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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. 195/142/17-RA

/2111

Date of Issue: 12.04.2023

ORDER NO.

216 /2023-CEX (WZ)/ASRA/MUMBAI

DATED 31.03.2023 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. Henkel Adhesive Technologies(I) Pvt. Ltd.

Respondent : The Commissioner of CGST & CX, Belapur Commissionerate.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.
PK/132/Bel/2016 dated 08.12.2016 passed by the
Commissioner of Central Excise (Appeals), Zone-II, Mumbai.

ORDER

This Revision Application has been filed by M/s. Henkel Adhesive Technologies(I) Pvt. Ltd. (hereinafter referred to as "Applicant") against the Order-in-Appeal No. PK/132/Bel/2016 dated 08.12.2016 passed by the Commissioner of Central Excise (Appeals), Zone-II, Mumbai.

2. Brief facts of the case are that Applicant had filed 23 rebate claims amounting to Rs. 12,69,351/- which were rejected vide OIO No. R-15/ONP/AC/Henkel/R-III/Bel-III/Rebate/16-17 dated 20.04.2016 on the grounds that they had not submitted certain documents such as White and Buff copies of ARE-1 required for sanctioning of rebate claims. Aggrieved by the OIO, the Applicant filed appeal with the Commissioner of Central Excise (Appeals), Zone-II, Mumbai, who vide Order-in-Appeal No. PK/132/Bel/2016 dated 08.12.2016 rejected their appeal and upheld the OIO.

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

- i. They have submitted the copy of FIR dated 19.02.2016 for the misplaced copies of ARE-1s. Further they have submitted the indemnity bonds in respect of the lost copies of ARE-1s. Even though the Department came to conclusion that these are must for sanctioning rebate claims.
- ii. Duty payment character of the goods exported has been acknowledged by the adjudicating authority in his order.
- iii. There is no objection raised by Adjudicating authority on the export of goods. Both the conditions duty paid character and export of goods are met.
- iv. Substantial benefit of rebate can not be denied for procedural lapses.
- v. Applicant has placed reliance on various case laws.
- vi. Applicant has requested to quash and set aside the impugned OIA.

4. Personal hearing in the matter was fixed on 24.01.2023, Mr. Nazir K. Saikh, Advocate appeared online on behalf of the Applicant. He submitted that their claim is rejected since ARE-1 & a few other documents were not produced. He submitted that there is no doubt on export of duty paid goods. He requested to allow the claims.

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. On perusal of the records, Government finds that rebates were rejected on the grounds of non-submission of ARE-1 and a few other documents. The issue to be decided in the present case is that whether the rebate can be denied on non-submission of these documents.

7. With regards to the claim of rebate, the Government notes paragraph 8.4 of the Manual of Instructions issued by the CBEC 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. The second is that the goods are of a duty paid character. 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.

8. The 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, Government notes that there is no dispute on the duty payment character of the goods. Furthermore, lower authorities have not raised doubts on the export of goods.

9. With regard to the argument that Applicant have not submitted the white and buff copies of the ARE-1 which is a mandatory requirement, Government, holds that non-submission of copy of ARE-1 form by the Respondent should not result in the deprivation of the statutory right to claim a rebate subject to the satisfaction of the authority on the production of sufficient documentary material that would establish the identity of the goods exported and the duty paid character of the goods. Besides, Applicant has submitted the copy of FIR for the misplaced copies of these ARE-1s.

10. Further, as a matter of fact, 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 form 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. It is also observed that, in the present case, no doubt has been expressed whatsoever that the goods were exported goods.

11. Also, it is observed 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. v. Deputy Commissioner. 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"

12. In their judgment of Bombay High Court in case of UM Cables Ltd v/s Union of India-2013 (290) ELT 641 (HC-Bom) as relied upon by the applicant held that:

'non production of original and duplicate ARE-I ipso facto cannot invalidate the rebate claim. In such a case the exporter can demonstrate by cogent evidence that goods were exported and duty paid, satisfying the requirement of Notification No. 19/2004 CE (NT). On facts claim directed be considered on the basis of bill of lading, bankers certificate and inward remittance of export proceeds and certification from Customs authorities on ARE-I'

In the above said case, the exporter had failed to submit original and duplicate copy of ARE-1 while other export documents evidencing the "facts of exports" were submitted under rebate under Notification No. 19/2004 CE (NT). However, the lower authorities rejected the rebate claim for non-submission of Original and Duplicate copy of ARE-1 duly signed by the Central Excise officers for verification of goods exported. The ratio of the said judgment is squarely applicable in the instant case.

13. In view of above, the Government holds that since the export of duty paid goods is not in dispute, the rebate claim in question cannot be denied merely on technical/procedural lapses. Government therefore sets aside the impugned Order-in-Appeal No. – PK/132/Bel/2016 dated 08.12.2016 passed by the Commissioner of Central Excise (Appeals), Zone-II, Mumbai.

14. Revision application is disposed off in above terms.


(SHRAWAN KUMAR)

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

ORDER No. 216 /2023-CEX (WZ) /ASRA/Mumbai Dated 31.3.2023

To,

1. M/s. Henkel Adhesives Technologies Pvt. Ltd., Plot No. 1/1, Part 2, T.T.C. Industrial Area, MIDC Koparkhairane, Navi Mumbai- 400705.
2. The Commissioner CGST & CX, CBD Belapur, Ist Floor, CGO Complex, CBD Belapur, Navi Mumbai- 400614.

Copy to:

1. The Commissioner of Central Excise (Appeals), 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, BKC, Bandra(E), Mumbai-400051.