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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. 198/64/WZ/18-RA

2260

Date of Issue: 26.04.2023

ORDER NO. 234/2023-CX (WZ) /ASRA/Mumbai DATED 26.04.2023 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 : The Commissioner of GST & Central Excise, Surat

Respondent: M/s Shakti Rubber Industries
5/6, Krishna Industrial Estate, Kadodara,
Surat 394237

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. CCESA-SRT-(Appeals)/PS-137/17-18 dated 30.10.2017 passed by the Commissioner (Appeals), CGST & Central Excise, Surat.

ORDER

This revision application is filed by Commissioner, GST & Central Excise, Surat (hereinafter referred to as the "Applicant-department") against the Order-in-Appeal No. CCESA-SRT-(Appeals)/PS-137/17-18 dated 30.10.2017 passed by the Commissioner (Appeals), CGST & Central Excise, Surat.

2.1. Brief facts of the case are that the Respondent is engaged in the manufacture of excisable goods falling under Chapter 39 of the Central Excise Tariff Act, 1985. At the time of export, the Respondent was not registered with Central Excise, and had applied for permission for input stage rebate under Notification No 21/2004 dated 06.09.2004. After obtaining permission for the jurisdictional authority, the Respondent procured P.P Sheets from M/s Sagis Plastics Pvt Ltd, and after processing, the goods were exported under ARE-2 No. 01/15-16 dated 18.09.2015.

2.2. The Respondent filed a rebate claim for Rs. 99,038/- alongwith relevant documents under Rule 18 of the Central Excise Rules, 2002 read with Notification No 21/2004-CE(NT) dated 06.09.2004 as amended for rebate on excisable goods used in the manufacture or processing of export goods.

3. Pursuant to following the provisions of the law, the adjudicating authority i.e the Assistant Commissioner, Central Excise and Customs, Division-II, Surat-I vide Order-in-Original No. SRT-I/Div-II/346/2616-17 dated 30.12.2016 rejected the rebate claim under Section 11B of the Central Excise Act, 1944 and Rule 18 of the Central Excise Rules, 2002 read with Notification No 21/2004-CE(NT) dated 06.09.2004, on the grounds that in the absence of original/duplicate copy of the ARE-1 duly endorsed by the Customs, the export of duty paid goods cannot be established.

4. Being aggrieved by the Order-in-Original, the Respondent filed an appeal before the Commissioner (Appeals), CGST & Central Excise, Surat. The Appellate Authority vide Order-in-Appeal No. CCESA-SRT-(Appeals)/PS-137/17-18 dated 30.10.2017, allowed the appeal and set aside the Order-in-Original.

4. Being aggrieved with the impugned Order-in-Appeal, the Applicant-department filed the Revision Application on the following grounds:

4.1. That the AA has erred in not considering the fact that granting rebate is not obligatory on the part of the Government but shall be subject to such conditions, limitations specified by the Government by way of Rules, Notifications and instructions

4.2. That the provision contained in Para 3(b) (ii) of Notification No. 19/2004-CE (NT) dated 06.09.2004 has not been followed and thus in the absence of statutory documents, duty paid nature of the goods cannot be ascertained nor established and therefore the fundamental criteria as envisaged in para 8.4 part I Chapter 8 of the CBEC's Excise Manual of Supplementary Instruction for ascertaining the duty paid nature of the goods exported are not fulfilled in the instant case;

4.3. That the if the claim is granted on the basis of photo copies of the required documents, it would open up possibility of the claimant filing claim on the basis of manipulated fraudulent documents which is difficult to identify in a photo copy and also file a claim with the jurisdictional Commissionerate as well as with the Maritime Commissionerate;

4.4. That there are no provisions for claim of rebate in case of loss of documents when the goods are exported under rebate, and in the absence of such a procedure, the AA erred in holding the condition of submission of original/duplicate copy of ARE-2, in original as procedural

4.5. That the AA has misconstrued the order in the case of Enkay Containers [2013(295)E.L.T 165(GOI)] wherein it has been held that submission of original document is a statutory requirement, is not applicable in the instant case;

