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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.198/35/2015-RA

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Date of Issue: 01.07.2021

ORDER NO. ~~227~~ | 2021-CX (WZ)/ASRA/MUMBAI DATED 14.6.2021 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.

Applicants : Commissioner of Central Excise, Pune-I Commissionerate

Respondents : M/s Mather & Platt Pumps Ltd., Pune

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. PUN-EXCUS-
001-APP-228-14-15 dated 13.03.2015 passed by the
Commissioner of Central Excise (Appeals), Pune-I

ORDER

This Revision Application is filed by the Commissioner of Central Excise, Pune-I (hereinafter referred to as "the Applicant") against Order-in-Appeal No. PUN-EXCUS-001-APP-228-14-15 dated 13.03.2015 passed by the Commissioner of Central Excise (Appeals), Pune-I.

2. The issue in brief is that the M/s Mather & Platt Pumps Ltd., Mumbai-Pune Road, Chinchwad, Pune-411 019 (herein after as "the Respondent"), are engaged in the manufacture of excisable goods and also export thereof. They are availing Cenvat credit of the duty paid on inputs as provided in the Cenvat Credit Rules, 2004. They filed a rebate claim on 04.10.2013 for Rs. 13,08,263/- in terms of Section 11B of the Act read with Rule 18 of Central Excise Rules, 2002. It appeared that the goods were not exported within six months of the clearance of the goods from the factory and therefore the condition laid down at para 2(b) of the Notification No. 19/2004-CE (N.T.) dated 06.09.2004 which prescribes the conditions and procedure for sanction of rebate, was not satisfied. Accordingly, a Show Cause Notice dated 19.12.2013 was issued to the Respondent. The Assistant Commissioner, Central Excise, Pune-II Division, Pune-I Commissionerate vide Order-in-Original No. PI/Div.II/Reb/90(a)/13-14 dated 03.01.2014 rejected the rebate claim on the grounds that the goods were not exported within six months from the date of clearance of the goods from the factory as per the condition of the Notification. Aggrieved, the Respondent filed an appeal before the Commissioner of Central Excise (Appeals), Pune-I. The Commissioner(Appeals) vide Order-in-Appeal No. PUN-EXCUS-001-APP-228-14-15 dated 13.03.2015 allowed the Respondent's appeal and set aside the Order-in-Original dated 03.01.2012 with consequential relief.

3. Being aggrieved, the Applicant Department filed the current Revision Application of the following grounds:

- (i) On examination of the Order-in-Appeal dated 13.03.2015, it was observed that the same is legally not correct and proper.

- (ii) It is an undisputed fact that the Respondent had cleared the goods i.e. Power Driven pumps for export from the factory under ARE-1 Nos. 306 and 307 both dated 30.10.2012 and Central Excise Invoice Nos.18261 and 18262 both dated 30.10.2012. Therefore, the goods were required to be exported on or before 29.04.2013, but as per the endorsement made by the Customs Officer of the J.N.P.T. Port, Nhava Sheva, the consignment left only on 03.05.2013 i.e. beyond the period of six months from the date of clearance as stipulated under Clause 2(b) of Notification No.19/2004-CE(NT) dated 06-09-2004, as amended. This fact was evidence by the Mate Receipt No. 350 dated 03.05.2013 of the Shipping Liner.
- (iii) As per Explanation B to sub-section 5 of Section 11B of the Central Excise Act, 1944, 'relevant date' for goods exported outside India by sea / air, is the date on which the ship or the aircraft in which such goods are loaded, leaves India. Further, as per Clause 2(b) of Notification No.19/2004-CE(NT) dated 06.09.2004 as amended, one of the conditions for granting rebate is that the goods have to be exported within six months from the date on which these were cleared from the factory of manufacture.
- (iv) In the instant case, it can be seen that there was a delay of four days in the impugned exports undertaken by the Respondent and they had admittedly not filed any application with the Commissioner of Central Excise for condonation of such delay in exports or for extension of the period and hence the rebate cannot be granted to them for non-fulfillment of mandatory conditions as mentioned in the aforesaid Notification.
- (v) The Appellate Authority appeared to have erred in putting too much reliance upon the fact that Shipping Bill No. 5139485 dated 25.04.2013 and the Let export order dated 26.04.2013 were within the period of six months from the date of clearance of goods for export from the factory. However, he appeared to have overlooked the fact

these are the procedural aspects and dates mentioned on these documents do not signify that the goods have physically been exported within the stipulated period of six months of removal of the goods from the factory of export as mandated under Clause 2(b) of Notification No.19/2004-CE(NT) dated 06.09.2004 read with Explanation B to sub-section 5 of Section 11B of the Act.

