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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. 195/74/WZ/2017-RA /2143 Date of Issue: 12.04.2023

ORDER NO. 229/2023-CX (WZ)/ASRA/MUMBAI DATED 11.04.2023 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. Aquatherm Engineering Consultants Inc.,
A-402, Ansal Chambers-1,
3, Bhikaji Cama Place,
New Delhi-110066.

Respondent: The Pr. Commissioner of GST & CX,
Ahmedabad North Commissionerate.

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. AHD-EXCUS-001-APP-018-2017-18 dated 07.07.2017 passed by the Commissioner(Appeals-I), Central Excise, Ahmedabad.

ORDER

This revision application has been filed by M/s. Aquatherm Engineering Consultants Inc., A-402, Ansal Chambers-1, 3, Bhikaji Cama Place, New Delhi-110066 (hereinafter referred to as "the applicant") against the Order-in-Appeal No. AHD-EXCUS-001-APP-018-2017-18 dated 07.07.2017 passed by the Commissioner(Appeals-I), Central Excise, Ahmedabad.

2. The case in brief is that M/s. Aquatherm Engineering Consultants Inc., registered with Central Excise Range-29, Division-VI, Commissionerate Delhi-II as dealer having registration No. ABAFA0086HRD001, has filed rebate claim of Rs.17,50,000/- on 30.03.2016 under Rule 18 of the Central Excise Rules, 2002 in prescribed Form-C alongwith documents such as invoice, EP copy of S/B, B/L, BRC etc. The Assistant Commissioner, C.Ex. Div.-V, Ahmedabad-I vide his Order-in-Original No. MP/648/Reb/2016 dated 27.09.2016 on the grounds that the applicant had failed to comply with the requirements of conditions prescribed in Notification No. 19/2004-CE(NT) dated 06.09.2004 as under:

A. Condition No.3(a)(iii): The exported goods have not been sealed at the place of dispatch by a Central Excise Officer.

B. Condition No.3(a)(iv): The claimant has not presented four copies of ARE-1 to the Superintendent or Inspector of Central Excise having jurisdiction over the factory of production or manufacturer.

C. Condition No.3(a)(v): the said incharge jurisdictional Superintendent or Inspector of Central Excise has not verified the identity of the goods mentioned in the said ARE-1 and particulars of the duty paid or payable, sealed each package or container and endorsed each copy of the application (i.e. ARE-1) in token of having such examination done.

D. Condition No.3(a)(vi): The said incharge jurisdictional Superintendent or Inspector of Central Excise has not returned the original and duplicate copies of application to the exporter.

E. Condition No.3(a)(vii): The triplicate copy of the application (ie. ARE-1) is not sent to the officer with whom rebate claim is to be filed either by post or by handing over to the exporter in a temper proof sealed cover after posting the particulars in official records.

F. Condition No.3(a)(xi): the claimant has not certified on all copies of the application (i.e. ARE-1) that the goods have been sealed in his presence and sent the original and duplicate copies of the ARE-1 alongwith the goods at the place of export and sent the triplicate and quadruplicate copies of said ARE-1 to the jurisdictional Superintendent or Inspector of Central Excise having jurisdiction over the factory within 24 hours of the removal of the goods.

G. Condition No.3(a)(xii): the said Superintendent or Inspector of Central Excise has not sent triplicate and quadruplicate copies of said ARE-1 to the officer with whom rebate claim is to be filed, either by post or by handing over to the exporter in a temper proof seal cover after posting the particulars in official records.