4.6. The Applicant-department has also relied upon the decisions in the following cases

(i) J.Yashoda vs. Shobha Rani [2007(212) E.L.T. 458(SC)]

(ii) Vee Excel Drug and Pharmaceuticals Pvt Ltd vs. UOI [2014(305) E.L.T 100(All)]

Under the circumstances, the Applicant-department prayed to set aside the Order-in-Appeal and restore the OIO

5. The Respondent filed written submissions to the Revision Application as under:

5.1. That the department should have verified the fact of export from www.icagate.gov.in or from the Customs port officer instead of filing the revision application and when there is no dispute of export having taken place, the technical lapse of submission of photo copy of ARE-2 be accepted and allowed

5.2. That applying the ratio of online method adopted for all verifications, pursuant to the advent of the GST regime, to the facts of the revision application, the revision application need to be rejected;

5.3. That the decision of the GOI, RA in the case of M/s Enkay Containers [2013(295) E.L.T 165(GOI)] and the decision of the Hon'ble High Court of Allahabad [2014(01)LCX 0144] relied upon by the department are clearly distinguishable in the instant case ;

5.4. The Respondent has relied upon several case laws to further their contention that substantive benefit of refund may not be denied on account of procedural lapse

- (i) Mangalore Chemicals and Fertilisers Ltd vs. DCCE [1991(55) E.L.T 437(SC)]
- (ii) Zandu Chemicals Ltd vs. UOI [2015(315) E.L.T 520(Bom)]
- (iii) In RE: Shalina Labortories Pvt Ltd [2014(312) E.L.T. 868(GOI)]
- (iv) In RE: Polyplex Corporation Ltd vs. CCE (Appeals), Meerut-II [2014(311) E.L.T 923(GOI)]
- (v) Arti Industries Ltd vs. UOI [2014(305)E.L.T 196(Bom)]
- (vi) Kaizen Plastmould Pvt Ltd vs. UOI [2015(330) E.L.T. 40(Bom)]
- (vii) U.M.Cables Ltd vs. UOI [2013(293) E.L.T. 641(Bom)]
- (viii) In RE: CCE, Surat vs. GSL India Ltd [2012(276) E.L.T 0116(GOI)]
- (ix) In RE: United Phosphorus Ltd vs. CCE [2015(321) E.L.T 148 (GOI)]
- (x) In RE: Tricon Enterprises Pvt Ltd vs. CCE (Appeals), Mumbai-II [2015(320) E.L.T 667(GOI)]
- (xi) others ...

5.4. That as per CBIC instruction dated 25.05.2018, a limit of Rs. 2,50,000/- has been fixed for filing appeal with Commissioner (Appeals) and

appeal below the amount should not be filed. In the instant case, the amount in dispute, being below the limit of Rs. 2,50,000/-, the Revision Application is liable to be dismissed on this ground alone.

6. Personal hearing in the case was scheduled for 13.10.2022 or 03.11.2022, 09.12.2022 or 23.12.2022, 12.01.2023 or 23.01.2023, 10.02.2023 or 17.02.2023. Shri Santosh Soni, consultant appeared online on 10.02.2023 on behalf of the Respondent. He submitted that exporter being new, original and duplicate copies of the ARE-2 could not be produced. He further informed that both these copies were later traced and were now available. He requested to maintain Commissioner(Appeals) order who had allowed their appeal as there was no doubt on export of duty paid goods. No one appeared for the personal hearing on behalf of the Applicant-department.

7. 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.

8.1. In the instant case, the rebate claim was filed by the Respondent for input stage rebate under Notification No. 21/2004 dated 06.09.2004. The duty paid inputs, after processing were exported by the Respondent under ARE-2 No. 01/15-16 dated 18.09.2015. The rebate claim was rejected by the original adjudicating authority on the sole ground that the original and duplicate copies of the ARE-2 were not submitted by Respondent and the adjudicating authority contended that in the absence of the original and duplicate copies of the original/duplicate copy of the ARE-2 duly certified by Customs, the export of the duty paid goods could not be established. The Respondent had submitted the photo copy of the original and duplicate copy of the ARE-2 duly endorsed by the Customs.

