissioner, Vadodara - I Commissionerate, wherein it is mentioned that: -

"The Assistant Commissioner (Technical), Head Quarter, Central Excise & Customs, Vadodara - I, who was designated to discharge functions of Maritime Commissioner, vide this office Trade No. 6/2003 dated 3/3/2008 is also hereby designated as Assistant Commissioner of Central Excise (Export)."

(d) CESTAT's decision in case of M/s Hiya Overseas P Ltd Vs, CCE Ahmedabad dated 21.12.2011(Annexure - XI) wherein it is laid down in principle that even if the refund has been filed with the wrong jurisdictional authority, still it cannot be ground for rejection of the refund, but should have been forwarded to the appropriate authority.

In view of the above, the applicant pleaded that as there is no dispute that the goods have actually been exported and the exported goods were duty paid; that the Deputy/Assistant Commissioner (Technical) is designated to discharge all and similar functions as are being discharged by the Maritime Commissioner as far as the exports under Rule 18 and Rule 19 of the Central Excise Rules, 2002 are concerned and that even if there was mistake in the filing the with the correct jurisdictional authority, still it cannot be reasons for rejection of rebate claim, as no

substantial benefits which were otherwise admissible can be denied due to procedural lapses and therefore, the Order in Appeal may please be set aside and rebate claim in question may kindly be ordered to sanction.

5. Personal hearing in this case was held on 16.02.2021 through video conferencing which was attended online by Shri Augustin Jiwan, Consultant on behalf of the applicant. He submitted that his claim was wrongly rejected on the ground of jurisdiction as Board Circular and Trade Facility No. 03/2011-Central Excise dated 16th June 2011, prescribe AC (T), Vadodara as jurisdictional Maritime Commissioner. Written submission mailed by him on 12.02.2021 is also taken on record.

6. In their written submissions filed on 12.02.2021 the applicant mainly contended as under :-

6.1 A detailed submissions made in the Revision Application dated 28th July 2014 may kindly be considered judiciously and sympathetically.

6.2 The rebate claim was not rejected on the ground of inadmissibility, but the same was rejected wrongly on the ground for filing with the "incorrect jurisdictional authority" under erstwhile Rule-18 of the Central Excise Rules, 2002. Even this reason "incorrect jurisdictional authority" for rejection of rebate claim is wrong, as they had filed rebate claim with the correct Jurisdictional Authority, but the Adjudicating Authority as well as 1st Appellate Authority had wrongly interpreted provisions of Law to reject the rebate claim.

6.3 Kind attention is invited to the Circular No.500/66/99-CX dated 15.12.1999 issued vide F.No.209/24/99-CX. Accordingly the Deputy/Assistant Commissioner (Technical) Hdqrs. is designated to discharge all and similar functions as are being discharged by the Maritime Commissioner as far as the exports under Rule-18 and Rule-19 of the Central Excise Rules, 2002 are concerned.

6.4 Circular No.81/81/94-Cx dated 25.11.1994 gives an option to Merchant Exports to claim Rebate Claim either from the Maritime Collector or the Jurisdictional Assistant/Deputy Commissioner of Central Excise.

6.5 Trade Facility No. 03/2011-Central Excise dated 16th June 2011 issued by the Additional Commissioner, Vadodara - I Commissionerate, wherein it is mentioned that: -

"The Assistant Commissioner (Technical), Head Quarter, Central Excise & Customs, Vadodara - I, who was designated to discharge functions of Maritime Commissioner, vide this office Trade No. 6/2003 dated 3/3/2008 is also hereby designated as Assistant Commissioner of Central Excise (Export)."

6.6 CESTAT's decision in case of **M/s. Hiya Overseas P Ltd Vs. CCE Ahmedabad** dated 21.12.2011 wherein it is laid down in principle that even if the refund has been filed with the wrong jurisdictional authority, still it cannot be

ground for rejection of the refund, but should have been forwarded to the appropriate authority.

In view of the above factual position, the following prayers submitted:-

There is also no dispute that the Deputy/Assistant Commissioner (Technical) is designated to discharge all and similar functions as are being discharged by the Maritime Commissioner as far as the exports under Rule-18 and Rule-19 of the Central Excise Rules, 2002 are concerned.