H. Further, it was also observed that the claimant has purchased the said exported goods from two different factory of the manufacturer of the goods, having two different Central Excise Authorities viz. M/s. Transformers & Rectifiers (India) Ltd. Survey No.344-350, Sarkhej Bavla Highway, Opp.PWD Store, NH 8A, Village:Changodar, Taluka: Sanand, Distt. Ahmedabad- 382213 (Jurisdictional C.Ex. Officer: DC/AC, C.Ex. Rural Div.-IV, Ahmedabad-II & M/s. Transformers & Rectifiers (India) Ltd. 353/353-E, GVMM Ind. Estate Odhav, Ahmedabad-382415(Jurisdictional C.Ex. Officer: DC/AC,AR-II, C.Ex. Div. V, Ahmedabad-I) in both the cases M/s. Transformer & Rectifiers (India) Ltd., a manufacturer, had sold the goods to M/s. Pushpit Steels Pvt. Ltd., a trader in Pondicherry on payment of appropriate central excise duty who in turn sold the said goods to the applicant and then the subject goods were exported by the claimant from New Custom House, Mumbai. The applicant had purchased the said goods from said trader for export from two different location on different

dates and time and have two different Superintendent of Central Excise having jurisdiction over the said factory and rebate sanctioning authority, have prepared only one ARE-1 No.3/14-15 dated 31.03.2015 and submitted the said rebate claim with Assistant Commissioner, C.Ex. Div.V, Ahmedabad-I.

3. Being aggrieved with the above Order-in-Original dated 27.09.2016 passed by Assistant Commissioner, C.Ex. Div.V, Ahmedabad-I applicant filed an appeal before the Commissioner(Appeals). Commissioner(Appeals-I), Central Excise, Ahmedabad rejected the appeal filed by the applicant vide Order-in-Appeal No. AHD-EXCUS-001-APP-018-2017-18 dated 07.07.2017

4. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government mainly on the following grounds:

4.1 The Order- in- Appeal is illegal and baseless.The applicant contended that the rebate claim was sanctionable on merit, as there is no finding that the goods were not duty paid or not exported. The learned Commissioner erred in upholding the Order-in-Original that rejected the rebate claim on procedural grounds, as the applicant substantially fulfilled the conditions and procedure of the relevant rule and notification. The applicant also argued that the learned Commissioner erred in rejecting the appeal on the ground that they did not follow the procedures prescribed under the notification, as non-production of a document was a procedural lapse and not sufficient ground to deny a rebate claim. The applicant bought exported goods from a registered dealer who bought them from the manufacturer. Both the dealer and manufacturer gave a no-objection certificate to the applicant to claim a rebate on the excise duty paid. Customs verified the goods and confirmed their duty paid status, and there were no differences in the description or quantity of the goods. The applicant did not submit an endorsed copy of ARE-1, but this alone does not prove that the exported

goods were different from the duty-paid goods cleared from the factories of manufacture.

4.2 The applicant's rebate claim was rejected because they were said to have not followed the procedure and conditions set out in Notification No. 19/2004-C.E. (N.T.) dated 06.09.2004. However, the applicant argues that they fulfilled the substantial requirements of the rule, which are that duty has been paid on the goods and they have been exported. There is no evidence that duty was not paid on the goods or that they were not exported. The rejection was based on a procedural lapse of not having the goods sealed by a Central Excise Officer, but this is not a sufficient reason to deny the claim when the Customs have verified that the goods were duty paid and exported. The applicant cited case law 2016 (342) ELT 127 (Tri. – Hyd.) that supports their argument that a procedural lapse is not enough to deny a rebate claim if the substantial requirements of the rule have been met.

4.3 Rejection of the claim on the ground that that the FOB value declared in the shipping bill is much more than the assessable value mentioned in the ARE-I is not sustainable. FOB value declared in the shipping bill is the value of the goods in international market and the assessable vale declared in the invoices issued from the factory of manufacture is the transaction value of the goods at the time and place of clearance of the goods from the factory of manufacture. There is nothing in Rule 18 of the Central Excise Rules, 2002 and notification issued there under that the goods be sold in international market at the prices at which the same were cleared from the factory where the same were manufactured. Assessable was not challenged by the officers having jurisdiction over the factories from where the goods were cleared. Customs accepted the value declared in the shipping bill. BRC has been received and submitted to the officers. No enquiry was made by the learned Assistant Commissioner or the learned Commissioner (Appeal) regarding the genuineness of the factory sale price or international price declared in the shipping bill. Thus rejection of the rebate claim on extraneous ground and upholding of the order rejecting it is illegal and wrong.

