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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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

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F.No. 195/226/14-RA / 1311

Date of Issue: 01.07.2021

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ORDER NO. 228/2021-CX (WZ) /ASRA/MUMBAI DATED 24.06.2021  
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 CENTRAL  
EXCISE ACT, 1944.

Applicant : M/s. Sequent Scientific Ltd.

Respondent: Commissioner (Appeals-1), Central Excise, Mumbai Zone-1

Subject : Revision Applications filed, under Section 35EE of Central  
Excise Act, 1944 against Order-in-Appeal No. PD/22/Th-  
1/2014 dated 11.03.2014 passed by the Commissioner  
(Appeals-1), Central Excise, Mumbai Zone-1.

**ORDER**

This Revision Application has been filed by M/s. Sequent Scientific Ltd., Plot No. A-68 & 69, MIDC Industrial Area, Ambarnath (East) - 421 506 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. PD/22/Th-1/2014 dated 11.03.2014 passed by the Commissioner (Appeals-1), Central Excise, Mumbai Zone-1.

2. The case in brief is that the Applicant, manufacturer had filed rebate claim of Rs 50,089/- (Rupees Fifty Thousand and Eighty Nine Only) dated 21.03.2013 under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/04-CE(NT) dated 06.09.2004 as amended in respect of the goods claimed to be exported by them vide ARE-1 No. 31 dated 06.07.2012 through their Merchant exporter M/s Veeram Healthcare, Bangalore. On scrutiny of the claim it was noticed that they had not submitted the Duplicate copy of the ARE-1 and Disclaimer Certificate of the Merchant Exporter along with the claim. Hence, the Applicant was issued Deficiency Memo dated 13.05.2013. However, the Applicant did not the documents. Therefore, they were issued Show Cause Notice dated 20.08.2013. The Deputy Commissioner, Central Excise, Kalyan -IV Division vide Order-in-Original No. 995/SRT-II/ANK-II/REBATE/12-13 dated 13.08.2012 rejected the refund claims under Rule 18 of the Central Excise Rules, 2002 read with Section 11B of Central Excise Act, 1944 read with Para 8.4 of the Chapter 8 of CBEC's Excise Manual of Supplementary instructions. Aggrieved, the Applicant then filed appeal with the Commissioner (Appeals-1), Central Excise, Mumbai Zone-1. The Commissioner(Appeals) vide Order-in-Appeal No. PD/22/Th-1/2014 dated 11.03.2014 upheld the Order-in-Original dated 13.08.2012 and rejected their appeal.

3. Aggrieved, the Applicant filed the current Revision Application on the following grounds:

- (i) The Applicant had discharged duty at the time of clearance for export of goods. Exporter had provided an undertaking and FIR filed with jurisdictional Police Station for loss of Duplicate copy of ARE-1. However, exporter had provided the original copy of ARE-1 duly endorsed by the proper officer of Customs evidencing the export. The Commissioner(Appeals) rejected the rebate claim on the ground that the duplicate copy of ARE-1 not submitted and went on the different reasoning stating that the rebate claim was not re-submitted within time. Therefore, the order of Respondent is liable to be quashed and set aside.
- (ii) The Adjudicating authority had also erred in rejecting the claim by not considering that the Original copy of ARE-1 No. 31/12-13 dated 06.07.2012 was duly endorsed by the Customs Authority evidencing the export of goods cover under the said ARE-1. It was on record in place of misplaced 'duplicate copy of ARE-1'. In spite of the fact that all requisite documents needed for the purpose of sanctioning the rebate claim was available on record, merely because duplicate copy of ARE-1 was not there, the rebate claim was straight away rejected by adjudicating authority. It is settled law that the rebate claim cannot be rejected on the said ground as held by the Hon'ble Bombay High Court & also by the Govt. of India. Here the Applicant relies upon the following judgments in support of their claim:
- (a) UM Cables Ltd V/s Union of India [2013 (293) ELT 641 (HC-BOM)];
  - (b) GSL (India) Ltd V/s CCE [ 2012 (276) ELT 116 (GOI)];
  - (c) Shreeji ColourChem Industries [2009 (233) ELT 367 (T-Ahd).
- Therefore the Order-in-Appeal is liable to be quashed and set aside.
- (iii) The rebate cannot be denied merely on the procedural and/or technical grounds when the fact of actual export is not in dispute at all. Applicant had submitted the proof of export and the original 'endorsed' copy of ARE-1 evidencing the export. It is settled law that the rebate should not be denied merely on procedural contraventions in such situations and they rely upon the following judgments in support of their submissions:

(a) M/s.Banaras Beads Ltd. [2011(272) ELT 433(GOI)];

(b) M/s ACE Hygine Producds Pvt Ltd [2012 (276) ELT 131 (GOI)]

- (iii) The Commissioner (Appeals) erred in observing that the Applicant had not submit the ARE-1 for verification of details of goods which are exported and further observed that no new evidence was brought on records by the Applicant. The Applicant submitted that it is totally wrong. The only the difference was that that original copy which was endorsed by the customs authority, was submitted in place of duplicate copy since it was lost. To substantiate the fact of loss of duplicate copy of ARE-I, FIR with 'Police Authority' was lodged and the same was produced before the adjudicating authority. This fact has been overlooked by the Commissioner (Appeals), also while considering the rebate claim as liable for rejection
- (iv) The Applicant prayed that the Order-in-Appeal be quashed and set aside and the rebate be sanction on merits of the case.

4. A Personal Hearing was held on 17.04.2018, 05.12.2019 and 12.12.2019. No one appeared for the hearing. However, there was a change in the Revisionary Authority, hence a final hearing was granted on 03.02.2021, 17.02.2021, 17.03.2021 and 24.03.2021. However none appeared for the hearing. Hence the case is taken up for decision based on records on merits

5. 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.

6. On perusal of the records, it is observed that the Applicant, manufacturer had filed rebate claim of Rs 50,089/- dated 21.03.2013 under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/04-CE(NT) dated 06.09.2004 as amended in respect of the ARE-1 No. 31/12-13 dated 06.07.2012 which was exported through their Merchant Exporter, M/s Veeram Healthcare, Bangalore. On scrutiny of the claim it was noticed that

the Applicant had not submitted the Duplicate copy of the ARE-1 and Disclaimer Certificate of the Merchant Exporter along with the claim. Hence, the Applicant was issued Deficiency Memo dated 13.05.2013 and Show Cause Notice dated 20.08.2013. The Applicant vide their letter dated 27.08.2013 submitted the copy of Disclaimer Certificate and stated that the buff copy of the said ARE-1 was misplaced and submitted copy of the FIR for the same. The adjudicating authority and the Commissioner(Appeals) had rejected the Applicant's rebate claims for non-furnishing of Duplicate copy of ARE-1 No. 31/12-13 dated 06.07.2012.

7. The Applicant submitted that they had filed rebate claim annexing the following relevant documents:

- (i) Original copy of ARE-1 No. 31/12-13 dated 06.07.2012 duly endorsed by Customs Officer evidencing the shipment of goods;
- (ii) 'EP' copy of Shipping Bill No. 9739658 dated 06.07.2012;
- (iii) Bill of Lading No. MMUM071212138 dated 29.07.2012;
- (iv) Excise Invoice No. ADDEX/12-13-0031 and Exporter's Invoice No. 004 dated 03.07.2012 issued by Veerum Healthcare, Bangalore.

