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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, Cuff Parade,
Mumbai- 400 005

F. NO. 195/208/13-RA / 3291

Date of Issue: 01.06.2021

ORDER NO. 223/2021-CX (WZ) /ASRA/Mumbai DATED 07.06.2021 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 Cadila Healthcare Ltd.,
'Zydus Tower', Sarkhej Gandhinagar Road,
Satellite Cross Road, Satellite,
Ahmedabad- 380 015.

Respondent : Commissioner of CGST, Belapur.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. US/740/RGD/2012 dated 30.10.2012 passed by the Commissioner (Appeals-II), Central Excise, Mumbai.

ORDER

This revision application is filed by M/s Cadila Healthcare Ltd., 'Zyodus Tower', Sarkhej Gandhinagar Road, Satellite Cross Road, Satellite, Ahmedabad- 380 015 (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/740/RGD/2012 dated 30.10.2012 dated 23.11.2011 passed by the Commissioner (Appeals-II), Central Excise, Mumbai.

2. Brief facts of the case are that the applicant, a merchant exporter, had filed six rebate claims under the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004 in respect of the goods exported by them. The total amount of rebate claimed was Rs. 20,26,140/- (Rupees Twenty Lakh Twenty Six Thousand One Hundred Forty Only) being central excise duty paid on exported goods. The Rebate Sanctioning Authority while scrutinizing the impugned rebate claim noticed following discrepancies -

- a) No self sealing and supervision certificate in respect of export goods was mentioned on the body of ARE-1 in respect of 5 rebate claims.
- b) Signature of Master vessel was not appearing on the shipping bill.
- c) Photocopies of Shipping Bills, Mate Receipts and Bill of Lading did not bear necessary certificate i.e. 'Certified True Copy' except in respect of one claim.
- d) Name of the rebate sanctioning authority was wrongly mentioned.
- e) Copies of BRC were not submitted in respect of 3 rebate claims.
- f) Triplicate copies of ARE-1 in respect of 3 rebate claims were not submitted along with rebate claims.
- g) Central Excise Invoice in original was not submitted in respect of one rebate claim.

The Rebate Sanctioning Authority vide Order in Original No. 263/11-12/Dy. Commr. (Rebate)/Raigad dated 01.05.2012 rejected the impugned rebate claim.

3. Being aggrieved by the Order in Original, the applicant filed an appeal before the Commissioner (Appeals-II), Central Excise, Mumbai-II. The Appellate Authority vide Order in Appeal No. US/740/RGD/2012 dated

30.10.2012 rejected the appeal and upheld the Order in Original. The appellate authority while passing the impugned order in appeal observed that:-

- a) The provision of self-sealing is a mandatory provision and the applicant had not followed the procedure as laid down in para 3(a)(xi) of the Notification No. 19/2004-CE(NT) dated 06.09.2004 and as prescribed under para 6 of the Chapter 8 of the CBEC Manual.
- b) The applicant did not submit any documentary evidence to prove that the goods were actually opened and examined by the Customs Department. Therefore, the identity of the goods exported was not established and the rebate claim was rightly denied.
- c) The duty payment certificates from the Central Excise authorities indicating the debit entries of the duty payment and excise invoice issued under Rule 11 of the Central Excise Rules, 2002 are essential to prove the duty payments.
- d) Nonappearance of the signature of the Master of Vessel is a procedural matter and cannot not be a ground for the rejection of the rebate claims.
- e) The BRCs have been produced by the applicant.
- f) The wrongly mentioned rebate sanctioning authority is also a procedural requirement and cannot be ground for rejection of rebate claims.
- g) The submission of Triplicate copies of ARE-1 is essential to prove the duty paid character, quantity and description of the goods exported.
- h) Submission of Original copies of Central Excise Invoices are mandatory documents in terms of Notification No. 19/2004-CE(NT) dated 06.09.2004 read with Chapter 8 of the CBEC's Manual.

4. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application on the following grounds that :

- 4.1 With the proper export documents, the excisable goods, which were cleared from the factory of the manufacturer, on payment of Central Excise Duty, with a claim for rebate, had travelled to the port of exportation and therefrom, the concerned Customs Authorities, based on the said export documents,

exported the export consignment to the foreign country and attested certain documents accordingly.