4.4 Rejection of the claim on the ground that the applicant is a registered dealer who has not followed any procedures prescribed under the said notification either with the Central Excise office or with the Maritime Commissioner and that the appellant had exported the goods as a trader is unsustainable. The rebate claim is in respect of the goods exported and the exporter can file the rebate claim. There is nothing in the Rule 18 or the notification issued there under that exporter cannot be a trader. There are provisions for rebate claim in respect of the goods exported by a merchant exporter. Further, as abovesaid, rebate claim cannot be rejected on the ground of procedural lapses when the duty paid nature of the goods and export there of is well established as is the fact in the instant case. In this regard the applicant relied on the judgment of the Hon'ble High Court of judicature at Bombay in the case of Madhav Steel v. U.O.I.-2016 (337) ELT. 518 (Bom.) wherein the goods like in the instant case were obtained by the exporter from a dealer who in turn had purchased from the manufacturer thereof and the procedure was not followed, it was held that when the duty paid nature of goods is not in dispute and goods have been exported rebate claim cannot be denied for the procedural lapses.

4.5 The learned Commissioner (Appeal), in rejecting the appeal, wrongly relied on the judgment of the Hon'ble High Court of Gujarat in case of M/s. Intas Pharma Ltd.- [2016(332) ELT680]. The facts in Intas case were quite different from the instant case. In that case the rebate claim was disallowed by the concerned authorities on the ground that rebate shall be available only on the goods manufactured and processed in India and that in that case the goods were imported by the dealer and no further processes were undertaken and straightaway transferred to the petitioner company. Intas filed petition challenging the disallowance of the claim. The Hon'ble High Court dismissed the petition holding that "Moreover, the notification defines duty for the purpose of the notification to mean the excise duty collected under the enactments stated therein. Undisputedly, the duties paid by the

petitioner in relation to the goods in question do not fall within the enactments stipulated in the notification. Clearly therefore, the petitioner has failed to satisfy the basic requirements for availing of the benefits under the notification." Thus the basic requirement of the Notification which was not fulfilled by the petitioner was that the claim was in respect of the duty which was not specified in the Notification. Additionally, the petitioner had not followed the procedure prescribed in the notification.

4.6 The learned Commissioner (Appeal) wrongly placed reliance on decision of Government of India in case of M/s Manoj Automotive - 2012 (275) E.L.T. 496 (G.O.I.) also for rejection of the claim. The facts in that case were quite different from the instant case. In that case the goods were procured from a trader under a commercial invoice which is not the document evidencing payment of duty specified under Rule 9 evidencing payment of duty. In the instant case the goods were procured by the exporter under invoice issued by a registered dealer which invoice is the document evidencing payment of duty specified under Rule 9 ibid. The contention of Manoj Automotive that all goods purchased from market are duty paid and thus rebate claim in respect of goods purchased from market and exported was admissible was rejected by the Hon'ble Govt. of India. Since the duty paid character of exported goods was not proved in that case, the rebate of duty was held as not admissible. Thus the rebate claim in that case was rejected on the ground that duty paid character of the goods was not established and not merely on the ground that procedure prescribed under the Notification was not followed. The ratio of the Manoj Automotive case is not applicable to the instant case.

4.7 The learned Commissioner (Appeal) admitted that the applicant had cited various case laws but observed that all the case laws of Hon'ble Tribunal and Government India cited by the appellant is prior to above referred case laws of Hon'ble High Court of Gujarat and Government of India discussed at para above. The learned Commissioner (Appeal) erred in not following the cited settled case laws. The decisions cited by the Applicant

have not been set aside in appeal and have not been overruled. The decisions cited by the applicant are based on the settled case laws decided by various Benches of Tribunal, High Court and of the Apex Court- Hon'ble Supreme Court. The decisions cited by the learned Commissioner (Appeal) are not applicable to facts and circumstances of the instant case and are also in per curium as the settled case laws were not cited before the authorities in these cases and therefore the learned Commissioner (Appeal) erred in following these inapplicable decisions. and ignoring the settled case laws on the ground that the decisions relied on by him are the latest decisions.