- (vi) The Appellate Authority's reliance upon the provisions of Para 3(a) of the Notification No.19/2004-CE(NT) which prescribes procedures for sealing of goods and examination at the place of dispatch and export, and wherein the Customs Officer is required to certify that the goods have been exported at the time of examination after export is allowed by him, was also of no avail because this would not alter the factum of delay in exports beyond the stipulated period of six months from the date of removal of the goods from the factory of export as per Clause 2(b) of Notification No.19/2004-CENT) which stands established in this case.
- (vii) The Appellate Authority's observation that the condition for export within six months is a procedural condition of a technical nature and not a substantive condition because the Notification itself provides such extension of period of export by Commissioner of Central Excise, in any particular case, without any limit and without any reasonable cause shown by an assessee, was not proper because the requirement for extension of export beyond the period of six months is not a procedural aspect but the same has to be viewed in the light of the object behind the issue of the Notification, which has been issued with a view to govern the export and is mandatory in nature and the discretion vests with the jurisdictional Commissioner of Central Excise to grant such extension only after the assessee is able to put forth reasonable cause for such delay.
- (viii) The words 'shall be exported within six months' as appearing in Clause 2(b) of Notification No.19/2004-CE(NT) under the heading

“Conditions and limitations” clearly indicates that this is a condition precedent and a mandatory requirement, to be fulfilled before filing the rebate claim, and not a mere procedural requirement. This condition appears to have been specifically incorporated in this Notification so as to pre-empt any attempt to misuse the benefit extended therein. Had this stipulation been only procedural in nature, the same would have been incorporated in Clause 3 of the said Notification, dealing with the procedural requirements.

- (ix) The Hon'ble Supreme Court in the case of M/s Mangalore Chemicals and Fertilizers Ltd. Vs. Deputy Commissioner [1991 (55) ELT 437 (SC)] has interalia, held that-

“Distinction is to be made between a procedural condition of a technical nature and a substantive condition. Non-observance of the former is condonable, while that of the latter is not condonable, as it is likely to facilitate commission of fraud and introduce administrative inconveniences.”

- (x) In this case, the Respondent had neither approached the jurisdictional Commissioner of Central Excise nor apprised the department of any such delay and appears to have taken granted that condonation of delay is a matter of right of the exporter. However, in this case it can be seen that although there were no clear instructions from their client, the Respondent cleared the goods from the factory on 30.10.2012, which were handed over to the Customs Authorities only on 25.04.2013 i.e. after a gap of almost 05 months and 25 days, after they received 10% of the contracted price from their client. This means that the Respondent could have easily anticipated a delay in shipping of the consignment, but failed to make any application to the jurisdictional Commissioner of Central Excise for grant of extension for causing the exports.
- (xi) The Appellate Authority's reliance upon the Order-in-Appeal No.PUN-EXCUS-001-APP-093-13-14 dated 06.09.2013 passed by him in respect of the Respondent cannot be said to have precedential value

as the same is under challenge and a Revision Application against the same has already been filed with the Revisionary Authority and the same is pending decision.

- (xii) Conclusively, in view of the facts and circumstances of this case, the statutory provisions discussed above and the ratio of the case cited above, the Appellate Authority, had erred in setting aside the Order-in-Original dated 03.01.2014, and upholding the Respondent's appeal whereas on the contrary, in view of the mandatory nature of the statutory provisions discussed above, the violation of which remains proved, he should have upheld the aforesaid Order-in-Original and rejected the appeal filed by the Respondent.
- (xiii) The Applicant Department prayed that the Order-in-Appeal dated 13.03.2015 be set aside and hold that the Appellate Authority in this case has no power or authority to condone the delay in exports, which has been mandated under Clause 2(b) of Notification No.19/2004-CE(NT) dated 06-09-2004 and restore the Order-in-Original No. PI /Div.II/Reb/90(a)/13-14 dated 03.01.2014.

