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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 195/56/WZ/2018-RA

2101

Date of Issue: 12.03.2023

ORDER NO. 2-18/2023-CX (WZ) /ASRA/MUMBAI DATED 12.03.2023 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: Commissioner of Central Excise, Bharuch

Subject : Revision Application filed under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. VAD-EXCUS-002-APP-286-2017-18 dated 04.08.2017 passed by the Commissioner (Appeals), Central GST & Central Excise, Vadodara

ORDER

The Revision Application has been filed by 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-286-2017-18 dated 04.08.2017 passed by the Commissioner (Appeals), Central GST & Central Excise, Vadodara.

2. Brief facts of the case are that the Applicant filed a rebate claim for Rs. 2,38,177/- under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004 CE (NT) dated 06.09.2004, for duty paid on goods exported under ARE-1 No 2176 dated 10.09.2014. On scrutiny of the rebate claim, it was noticed that the EP copy of the concerned shipping bill was not endorsed by the Customs Authority. Letter dated 27.07.2015 and reminder dated 10.08.2015 was issued to the Applicant for complying with the deficiency but no reply was received from the Applicant. Following the due process of law, the Adjudicating Authority i.e Assistant Commissioner. C.EX and Customs, Division II, Ankleshwar rejected the claim vide Order-in-Original No ANK-II/AC/4848/Rebate/ 2015-16 dated 29.03.2016, as the Applicant did not submit the EP copy of the Shipping Bill duly certified by Customs, which is a statutory requirement for filing of rebate claim and therefore the Applicant had not fulfilled the conditions and procedures as per Sr. No (3) (a) (xiii),(xiv),(xv) of Notification No 19/2004-CE(N.T) dated 06.09.2004 issued under Rules 18 of the Central Excise Rules, 2002.

3. Being aggrieved with the impugned order, the Applicant filed an appeal before the Commissioner (Appeals), CGST & Central Excise, Vadodara. The Appellate Authority vide Order-in-Appeal No. VAD-EXCUS-002-APP-286-2017-18 dated 04.08.2017 rejected the appeal filed by the Applicant. While rejecting the appeal, the Appellate Authority observed that the signed shipping bill copy is a mandatory requirement as prescribed under

Notification No 19/2004-CE (N.T) dated 06.09.2004 and as the Applicant had not complied with the same, they were ineligible for rebate.

4. Being aggrieved by the Order-in-Appeal, the Applicant has filed the Revision Application 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-endorsement of shipping bill by the Customs Authority even though other related export documents were substantial enough to establish the export and payment of duty;

4.3. That all the relevant documents i.e Original, duplicate and triplicate copy of ARE-1, having relevant details duly attested by Superintendent and the inspector, self-attested copy of the invoice, packing list and other documents as proof of export, self-attested copy of bill of lading providing details of goods exported including shipping bill details, copy of shipping bill were submitted to substantiate their claim but the shipping bill was not endorsed by the customs authority, which was an error on the part of the customs authority and not the Applicant;

4.4. That subsequently the endorsed copy of the shipping bill duly attested by the customs inspector was submitted;

4.5. That nowhere has it been disputed by the department that the goods were not physically exported or the duty on the goods were not paid and that the department has rejected the claim due to a curable mistake which has no significance;

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 Specialities vs. UOI [2017(345) E.L.t. 496(Guj)]

4.6. 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;

4.7. That the Applicant had complied with the procedures of Notification No 19/2004-CE (N.T) dated 06.09.2004 without which export of goods would not have taken place and that it was not known how submission of a shipping bill which was not endorsed (which was later rectified) is in contravention of the provision;

4.8. That the decision relied upon by the AA is not relevant to the instant case;

4.9. That even if the shipping bill was not endorsed, then also there are various other documents like mates receipt, ARE-1, Bill of Lading etc which were submitted could be got verified by the adjudicating authority from the concerned customs range office;

4.10. 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;

4.11. 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) Neptunus Power Plant Services [2015]321 E.L.T.160(GOI)
- (iii) In RE: A.G. Enterprises [2012(276) E.L.T127(GOI)]
- (iv) In RE: Audler Fasteners [2007(216) E.L.T 465(GOI)]
- (v) In RE: Rans Pharma Corporation 2014(314) E.L.T953(GOI)
- (vi) In RE: Cotfab Exports [2006(205) E.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 Order-in-Original and Order-in-Appeal.

7.1. In the instant case, Government observes that the rebate claim was rejected by the OAA solely on the ground that the EP copy of the concerned shipping bill was not endorsed by the Customs Authority and therefore the Applicant had not fulfilled the conditions and procedures as per Sr. No (3) (a) (xiii), (xiv), (xv) of Notification No 19/2004-CE(N.T) dated 06.09.2004 issued under Rules 18 of the Central Excise Rules, 2002 and the Appellate Authority echoed the decision of the Original Authority.

7.2. The 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.

7.3. 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, rebate claim was rejected only on the ground that the EP copy of the shipping bill did not bear the endorsement of the Customs Authority.

7.4. Government notes that the Applicant had submitted the endorsed copy of the shipping bill duly attested by the customs inspector, to the Appellate Authority. It is also evident from the records of the case that the export of goods was never in question as all the documents like the Commercial invoice and packing list, ARE-1's, Bill of Lading, mates receipt bear endorsements to effect that the goods were exported and duty was paid on the goods was paid.

7.5. Further, 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.

7.6. In view of above, the government holds that the deficiency pointed out by the lower authorities at best, 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.

8.1. The 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.

8.2. The 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. v. 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."

8.3. 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.

8.4. 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”.

8.5. 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 notes 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 observes that in the instant case all the relevant documents submitted by the Applicant categorically prove the genuineness of the export of goods and payment of duty on the same and that the conditions and procedures prescribed under the relevant Notification and Rules have been adhered to by the Applicant. The rejection of the rebate claims by the Appellate Authority merely on the grounds that the EP copy of the concerned

shipping bill was not endorsed by the Customs Authority, particularly when the endorsed copy of the shipping bill duly attested by the customs inspector had been submitted, is not in order.

11. In view of the above discussions, Government sets aside the Order-in-Appeal No. VAD-EXCUS-002-APP-286-2017-18 dated 04.08.2017 passed by the Commissioner (Appeals), Central GST & Central Excise, Vadodara and allows the Revision Application.

12. The Revision Application is allowed on the above terms.


(SHRAWAN KUMAR)

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

ORDER NO. 218/2023-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) A.B. Nawal & Associates, Cost Accountants, S.No 74-75, 14-17, Suyash Commercial Mall, Above Union Bank, Baner, Pune-411 045.
- 3) Sr. P.S. to AS (RA), Mumbai
- 4) Notice Board.
- 5) Spare copy.