Even if there was mistake in the filing of rebate the with the correct jurisdictional authority, still it cannot be the reasons for rejection of rebate claim, as no substantial benefits which were otherwise admissible can be denied due to procedural lapses. The order-in-appeal may please be set aside and rebate claim in question may kindly be ordered to sanction along with interest.

7. Government has considered the relevant case records, written/oral submissions and perused the Order-in-Original and impugned Order-in-Appeal.

8. Government observes that the applicant, a Merchant Exporter had procured the goods from M/s. Yantraman Automac Pvt. Ltd., 788, N.H. No. 8, Under Railway Over Bridge, Vadodara 391 750, Gujarat (an authorized dealer of JCB) who was not registered with the Central Excise. M/s. Yantraman Automac Pvt. Ltd., had procured goods from M/s JCB India Ltd., 23/7 Mathura Road Bhallabgarh-121 004, Haryana (manufacturer of goods). The said goods were subsequently exported by the applicant from Mundra SEZ port, Mundra and rebate claim against said export was filed / lodged before the Maritime Commissioner i.e. Commissioner of Central Excise & Customs, Vadodara-I. The original authority rejected the applicant's rebate claim for filing the same with incorrect jurisdictional authority under Rule 18 of Central Excise Rules, 2002 read with provisions of Notification No. 19/2004 C.E. (N.T.) dated 06.09.2004. The Appellate Authority upheld the impugned Order-in-Original.

9. The applicant before the lower authorities as well as before this forum contended that as per Circular No. 500/66/99- CX-dated 15.12.1999 issued vide F No. 209/24/99-CX.6, the Deputy/Assistant Commissioner of Central Excise (Exports) i.e. Deputy/Assistant Commissioner of Central Excise (Technical) are designated to discharge all and similar functions as are being discharged by the Maritime Commissioners, so far as the exports under Rule 18 and Rule 19 of Central Excise Rules, 2002 (erstwhile Rule-12 and 13 of the Central Excise Rules, 1944); that it is well settled law that powers under Section 11B of Central Excise

Act, 1944 are only with the Deputy/Assistant Commissioner. Even the powers of Maritime Commissioner have to be exercised by the Deputy/Assistant Commissioner (Export); and that therefore, they had correctly filed rebate claims with the Deputy Commissioner (Export) i.e. Deputy Commissioner (Technical), Vadodara-I. The applicant also contended that Circular No.81/81/94-Cx dated 25.11.1994 gives an option to Merchant Exports to claim Rebate Claim either from the Maritime Collector or the Jurisdictional Assistant/Deputy Commissioner of Central Excise; that Trade Facility No. 03/2011-Central Excise dated 16th June 2011 issued by the Additional Commissioner, Vadodara - I Commissionerate, wherein it is mentioned that: -

“The Assistant Commissioner (Technical), Head Quarter, Central Excise & Customs, Vadodara – I, who was designated to discharge functions of Maritime Commissioner, vide this office Trade No. 6/2003 dated 3/3/2008 is also hereby designated as Assistant Commissioner of Central Excise (Export).”

The applicant also relied upon CESTAT's decision in case of M/s. Hiya Overseas P Ltd Vs. CCE Ahmedabad dated 21.12.2011 wherein it is laid down in principle that even if the refund has been filed with the wrong jurisdictional authority, still it cannot be ground for rejection of the refund, but should have been forwarded to the appropriate authority.

10. Government observes that Circular No. 500/66/99-CX-dated 15.12. 1999 issued vide F No. 209/26/99-CX.6, prescribes procedure where bonds can be furnished with Deputy/Assistant Commissioner of Central Excise. Government finds it pertinent to reproduce para 14.1 of Central Excise Manual published on 17th May, 2005.