4.8 In latest judgment of the Hon'ble High Court at Calcutta in the case of LGW Ltd. v. Union of India - 2017 (346) ELT 103 (Cal.) when the Revisionary Authority did not find that duty paid goods were not exported, denial of rebate on procedural lapse was held to be not sustainable and the order denying the rebate claim was set aside.

4.9 Rebate of duty not to be denied for non compliance procedural requirement. Export benefit cannot be denied for non compliance of procedural requirement. Non compliance of procedural requirement cannot be ground for denying the rebate claim. Appellant relied on the following case law in this regard. The learned Assistant Commissioner erred in rejecting the Rebate Claim on the above ground. The applicant relies in this regard on the following case laws. (i) Kansal Knitwears Versus Commissioner of C. EX., Chandigarh, 2001(136) ELT 467 (Tri- Del.) wherein it was held that it is well settled that procedural infractions of notification/circular are to be condoned if exports have taken place actually and substantive benefit should not be denied as rebate is a beneficial scheme. Rebate of duty can not be denied for procedural infractions. Non compliance of procedural requirement. Procedural infractions of notification/circular are to be condoned if exports have taken place actually and substantive benefit of rebate should not be denied as rebate is a beneficial scheme. Appellant relied on the following case law in this regard.

The learned Assistant Commissioner erred in rejecting the Rebate Claim on the procedural infractions. The applicant relies on the order of the Hon'ble Govt. of India reported in 2006 (204) E.L.T. 632 (G.O.I.) IN RE: Modern Process Printers.

4.10 Revenue is not entitled to retain the duty paid on the good exported. Even if the there have been some procedural lapses on the part of the appellant exporter in following the procedure for clearance of goods for export but as the duty was paid on the goods exported, Revenue is not entitled to retain the same as the goods have been exported undisputedly and hence the same is to be refunded based on the following judgments.

(i) Jayant Oil Mills 2009 (235) E.L.T. 223 (Guj.)
(ii) Suncity Alloys Pvt. Ltd. - 2007 (218) E.L.T. 174 (Raj.) = 2009 (13)S.T.R. 86 (Raj.)
(iii) Punjab Stainless Steel Ind. - 2008 (226) E.L.T., 587 (T)
(iv) Norris Medicines Ltd. - 2003 (56) RLT 353 (T)
(v) Medispan Ltd. - 2004 (112) ECR 664 (T) = 2004 (178) E.L.T., 848(Tribunal)

4.11 Goods have been exported on payment of duty, rebate is not deniable. It is well settled that once goods have been exported on payment of duty, rebate is not deniable, based on the following judgments:

(i) Alpha Garments - 1996 (86) E.L.T. 600 (T)
(ii) Indo Euro Textiles Pvt. Ltd. - 1998 (97) E.L.T. 550 (GOI)
(iii) Birla VXL Ltd. - 1998 (99) E.L.T. 387 (T)
(iv) CCE v. Stainless India Ltd. - 2008 (222) E.L.T. 210 (T)

5. A personal hearing in the case was held on 20.10.2022. Shri Priyanshu Agarwal, C.A. appeared online on behalf of the applicant and submitted that their claim was rejected on the ground of jurisdiction. He further submitted that there is no dispute on export of duty paid goods. He requested to remand the mater to jurisdictional authority for deciding the claim on merits.