Further, the Applicant vide their rely dated 27.08.2013 had stated that:

*"Sub: Rebate application on 21.03.2013*

*Ref: Deficiency memo dtd. 13.05.13*

*Dear Sir,*

*With reference to deficiency memo we would like to attached the copy of NOC and FIR which is lodged in respect of misplace the documents Buff copy of the ARE-1 No. 031 Dt 06.07.12."*

8. Government observes that the Original copy of ARE-1 No. 31/12-13 dated 06.07.2012 is duly endorsed by Customs Officer evidencing the shipment of goods. Since the Duplicate copy i.e. "(1) Buff Copy of ARE No:31/2012-13" was misplaced, the Merchant Exporter M/s Veeram Health Care had filed FIR dated "12/07/2013 " with the jurisdictional Police Station

Byatarayanapura. Government notes that evidence of duty payment and export of goods have been submitted by them and it was not disputed by rebate sanctioning authority. Rebate claim was rejected only on technical/procedural grounds. Government finds that there are caters of judgments stating that substantive benefit cannot be denied on mere procedural lapse.

9. In this regard it is noticed that while deciding an 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 TIOI 386 HC MUM CX. = 2013 (293) E.L.T. 641 (Bom.), observed at para 16 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.*

10. Further, the Hon'ble High Court, Gujarat in Raj Petro Specialties Vs Union of India [2017(345) ELT 496 (Guj)] also while deciding the identical issue, relied on aforesaid order of Hon'ble High Court of Bombay.

11. Government finds that ratio of aforesaid Hon'ble High Court orders is squarely applicable to the issue in question. Government in the instant case notes that the Duplicate copy of ARE-1 No. 31/12-13 dated 06.07.2012 were misplaced/lost by the Merchant Exporter. However, the Applicant submitted the Original copy of the ARE1s duly wherein the Part A was endorsed by the Inspector (Examiner, Customs and Part B by the Superintendent of Customs showing the Shipping Bill No. "9739658 dated 06/07/12" by S.S./Flight "E R CANBERRA" which left on the "MOMBASA" day of "29" (Month) "07/2012". The Shipping Bill No "9739658 /06/07/12" shows the Invoice No. & Date "004 03/07/2012" and the Mate Receipt No. 853 shows Shipping Bill No. "9739658 /06/07/12", Sailed Date "29/07/2012", Received for shipment on Board the "E R CANBERRA" and the following goods for "MOMBASA". The Applicant then filed the rebate claim of Rs 50,089/- 21.03.2013 in respect of the goods exported by them vide ARE-1 No. 31/12-13 dated 06.07.2012.

12. Therefore the documents furnished by the Applicant indisputably prove that duty paid goods under claim for rebate have been exported and hence the rebate claim should not have been denied only on grounds of non-production of original copy of ARE-1 particularly when the same are lost, and an FIR to this effect is on record. It is incumbent upon the adjudicating authority to verify the documentary evidences furnished by the Applicant as resorting rejection on technical grounds/procedural lapses would not serve the purpose of justice.

13. With the above observations, Government remands the matter to the original authority for the limited purpose of verification of the claim with directions that he shall reconsider the claims for rebate on the basis of the aforesaid documents submitted by the Applicant. After satisfying the authenticity of those documents, and the fact of export of duty paid goods, the original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

14. In view of above, Government sets aside the impugned Order-in-Appeal Nos. PD/22/Th-1/2014 dated 11.03.2014 passed by the Commissioner (Appeals-1), Central Excise, Mumbai Zone-1 and the matter is remanded to the Original Adjudicating Authority for further needful action.

15. The revision application is allowed in terms of above.

*Shrawan Kumar*  
24/6/21

(SHRAWAN KUMAR)

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

ORDER No ~~228~~/2021-CX (WZ) /ASRA/Mumbai Dated 24.6.2021

To,  
M/s. Sequent Scientific Ltd.,  
Plot No. A-68 & 69, MIDC Industrial Area,  
Ambernath (East) - 421 506.

Copy to:

1. The Commissioner of CGST, Thane Rural, 4<sup>th</sup> floor, Utpad Shulk Bhavan, Plot No. 24-C, Sector-E, BKC, Bandra(East), Mumbai 400 051.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.
4. Spare Copy