Para 14. Functioning of Deputy/Assistant Commissioner of Central Excise (Export)

14.1 Under the normal export procedure, the merchant-exporters including those manufacturer-exporters (Project-exporters who have to export bought out goods) have to procure the excisable goods for export under bond manufactured in different parts of the country. For this purpose, they have to have to furnish either several bonds with the Deputy/Assistant Commissioner of Central Excise of the supplier's area and submit proof of exports for discharge of such bonds or furnish a bond with the Maritime Commissioner who are located only at seven ports, namely, Considering that there have been tremendous export potentials from the inland areas located at considerable distance from a sea port and that there have been considerable growth of

exports from Inland Container Depots and the Air Cargo Units located in such inland areas, the Board had appointed an officer in each Commissionerate except those Commissionerates in which the Maritime Commissioner is posted as Deputy/Assistant Commissioner of Central Excise (Export) for the purpose of facilitating export under bond by Circular No.. 500/66/99-CX dated 15th December, 1999, under authority of rule 19 of the said Rules read with notification No.42/2001-Central Excise (N.T) dated 26.6.2001.

11. From reading of para 14.1 of said Central Excise manual, it is amply clear that Circular No. 500/66/99-CX-dated 15.12. 1999 has no relevance as far as Rule 18 of Central Excise Rules, 2002 is concerned. Further, this Circular 500/66/99-CX-dated 15.12. 1999 was modified by the board vide Circular No. 706/22/2003 - CX dated 08.04.2003 by deciding that "*Commissioners having jurisdiction over Maritime Commissioner may also designate the Maritime Commissioner as Deputy/Assistant Commissioner of Central Excise (Export). This shall place the Maritime Commissioner at par with the Deputy/Assistant Commissioner of Central Excise (Export) designated in other Commissionerates in so far as the acceptance of bond is concerned.*

12. Trade Facility No. 03/2011-Central Excise dated 16th June 2011 which is also relied upon by the applicant, has been issued by the Central Excise and Customs, Vadodara-I Commissionerate designating Assistant Commissioner of Central Excise (Export) in terms of para 3 of Circular No. 706/22/2003 - CX dated 08.04.2003. The relevant para of the said Trade Facility reads as under:-

"The Assistant Commissioner (Technical), Head Quarter, Central Excise and Customs, Vadodara-I, who was designated to discharge functions of Maritime Commissioner, vide this office Trade Notice No. 6/2003 dated 03.03.2008, is also hereby designated as Assistant Commissioner of Central Excise (Export) for limited (sic) purpose in terms of of para 3 of Circular No. 706/22/2003 - CX dated 08.04.2003)".

Thus it is amply clear that the designation of the Assistant Commissioner (Technical), Head Quarter, Central Excise and Customs, Vadodara-I, as Assistant Commissioner of Central Excise (Export) vide Trade Facility No. 03/2011-Central Excise dated 16th June 2011 was only for limited purpose of accepting of bond. Therefore, Circular No. 500/66/99-CX-dated 15.12.1999, Circular No. 706/22/2003 - CX dated 08.04.2003 as well as Trade facility No. 03/2011 have been issued to simplify of Export Procedure for executing bond for export of goods under Rule

19 of the Central Excise Rules, 2002 (previously Rule 13 of Central Excise Rules, 1944).

In view of the above the applicant's reliance on these Circulars as well as Trade Facility (supra), and contention that they had correctly filed rebate claims with the Deputy Commissioner (Export) i.e. Deputy Commissioner (Technical), Vadodara-I as the Deputy/Assistant Commissioner (Technical) is designated to discharge all and similar functions as are being discharged by the Maritime Commissioner as far as the exports under Rule-18 of the Central Excise Rules, 2002 are concerned, is entirely misplaced.

13. Government observes that para 8 of Chapter 8 of C.B.E.& C. Excise Manual of Supplementary Instructions stipulates that the rebate can be sanctioned by Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of production of export goods or the warehouse; or Maritime Commissioner and the exporter has to indicate on the ARE-1 at the time of removal of export goods the office and its complete address with which they intend to file claim of rebate. Further, Para 3(b) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 issued under Rule 18 of the Central Excise Rules, 2002, envisage as under :-

"3(b) Presentation of claim for rebate to Central Excise :-

(i) Claim of the rebate of duty paid on all excisable goods shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner;

14. As per these statutory provisions and procedure prescribed under Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 discussed above, the rebate claim can be filed before either Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of production of export goods or the warehouse; or Maritime Commissioner as the case may be.