4. The Respondent vide their letter dated 05.12.2015 in reply to Show Cause Notice issued under Section 35EE of the Central Excise Act, 1944 submitted the following:

- (i) On 30.10.2012, the Respondent had prepared export invoices for "Power Driven Pump Set Handling Water" falling under CH No, 84137010 and Pump Spares under CH 84139120 for export to M/s Sideridraulic System SPA, Italy at their site to M/s Arcelor Mittal Tubular Products, Saudi Arabia on appropriate payment of excise duty under cover of excise invoices.
- (ii) M/s Sideridraulic System SPA, Italy directed the Respondent to raise invoices on them for releasing payment of goods. Accordingly, the Respondent raised invoices on them and started the procedure for export of said goods. However, there was inordinate delay from M/s Sideridraulic System SPA, Italy in completing the formalities.

- (iii) The Respondent were continuously following-up with the concerned person of M/s Sideridraulic System SPA, but no clear instructions were received by them and they were not unable to take any decision. They even extended the bank guarantee for a couple of times. They were trying their best to dispatch the goods at earliest. Though no instructions were received, they decided to complete export procedures through shipping agents.
- (iv) The goods were removed from factory on 31.10.2012. On perusal of Shipping Bill No. 5139485 dated 25.04.2013, it can be seen that goods were handed over to customs authorities on 25.04.2013 for export that is within 6 months from date of clearance of the factory.
- (v) They were under bonafide belief that the goods will be cleared by customs authorities immediately. However, on availability of ships, goods were shipped as per Bill of Lading No. TALTSB01616998 dated 02.05.2013 and finally the goods were removed from India on 03.05.2013 as per Mate Receipt No. 350 dated 03.05.2013.
- (vi) The Respondent was not aware of the facts as to whether goods were not loaded on ship for export and therefore they could not apply for extension for export to jurisdictional Commissioner of Central Excise. Under the circumstances, they request to take a lenient view and grant condonation of delay in export by 3 days.
- (vii) There was no dispute about export of goods on payment of excise duty and also there was no dispute about receipt of payment in foreign currency. All the other conditions of the Notification had been fulfilled by them. The delay in export was due to genuine reasons which were beyond their control and the lapse in making application for extension of time may be treated as a procedural lapse and requested to condone the said procedural lapse. In this they relied on the case laws in case of Vardhman Spinning & General Mills Ltd. V/s. CCE, Ludhiyana [2005 (190) ELT (38) (Tri.- Del.)] and few other case laws.
- (viii) In the instant case, it is accepted that goods are exported on payment of excise duty under rebate claim and the goods were handed over to Customs Authority on 20.03.2013 i.e. within 6 months from date of

clearance from the factory. Therefore rebate claim cannot be denied on the grounds of technical lapse. In this they relied on the case laws in case of Kosmos Healthcare Pvt. Ltd. Vs. Asstt. Commissioner of Central Excise, Kolkata-I [2013 (297) E.L.T. (345) (Cal.)], wherein the Hon'ble High Court has held that extension for export can be granted post export also and the Commissioner would have to take a liberal approach keeping in mind the object of the duty exemption, which is encouragement of exports.

- (ix) As regards the contention of the Applicant Department, the Respondent had not applied to the Jurisdictional Commissioner for condonation of delay. The Respondent stated that till last day they were not aware of the fact that there was a delay. They were under bonafide belief that once the consignment was handed over to customs authorities, the goods are being exported. In any case, the delay was condoned by the Commissioner (Appeals) only and not by any authority below the rank of Commissioner. Therefore, condonation of delay by Commissioner (Appeals) needs to be accepted. In the case of Mangalore Chemicals & Fertilizers Ltd Vs UOI [1991 (55) ELT 437 (SC)], the Hon'ble Supreme Court has held that non observance of this condition is condonable.
- (x) The Commissioner(Appeals) has rightly decided the issue and also noted that in the Respondent's own case, the issue was decided vide Order-in-Appeal No. PUN-EXCUS-001-APP-093-13-14 dated 06.09.2013. The findings of the Commissioner(Appeals) are very speaking and well in line with the provisions and various decision.
- (xi) The Respondent prayed that the Revision Application be rejected and the Order-in-Appeal be upheld

5. On the Respondent's letter dated 05.12.2015, the Applicant Department vide letter dated 15.06.2016 submitted their following para-wise comments:

- (i) The Respondent is a unit in the organized sector and is thoroughly aware of the provisions of law under the Central Excise Act and Rules. If the Respondent was aware of the fact that there was an inordinate delay from their customer, in completing the formalities, they should have immediately initiated steps to file an application for extension of the period for export of goods, as the Commissioner of Central Excise may allow in a particular case. They should have utilized this facility made available to them. They just cannot blame their customer when remedial measures could have been initiated by them. This is only an afterthought to shirk their responsibility.
- (ii) The Respondent stated that they had not received clear instructions from their customer and hence were not able to take any decision. Later, they decided to complete the export procedures through shipping agents. The Respondent that the decisions could not be taken earlier and were taken later was totally baseless. When a decision was taken later, they could also have been taken well in advance keeping the time frame in mind, in view of the provisions of the law. Undoubtedly, if the Bank Guarantee was extended a couple of times, an application for extension of the period for export of the goods, could also have been submitted. Ignorance of law is no excuse.
- (iii) (a) The Shipping Bill (Electronic Declaration) Regulations, 2011 are framed in tune with statutory provisions of Sections 17, 18 and 50 of the Customs Act, 1962. Various notifications have been issued prescribing the procedures and formalities, right from presenting a Shipping Bill and other related documents to shipping the goods on board. Customs clearance formalities for goods meant for export have to be fulfilled by presenting a Shipping Bill and other related documents. These documents are verified for correctness of assessment and after examination of the goods, if warranted, 'Let Export', is given on the Shipping Bill. The Shipping Bill is generated only after the 'Let Export' order is given by Customs.

(b) Subsequently, the goods brought for the purpose of export are allowed entry to the Dock on the strength of the check list and other declarations filed by the exporter. After the receipt of the goods in the Docks, the Exporter/CHA may contact the Customs Officer designated for the purpose and present the check list with the endorsement of custodian and other declarations along with all original documents such as Invoice and Packing list, AR-4, etc. The Customs Officer may verify the quantity of the goods actually received and enter into the system and thereafter mark the Electronic Shipping Bill and also hand over all original documents to the Dock Appraiser who assigns a Customs Officer for examination and indicate the officer's name and the packages to be examined. if any, on the check list and return it to the Exporter/CHA.

(c) The Exporter or his agent should hand over the Exporter's copy of the Shipping Bill duly signed by the Appraiser permitting "Let Export" to the steamer agent who would then approach the proper officer (Preventive Officer) for allowing the shipment. The Customs Preventive Superintendent (Docks) may enter the particulars of packages actually stuffed into the container, the bottle seal number, details of loading of cargo container on board into the EDI system and endorse these details on the Exporter's copy of the Shipping Bill. The Customs Preventive Officer supervising the loading of container and general cargo into the vessel may give "Shipped on Board" endorsement on the Exporter's copy of the Shipping Bill.

(d) Further, the Mate's Receipt is a document signed by an officer of a vessel evidencing receipt of a shipment on board the vessel and on which the sailed date is available. Hence, the "Sailed date" is the date 'on which the ship or the aircraft in which such goods are loaded, leaves India. Therefore, any other date has no relevance in the matter.

(iv) The Respondent making claims of being, "under bonafide belief that the Customs authorities would clear the goods immediately, is not

acceptable. Making such a statement indicates the careless attitude of the Respondent. They being a unit of the organized sector, should work in accordance with the provisions of law, and not on their beliefs. The plea taken, therefore, only infers that the same is an afterthought to shirk their responsibility.

- (v) Heaving sufficient time to obtain an extension of the period for export of the goods, the Respondent should have immediately filed an application. By stating that they were unaware of the facts as to whether the goods were loaded on the ship for export, is a lame excuse. The Shipping Agent appointed by them, also should have taken care of this aspect and should have directed the Respondent to file an application for extension of the period for export of the goods. Ultimately, this is a case of vicarious liability, for which they themselves are responsible.
- (vi) The plea of the Respondent for condonation of delay in export by 3 days cannot be accepted, since they had not taken timely action to adhere to the provisions of law.
- (vii) The reasons put forth by the Respondent can in no way be held to be genuine reasons, beyond the control of their, as neither the Respondent nor their customer was keen in completing the formalities in following the provisions of law.
- (viii) The export within six months is a provision of law and is mandatory. The same cannot be treated as a 'procedural lapse". In the instant case it can be seen that the Respondent had contravened the mandatory provisions of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E.(N.T.) dated 06.09.2004. They are now adopting pleas viz. the Shipping Bill should be considered; is a procedural lapse, etc., in defiance of the statutory provisions of law. If such course of action is allowed to all the assesseees, it will not only cause administrative inconvenience and render the statutory provisions nugatory, but is likely to facilitate commission of fraud.