- 4.2 Inadvertently, the name and address of the Assistant Commissioner, Central Excise, Maritime, Thane was specified in the ARE-1s but subsequently it was realized tat the rebate claim was required to be filed with the Asstt. Commissioner, Central Excise, Maritime, JNPT, Navi Mumbai. As such, the triplicate copy of each ARE-1 was dispatched to the Asstt. Commissioner, C.Ex., Maritime, Thane and hence the same could not be traced out from the office of the same authority and for this reason the triplicate copy of ARE-s could not be presented.
- 4.3 The ground for denial of rebate claim that the personal hearing notices though fixing personal hearing on 27.03.2012 was posted through postal department only on 20.03.2012 and was received by the applicants on 02.04.2012, still the original authorities had still passed the Order in Original and accordingly the applicant had got about 28 days of time limit for filing suitable reply to the deficiency memos, failing which, it cannot be said that the original authority, had violated the principles of natural justice and on this ground, his order in original, cannot be set aside. In this connection, the applicant though does not have any documentary evidences but had several times telephonic talks with the office of the adjudicating authority, who maintained that another notice for personal hearing would be issued to them and accordingly the applicant had prepared themselves for reply of deficiency memos but were waiting for personal hearing so that they can approach the original authority and handover written submissions.
- 4.4 The Customs authorities had received the consignment and exported the same and raised no objection at all, for the procedure, followed by the applicants and then there was no need for excise authorities to raise any objection about self

sealing and self certification procedure followed or not followed by the applicants. The Customs Authorities had not passed any remarks about anything wrong with the export consignment.

4.5 The Export invoices were misplaced and the applicant had given a letter dated 07.05.2011 to the office of the original authority, maintaining that two invoices had been lost and accordingly they had provided an undertaking on Rs. 100/- Non Judicial Stamp Paper.

4.6 So far as it relates to payment of Central Excise Duty, on export goods, the applicant had obtained a certificate of duty payment from concerned superintendent in charge of the factory of the manufacturer.

5. A Personal hearing in the matter was granted on 04.12.2019, 11.12.2019, 09.12.2020, 16.12.2020, 23.12.2020 and 29.01.2021. However, no one appeared for the personal hearing so fixed on behalf of applicant / department. Since sufficient opportunity to represent the case has been given, the case is taken up for decision on the basis of available documents on record.

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. Government observes that rebate claim was prima facie rejected / returned by the Rebate Sanctioning Authority for the following reasons:

- a) The provision of self-sealing had not been followed by the applicant.
- b) The applicant did not submit any documentary evidence to prove that the goods were actually opened and examined by the Customs Department. Therefore, the identity of the goods exported was not established and the rebate claim was rightly denied.
- c) The duty payment certificates from the Central Excise authorities indicating the debit entries of the duty payment and excise invoice issued under Rule 11 of the Central Excise Rules, 2002 are essential to prove the duty payments.

- d) The Triplicate copies of ARE-1 were not submitted by the applicant to prove the duty paid character.
- e) The applicant did not submit the original copies of Central Excise Invoices.

7.1 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 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.

7.2 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.

7.3 In the instant case, it is observed that :-

a) the applicant had submitted the copies of the relevant ARE-1s duly endorsed by the Customs Authorities. Further, the Customs authorities had passed the consignments without any query / adverse remarks on the Part-B of the ARE-1.

b) The applicant have submitted the duty payment certificate in respect of the misplaced triplicate copies of ARE-1s.

c) They have also submitted relevant BRCs to the authorities.

7.4 In view of above, the government holds that the deficiencies pointed out by the adjudicating authority while rejecting the rebate claims for the amount of Rs. 20,26,140/- are merely procedural infractions 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.

7.5 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.

7.6 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."

7.7 In this regard Government observes that while deciding the identical issue, Hon'ble High Court of Bombay in its judgment dated 24-4-2013 in the case of M/s. U.M. Cables v. UOI (WP No. 3102/2013 & 3103/2013) reported as TIOL 386 HC MUM CX. = 2013 (293) E.L.T. 641 (Bom.), at para 16 and 17 of its Order observed as under :-

16. *However, it is evident from the record that the second claim dated 20 March, 2009 in the amount of Rs. 2.45 lacs which forms the subject matter of the first writ petition and the three claims dated 20 March, 2009 in the total amount of Rs. 42.97 lacs which form the subject matter of the second writ petition were rejected only on the ground that the Petitioner had not produced the original and the duplicate copy of the ARE-1 form. For the reasons that we have indicated earlier, we hold that the mere non-production of the ARE-1 form would not ipso facto result in the invalidation of the rebate claim. In such a case, it is open to the exporter to demonstrate by the production of cogent evidence to the satisfaction of the rebate sanctioning authority that the requirements of Rule 18 of the Central Excise Rules, 2002 read together with the notification dated 6 September, 2004 have been fulfilled. As we have noted, 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. We may also note at this stage that the attention of the Court has been drawn to an order dated 23 December, 2010 passed by the revisional authority in the case of the Petitioner itself by which the non-production of the ARE-1 form was not regarded as invalidating the rebate claim and the proceedings were remitted back to the adjudicating authority to decide the case afresh after allowing to the Petitioner an opportunity to produce documents to prove the export of duty paid goods in accordance with the provisions of Rule 18 read with*