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. On perusal of records, Government observes that the applicant's rebate claim made under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 – C.E. (NT) dated 06.09.2004 was rejected by The Assistant Commissioner, C.Ex. Div.V, Ahmedabad-I vide his Order-in-Original No. MP/648/Reb/2016 dated 27.09.2016 as the applicant had failed to comply with the requirements of conditions prescribed in Notification No.19/2004-CE(NT) dated 06.9.2004 specially they had not followed the procedure of self sealing as required vide para 3(a)(xi) of said notification.

7. Government observes that Commissioner (Appeals) in Para 7 had observed that -

> *"I observe that the Notification No. 19/2004-CE. (N.T.), dated 6-9-2004 issued under Rule 18 of Central Excise Rules, 2002 states that rebate of the whole of the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985, exported to any country, other than Nepal and Bhutan, shall be granted. subject to the conditions, limitations and procedures specified therein. One of the main condition therein is that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order. Further, the said notification also provides in detail the procedure of sealing/verification of the goods/duty paying documents by the Central Excise authority having jurisdiction over the factory of production or manufacture or warehouse. In the instant case, I observe that the export goods was manufactured from two different factory of M/s. Transformers & Rectifiers (I) Ltd. located at Ahmedabad, who in turn cleared the said goods to a dealer viz. M/s. Pushit Steels Pvt. Ltd., Puducherry and from the said dealer, the goods was purchased by the appellant and exported under the coverage of ARE-1 and other documents The CBEC Mannual (chapter 8, para 1.1 (ii)) states that "in certain case, the Board may issue instruction/procedures for exporting the duty paid goods from a place other than the factory or the ware house. In this regard, a general permission has been granted in respect of goods where it is possible to correlate goods and their duty paid character" The said permission (circular No.952/13/2011-Cx dated 08-09-2011) allows exporter other than those procuring the goods directly from the factory are allowed to export the goods sealed at the place of dispatch by Central Excise Officer. Further, para 5.2 of the said*

chapter further stipulates export from place other than factory of warehouse (including diversion of duty paid goods for export). The said para states that where goods are not exported directly from the factory of manufacture or warehouse, the distribution of ARE-1 will be same as sealing of export in place of dispatch except that the triplicate copy of application shall be sent by the Superintendent having jurisdiction of over the factory of manufacture or warehouse who shall, after verification forward the triplicate copy in the matter specified. Undisputed facts on both side revealed that the appellant has not followed any procedures as laid down in the said notification".

Government observes that the exported goods were manufactured by M/s Transformers & Rectifiers (I) Ltd at two different factories in Ahmedabad. These goods were then cleared to a dealer, M/s. Pushit Steels Pvt. Ltd. in Puducherry, and subsequently purchased by the applicant and exported under the coverage of ARE-1. The CBEC Manual, in Chapter 8, Paragraph 1.1 (ii), outlines that the Board may provide instructions or procedures for exporting duty paid goods from a location other than the factory or warehouse. Circular No. 952/13/2011-Cx, issued by the Board, grants general permission for such exports, where it is possible to establish the correlation between goods and their duty paid character. This permission allows exporters who procure goods other than the factory or warehouse to export the goods sealed at the place of dispatch by a Central Excise Officer. Further, Paragraph 5.2 of the same chapter covers exports from a location other than the factory or warehouse, including diversion of duty paid goods for export. Accordingly, when goods are not exported directly from the factory or warehouse, the process for distributing the ARE-1 will be the same as sealing the export goods at the place of dispatch. However, the Superintendent with jurisdiction over the factory or warehouse must verify and forward the triplicate copy of the application in accordance with the specified procedures.

Based on facts, it can be inferred that the applicant did not follow the procedures outlined in the circular and the manual for exporting duty paid goods from a location other than the factory or warehouse. This failure to follow the correct procedures resulted in a violation of relevant regulations prescribed in the Notification, Manual and Circular.

8. Government observes that Para (3)(a)(xi) Notification No. 19/2004-C.E. (N.T.) dated 6-9-2004 provides, where the exporter desires self-sealing and self-certification for removal of goods from the factory or warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit of the goods or the owner of warehouse or a person duly authorized by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify all the copies of the application that the goods have been sealed in his presence, and shall send original and duplicate copies of the application along with goods at the place of export, and shall send triplicate and quadruplicate copies of application to the Superintendent or Inspector of Central Excise, having jurisdiction over the factory or warehouse, within twenty-four hours of removal of the goods.