15. Commissioner (Appeals) at para 5.5 of the impugned Order has observed that the Circular No. 770/3/2004-CX, dated 09.01.2004 clearly specify the jurisdiction of each Maritime Commissioner which is always in relation to the port, airport, land customs, station or post office under the jurisdiction of the said Commissioner of Central Excise from which the export has taken place; and that the jurisdiction of Commissioner of Central Excise, Vadodara-I as Maritime

Commissioner is limited to the exports taken place in relation to the port, airport, land customs, station or post office falling under the jurisdiction of Central Excise, Vadodara-I Commissionerate only. In the instant case the exports of the impugned goods have taken place from Mundra SEZ port, Mundra which does not fall under the jurisdiction of Commissioner of Central Excise and Vadodara-I. The manufacturer of the impugned goods also does not fall under the jurisdiction of Commissioner of Central Excise and Customs Vadodara-I. As such, rebate claim with respect to goods exported from Mundra SEZ Port, Mundra has rightly been rejected as beyond jurisdiction by the adjudicating authority.

16. As regards reliance placed by the applicant on CESTAT's decision in case of M/s. Hiya Overseas P Ltd Vs. CCE Ahmedabad dated 21.12.2011 (para 6.6 supra); in this case the jurisdictional Deputy Commissioner issued a Show Cause Notice to the appellant therein, for rejection of refund claim of the amount of Service Tax paid by them for the services received and utilised for export of goods, on the ground that the said office cannot entertain any refund claim of Service Tax used for the purpose of export of goods. The adjudicating authority as well as Appellate authority relying upon the Board's Circular No. 101/4/2008-ST, dt.12.05.2008, rejected the refund claim on the ground that Ahmedabad City had an exclusive Service Tax Commissionerate and hence refund claim should have been filed before the jurisdictional Assistant/Deputy Commissioner of Service Tax.

With the above background, Tribunal, Ahmedabad observed that *"adjudicating authority in this case i.e. Deputy Commissioner of Central Excise, Division-V (City), Ahmedabad-II should have forwarded this application filed for the refund by the appellant to the jurisdictional Assistant/Deputy Commissioner of Service Tax. In our view, this activity would have helped the assessee to defend the case appropriately before the adjudicating authority on merits in a proper perspective. In any case, at this juncture, we find that the assessee should not be put to difficulty only on the ground of filing a refund claim before an inappropriate authority"*.

17. In the instant case, the rebate claim of Rs.5,02,190/-filed by the applicant was rejected by the Original Authority vide Order in Original dated 28.03.2014 clearly explaining therein as to how Deputy Commissioner (Export) Central Excise and Customs, Vadodara-I was incorrect authority to sanction the said rebate claim. Moreover, the applicant still had sufficient time then, at their disposal to file said rebate claim before appropriate authority, as the export in this case had taken

place in the month of May 2013. However, the applicant instead of filing the rebate claim before the appropriate authority on receipt of Order in Original dated 28.03.2014, decided to challenge the same before Commissioner (Appeals) and thereby allowed the claim to cross limitation bar for which it has only itself to blame. Therefore, the ratio of decision in case of M/s. Hiya Overseas P Ltd Vs. CCE Ahmedabad dated 21.12.2011 is inapplicable to the facts of the present case as discussed above.

18. In view of the foregoing discussion, Government does not find any reason to interfere with or modify the Order-in-Appeal No. VAD-EXCUS-001-APP-143-14-15 dated 04.06.2014 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vadodara, and upholds the same.

19. The revision application is rejected being devoid of merits.

Shrawan
31/5/21
(SHRAWAN KUMAR)

Principal Commissioner (RA) & Ex-Officio
Additional Secretary to the Government of India

To,

M/s Anam Exports,
C/o Durga Enterprises, Plot No. 1114/B,
Phase-IV, Behind Berger Paints, GIDC,
V.U. Nagar, District- Anand,
Gujarat- 388 121

ORDER NO. 2021-CX (WZ)/ASRA/MUMBAI DATED 31.5.2021

Copy to:

1. Commissioner of Goods & Service Tax, Vadodara-I Commissionerate, GST Bhavan, Race Course Circle, Vadodara, 390007.
2. The Commissioner of Central Tax (Appeals), Central Excise Building , 1st Floor Annexe, Race Course Circle, Vadodara 390 007.
3. Sr.P.S. to AS (RA), Mumbai.
4. Guard file.
5. Spare Copy.