notification dated 6 September, 2004 [Order No. 1754/2010-CX, dated 20 December, 2010 of D.P. Singh, Joint Secretary, Government of India under Section 35EE of the Central Excise Act, 1944]. Counsel appearing on behalf of the Petitioner has also placed on the record other orders passed by the revisional authority of the Government of India taking a similar view [Garg Tex-O-Fab Pvt. Ltd. - 2011 (271) E.L.T. 449] and Hebenkraft - 2001 (136) E.L.T. 979. The CESTAT has also taken the same view in its decisions in *Shreeji Colour Chem Industries v. Commissioner of Central Excise - 2009 (233) E.L.T. 367*, *Model Buckets & Attachments (P) Ltd. v. Commissioner of Central Excise - 2007 (217) E.L.T. 264* and *Commissioner of Central Excise v. TISCO - 2003 (156) E.L.T. 777*.

17. We may only note that in the present case the Petitioner has inter alia relied upon the bills of lading, banker's certificate in regard to the inward remittance of export proceeds and the certification by the customs authorities on the triplicate copy of the ARE-1 form. We direct that the rebate sanctioning authority shall reconsider the claim for rebate on the basis of the documents which have been submitted by the Petitioner. We clarify that we have not dealt with the authenticity or the sufficiency of the documents on the basis of which the claim for rebate has been filed and the adjudicating authority shall reconsider the claim on the basis of those documents after satisfying itself in regard to the authenticity of those documents. However, the rebate sanctioning authority shall not upon remand reject the claim on the ground of the non-production of the original and the duplicate copies of the ARE-1 forms, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled. For the aforesaid reasons, we allow the Petitions by quashing and setting aside the impugned order of the revisional authority dated 22 May, 2012 and remand the proceedings back to the adjudicating authority for a fresh consideration. The rejection of the rebate claim dated 8 April, 2009

in the first writ petition is, however, for the reasons indicated earlier confirmed. Rule is made absolute in the aforesaid terms.

7.8 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 AREIs, 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".

7.9 Government finds that ratios of aforesaid Hon'ble High Court orders are squarely applicable to the instant case in so far as the matter of sanction of rebate claim of Rs. 20,26,140/- is concerned.

7.10 In view of discussions and findings elaborated above, Government holds that impugned rebate claims for Rs. 20,26,140/- are admissible in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/04-CE (N.T.) dated 06.09.04 subject to verification by original adjudicating authority of the relevant documents pertaining to impugned exports and verification of duty payment particulars certified by the jurisdictional Central Excise Range officer.

8. In view of the above, Government holds that ends of justice will be met if the impugned Order in Appeal is set aside and the case remanded back to the original adjudicating authority for the limited purpose of verification of the claims with directions that he shall reconsider the claim for rebate on the

basis of the collateral documents submitted by the applicant after satisfying itself in regard to the authenticity of those documents and duty payment nature of goods.

9. Accordingly, Government sets aside Orders in Appeal No US/740/RGD/2012 dated 30.10.2012 passed by the Commissioner (Appeals-II), Central Excise & Customs, Mumbai and directs the Original authority for verification of impugned rebate claims filed by the applicant in the light of above discussion after giving reasonable opportunity of hearing to the applicant. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

10. The Revision applications are allowed on above terms.


17/06/21
(SHRAWAN KUMAR)

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

ORDER No. ~~223~~/2021-CX (WZ) /ASRA/Mumbai DATED 17.06.2021

To,

M/s Cadila Healthcare Ltd.,
'Zydus Tower', Sarkhej Gandhinagar Road,
Satellite Cross Road, Satellite,
Ahmedabad- 380 015.

Copy to:

1. The Commissioner of CGST, Belapur Commissionerate, C.G.O. Complex, 10, C.B.D. Belapur, Navi Mumbai - 400 614.
2. The Commissioner of GST & CX, Appeals Raigad, C.G.O. Complex, 10, C.B.D. Belapur, Navi Mumbai - 400 614.
3. The Deputy Commissioner (Rebate), GST & CX Belapur Commissionerate, C.G.O. Complex, 10, C.B.D. Belapur, Navi Mumbai - 400 614.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.