- (ix) The Respondent had not tendered any specific reasons that can be termed as genuine.
- (x) The case of Vardhman Spinning & General Mills Ltd. V/s. CCE, Ludhiana [2005 (190) ELT 38 (Tri.-Del.)] cited by the Respondent goes against them, inasmuch as they had not filed an application for extension of period for export of the goods. In the case law cited, it was observed that M/s. Vardhman Spinning had abided by the law; filed an application for extension of period for the export of the goods and that the goods were handed over to the Customs authorities within the extended period but could not be exported within the said period. The Respondent on the other hand had not even filed an application of extension of the period for export of the goods.
- (xi) The date mentioned on the Shipping Bill does not signify that the goods have been physically exported, within the period of six months from the date of removal of the goods from the factory of export, as mandated under Clause 2(b) of Notification No. 19/2004-C.E. (N.T.) dated 06.09.2004 read with Explanation B to Sub-section (5) of Section 11B of the Central Excise Act, 1944. As discussed, the "Sailed date" is the relevant date for an export said to have taken place.
- (xii) The reason cited in the case law of Chamunda Pharma Machinery Pvt. Ltd. viz. "on account of unrest in Nepal", can be accepted as "an unavoidable reason".
- (xiii) The case law in Kosmos Healthcare Pvt. Ltd. Vs. Asstt. Commissioner of Central Excise, Kolkata-I [2013 (297) E.L.T. (345) (Cal.)], states that there should be sufficient cause for delay. It is only then the Commissioner can take a liberal approach. In the first place, no such step was taken to file an application by the Respondent, hence leaves no room for consideration.
- (xiv) The Respondent should be well conversant with the provisions of law. They must be aware of the fact that the "Sailed Date" mentioned in the

Mate Receipt is the “date of the physical export of goods”, is the date to be considered for the computation of a period of six months. Further as per Para 2(b) of the Notification No. 19/2004-C.E.(N.T.), “the Commissioner of Central Excise” is “the jurisdictional Commissioner with executive powers”. On the other hand, the Commissioner(Appeals) is a Appellate Authority, with no jurisdiction to condone the delay. The plea of the Respondent is, therefore, no acceptable.

- (xv) The Respondent had stated that Notification No. 19/2004-C.E.(N.T.) provides extension of period for export of the goods by the Commissioner of Central Excise, without any limit and without any reasonable cause shown by the assessee. The condition has specifically mentioned "within such extended period...may in a particular case allow. The blanket permission cannot be sanctioned in this regard, without genuine/avoidable reasons.
- (xvi) A Revision Application has also been filed against the Order-in-Appeal No. PUN-EXCUS-001-APP-093-13-14 dated 06.09.2013, which is still sub-judice, as on date.
- (xvii) As explained above, the provisions of law applied to the facts and circumstances of the case, in all its entirety, needs to allow the Revision Application tiled by the Department and set aside the impugned Order-in-Appeal.

6. Personal hearing in the case was fixed on 03.03.2021, 10.03.2021 and 06.04.2021. On 06.04.2021, Shri Mahesh Patil, Joint Commissioner, Central Excise, Pune-I appeared online on behalf of the Applicant Department. He reiterated the submissions already made on the subject. She stated that export actually happened after six months, hence rebate is not admissible. The Respondent vide their email dated 08.04.2021 requested to re-schedule the personal hearing dated 06.04.2021. Hence, as requested, the hearing was re-scheduled on 20.04.2021. On 20.04.2021, Shri Shireesh Kumar Parab, Consultant appeared online on behalf of the Respondent. He

reiterated earlier submissions and stated that Shipping Bill, Bill of Lading, Let Export Order were all within six months from the date goods were removed. There was a reason for delay in receipt of contractual payments. Commissioner(Appeal) has rightly allowed their appeal and same was requested to be maintained.