9. From the above Government observes that the procedure for sealing by Central excise Officer or Self-Sealing and Self Certification procedure has been prescribed in relation to identify and correlation of export goods at the place of dispatch. Since in respect of rebate claims under reference in the present case the procedure prescribed under Notification No. 19/2004-C.E. (N.T.) has not been followed scrupulously by the applicant and therefore correlation between the excisable goods claimed to have been cleared for export from factory of manufacturer and the export documents as relevant to such export clearances cannot be established.

10. The applicant has failed to produce any evidences before the Government to show that the goods cleared from the factory were the same goods which were exported. The applicant has mainly relied on plea that procedural infraction of Notifications, circulars etc. are to be condoned if exports have really taken place and the law is settled now that the substantive benefit cannot be denied for procedural lapses.

11. Government observes that it is a settled issue that benefit under a conditional notification cannot be extended in case of non-fulfillment of

conditions and/or non-compliance of procedure prescribed therein as held by the Apex Court in the case of Government of India v. Indian Tobacco Association - 2005 (187) E.L.T. 162 (S.C.); Union of India v. Dharmendra Textile Processors - 2008 (231) E.L.T. 3 (S.C.). Also, it is settled that a notification has to be treated as a part of the statute and it should be read along with the Act as held in the case of Collector of Central Excise v. Parle Exports (P) Ltd. - 1988 (38) E.L.T. 741 (S.C.) and Orient Weaving Mills Pvt. Ltd. v. Union of India - 1978 (2) E.L.T. J311 (S.C.) (Constitution Bench).

12. Government further notes that the applicant relied on the various judgments regarding procedural relaxation on technical grounds. The point which needs to be emphasized is that when the applicant seeks rebate under Notification No. 19/2004-N.T., dated 6-9-2004, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under such Notification No. 19/2004-N.T., dated 6-9-2004 the applicant should have ensured strict compliance of the conditions attached to the said Notification. Government place reliance on the judgment in the case of Mihir Textiles Ltd. v. Collector of Customs, Bombay, 1997 (92) E.L.T. 9 (S.C.), wherein it is held that :

> *"concessional relief of duty which is made dependent on the satisfaction of certain conditions cannot be granted without compliance of such conditions. No matter even if the conditions are only directory."*

13. In view of the foregoing, Government observes that the impugned goods were not exported directly from the factory or warehouse and without ARE-1s bearing certification about the goods cleared under self-sealing and self-certification procedure and therefore the conditions and procedure of sealing of goods at the place of dispatch were not followed and therefore the correlation between the goods cleared from the factory and those exported cannot be said to have been established. Government, therefore, holds that non observations of the conditions and procedure of self-sealing as provided in the Notification No.19/2004–CE(NT) dated 06.09.2004 cannot be treated as minor procedural lapse for the purpose of availing benefit of rebate of

duty on impugned export goods. Therefore, the various judgments relied on by the applicant regarding procedural relaxation on technical grounds as well as applicant's plea about treating this lapse as procedural one cannot be accepted.

14. In view of above all Government finds no merits in the present revision application of the applicant and the impugned Order-in-Appeal is upheld for being legal and proper.

15. The revision application is therefore rejected being devoid of merits.

Shrawan 11/4/23

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 229/2023-CX (WZ) /ASRA/Mumbai DATED 11.04.23

To,

M/s. Aquatherm Engineering Consultants Inc.,
A-402, Ansal Chambers-1,
3, Bhikaji Cama Place,
New Delhi-110066.

Copy to:

1. The Pr. Commissioner of GST & CX, Ahmedabad North Commissionerate.
2. The Commissioner(Appeals-I), Central Excise, Ahmedabad.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.