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

8. On perusal of records, Government observes that the Respondent filed a rebate claim on 04.10.2013 for Rs. 13,08,263/- in terms of Section 11B of the Act read with Rule 18 of Central Excise Rules, 2002. It appeared that the goods were not exported within six months of the clearance of the goods from the factory and therefore the condition laid down at para 2(b) of the Notification No. 19/2004-CE (N.T.) dated 06.09.2004 which prescribes the conditions and procedure for sanction of rebate, was not satisfied. Accordingly, a Show Cause Notice dated 19.12.2013 was issued to the Respondent. The Assistant Commissioner, Central Excise, Pune-II Division, Pune-I Commissionerate rejected the rebate claim on the grounds that the goods were not exported within six months from the date of clearance of the goods from the factory as per the condition of the Notification. Aggrieved, the Respondent filed an appeal before the Commissioner of Central Excise (Appeals), Pune-I. The Commissioner(Appeals) allowed the Respondent's appeal and set aside the Order-in-Original dated 03.01.2012 with consequential relief. The details are as given below:

Sr. No	ARE-1 No & dt	Amt claimed (Rs)	S/B No & dt.	Let Export dt	B/L No & dt	M/R No. & dt	OIO No & dt.	OIA No. & dt
1	306 dt 30.10.12	12,73,316	5139485 dt	26.4.13	TALTSB0 1616998 dt 2.5.13	350 dt 3.5.13	PI/Div.II /Reb/90(a) /13-14 dated 03.01.14	PUN- EXCUS- 001-APP- 228-14- 15 dated 13.03.15
2	307 dt 30.10.12	34,947	25.4.13					
	Total	13,08,263						

9. The Government observes that the findings of the Commissioner(Appeals) –

“7. I find that the goods were cleared from the factory under ARE-1 Nos 306 and 307 both dated 30-10-2012 and central excise invoice nos 18261 and 18262 both dated 30-10-2012. Thus the goods were required to be exported on or before 29.04.2013. I find that the goods were exported under shipping bill No. 5139485 dated 25-04-2013 and let export order was given on 26-04-2013. Thus I find that the date of filing of the shipping bill and the date of ‘let export order’ both are within six months of the date of clearance of the goods from the factory. I find that para (3)(a) of the Notification prescribed procedures for sealing of goods and examination of the place of dispatch and export. S.No. (xiv) of para (3)(a) states that the officer of customs shall all the export after examination and verify on the copies of the application that the goods have been duly exported citing the shipping bill number and date and other particulars of export. Thus the customs officer is required to certify that goods have been exported at the time of examination after export is allowed by him. I further find that the condition of export within six months is a procedural condition of a technical nature and not a substantive condition as held by the Adjudicating Authority in his impugned order dated 3-01-2014. This is also evident from the fact that the Notification itself provides extension of the period for export by Commissioner of Central Excise without any limit and without any reasonable cause shown by an assessee.”

Government observes that the Commissioner(Appeals) has allowed the rebate of central excise duty paid on goods which have not been exported within six months of their clearance from the factory on the ground that date of filing of the shipping bill and the date of Let export order both are within the period of six months from the date of clearance of goods for export from the factory.

10 Government observes that the Respondent has submitted that -

“18. It is submitted that there is no dispute about export of goods on payment of excise duty. There is no dispute about receipt of payment in foreign currency. The delay in export was due to genuine reasons which were beyond our control.

19. All the other conditions of the Notification have been fulfilled by us. The lapse in making application for extension of time may be treated as a procedural lapse. We request Your Honour to condone the said procedural lapse.

20. *It can be seen that physical export of goods were delayed due to genuine reasons. In series of decisions it has been held that substantial benefit of rebate may not be denied on procedural/technical infractions.*
21. *In case of Vardhman Spinning & General Mills Ltd. V/s. CCE, Ludhiyana -2005 (190) ELT (38) (Tri.- Del.)- wherein there was 10 days delay in actual export of goods however rebate was granted."*

11. Government notes that Notification No. 19/2004-CE (NT) dated 06.09.004 prescribes the condition and limitations upon which a claim for rebate can be granted:

"(2) Conditions and limitations : -

(a) that the excisable goods shall be exported after by the Central Board of Excise and Customs by a general or special order;

(b) the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow;"

Government takes note of the fact that the condition 2(b) of Notification No. 19/2004-CE(NT) dated 06.09.2004 allows for some latitude to the exporter in that it provides them with the opportunity of approaching the jurisdictional Commissioner for extension of the prescribed time limit. Therefore, this time limit is procedural.

13 Government notes that in the case of Vardhman Spinning & General Mills Ltd. V/s. CCE, Ludhiana [2005 (190) ELT 38 (Tri.-Del.)] which was relied by the Respondent, M/s. Vardhman Spinning had abided by the law by filing an application for extension of period for the export of the goods and the goods were handed over to the Customs authorities within the extended period but could not be exported within the said period. Government finds that in the current case, the Respondent had handed over goods to Customs well within six months. Examination of goods and Let

export order was also given within six months. Any delay after that is beyond the control of the Respondent.

14. In similar case, the Hon'ble High Court at Calcutta in the case of Kosmos Healthcare Pvt. Ltd Vs A.C. of C.Ex. Kolkata-I [2013(297) ELT 345 (Cal.)] held that

“25. In Cosmonaut Chemicals v. Union of India reported in 2009 (233) E.L.T. 46 (Guj.) a Division Bench of Gujarat High Court held, and rightly, that a claim for rebate filed beyond the stipulated time limit, due to circumstances beyond the control of claimant could not deprive the claimant of his claim to rebate, when there was proof of export.

26. In Ford India Pvt. Ltd. v. Assistant Commissioner of Central Excise, Chennai reported in 2011 (272) E.L.T. 353 (Mad.), the Madras High Court held that substantive compliance of procedural requirements would be sufficient where factum of export is not in doubt.

27. As held by the Supreme Court in Commissioner of Customs (Import), Mumbai v. Konkan Synthetic Fibres reported in 2012 (278) E.L.T. 37 (S.C.), a beneficial notification was required to be given a liberal interpretation. The notification in this case is a beneficial one.

28. When there is proof of export, as in the instant case, the time stipulation of six months to carry out export should not be construed within pedantic rigidity. In this case, the delay is only of about two months. The Commissioner should have considered the reasons for the delay in a liberal manner.

29. It would perhaps be pertinent to note that an exporter does not ordinarily stand to gain by delaying export. Compelling reasons such as delay in finalization and confirmation of export orders, cancellation of export orders and the time consumed in securing export orders/fresh export orders delay exports.

30. As observed above, the notification does not require that extension of time to carry out the export should be granted in advance, prior to the export. The Commissioner may post facto grant extension of time.

31. *What is important is, the reason for delay. Even after export extension of time may be granted on the same considerations on which a prior application for extension of time to carry out export is allowed. If there is sufficient cause for the delay, the delay will have to be condoned, and the time for export will have to be extended. In my view, in considering the causes of delay, the Commissioner would have to take a liberal approach keeping in mind the object of the duty exemption, which is encouragement of exports.*

32. *Of course, in a case of inordinate unexplained delay or a case where the delay has caused loss of revenue to the Government or in a case where there is reason to believe that export has been delayed deliberately with ulterior intention, for example, for higher gain in anticipation price variation, the delay may not be condoned.*

33. *The impugned revisional order is set aside and quashed. The Respondent No. 3 is directed to decide the revisional application afresh in the light of the observations made above. "*

15. Government is in agreement with the findings of the Commissioner(Appeals) that the goods were exported under Shipping Bill No. 5139485 dated 25.04.2013 and Let export order was given on 26.04.2013 and both are within six month of the date of clearance of the goods from the factory. The condition of export within six months is a procedural condition of a technical nature and not a substantive condition. This is also evident from the fact that the Notification itself provides extension of the period for export by Commissioner of Central Excise without any limit and without any reasonable cause shown by an assessee. Government finds that the Respondent had handed over goods to Customs well within six months. Examination of goods and Let export order was also given within six months. Hence the delay after that was beyond the control of the Respondent and the delay has not caused any loss of revenue to the Government. Hence the rebate cannot be denied to the Respondent.

16. In view of the above discussions and findings, Government upholds the Order-in-Appeal No. PUN-EXCUS-001-APP-228-14-15 dated 13.03.2015

passed by the Commissioner of Central Excise (Appeals), Pune-I as proper and legal.

15. Revision Application filed by the Department is rejected without merits.


14/06/21
(SHRAWAN KUMAR)

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

ORDER No. 227/2021-CX (WZ)/ASRA/Mumbai Dated 14.06.2021

To,
The Commissioner of Central Excise & CGST,
Pune-I,
GST Bhavan, I.C.E. House,
Opp. Wadia College,
Pune- 411 001.

- Copy to :
1. M/s W.I.L.O. Mather & Platt Pumps Pvt. Ltd., ((Former Mather & Platt Pumps Ltd), Mumbai-Pune Road, Chinchwad, Pune-411 019.
 2. Sr. P.S. to AS (RA), Mumbai.
 3. Guard file.
 4. Spare Copy.