8.2. Government observes that on an appeal by the Respondent, the Appellate Authority, on the contrary held that the Respondent *"cannot be deprived of their legitimate benefit of rebate for procedural lapse when there is no dispute on the substantive conditions i.e utilization of inputs (for which rebate claimed) in the manufacture of finished goods; exportation of finished goods manufactured within time frame specified; duty payment etc."*

9.1. In this regard, the Government finds that the Manual of Instructions that have been issued by the CBEC specifies the documents and procedure which are required for filing a claim of input stage rebate. The assessee, before the export of the goods has to furnish a declaration alongwith a statement of the input-output for each export product. The input-output ratio has to be verified by the jurisdictional Assistant Commissioner/Deputy Commissioner, who after verification may grant permission for manufacture or processing and export of finished goods. As regards the documents to be submitted as the original copy of the ARE-2 duly endorsed by the Customs officer, the invoice and self-attested copy of shipping bill (Export promotion copy), bill of lading/airway bill and duplicate copy of the ARE-2 received in sealed cover from customs officer. Further the Manual of instructions states that the procedures for removal, presentations of documents, acceptance of documents/filing of rebate claims as followed under Notification No 19/2004 CE(NT) dated 06.09.2004 or Notification No. 42/2001 CE(NT) dated 26.06.2001 has to be followed *mutatis mutandis*. The Manual also states that the rebate of input stage duty shall be allowed to the manufacturer(processor)-Exporter, where such inputs are used in the manufacture/processing of export goods and cleared directly from the factory of the processor/manufacturer.

9.2. Government notes that the Respondent had applied for input stage rebate under Notification No 21/2004 dated 06.09.2004 which was granted to them by the jurisdictional authority and had submitted the documents viz. request letter for claim of rebate, triplicate copy of ARE-2 (in sealed cover) duly endorsed by the officer in charge of the manufacturing unit, self attested copy of the shipping bill, bill of lading, mate receipt and export invoice, excise invoice for procurement of excisable goods from the factory of the manufacturer in respect of the said consignment exported by them. The shortcoming in the submission of documents was that the Respondent had submitted the photocopies of the Original and Duplicate ARE-2 endorsed by the Customs. The collateral documents were sufficient to ascertain whether the goods cleared under said ARE-2 had been exported or otherwise. Further, in case of any doubt arising with the adjudicating authority the genuineness of the document could have been referred to the Customs Authorities and

Central Excise Authorities and could have been verified, particularly as the photo copies of the ARE-2, duly endorsed by the Customs were furnished by the Respondent.

9.3. The Government observes that it is on record that the instant case being one of rebate of input stage rebate, the processed goods were exported after the permission as required under Notification No. 21/2004-CE (NT) dated 06.09.2004 was obtained from the jurisdictional authority. Government thus holds that the non-submission of original and duplicate copies of ARE-2 form by the Respondent should not result in the deprivation of the statutory right to claim a rebate subject to the satisfaction of the authority on the production of sufficient documentary material that would establish the identity of the goods exported.

10.1 Further, 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 form 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. It is also observed that, in the present case, no doubt has been expressed whatsoever that the goods were exported goods.

10.2. Also, it is observed 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. vs. Deputy Commissioner*. 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."

11. Government holds that the rejection of the rebate claim for input stage credit, solely on the ground of non-submission of original / duplicate copies of ARE-2, when sufficient collateral documents are available on records and there is no allegation of the goods not having been exported or inputs not having been used in the processing of the export goods, is not just and proper.

12. In view of above circumstances, Government upholds the impugned Order-in-Appeal No. CCESA-SRT-(Appeals)/PS-137/17-18 dated 30.10.2017 passed by the Commissioner (Appeals), CGST & Central Excise, Surat and rejects the revision application.

13. The Revision Application is dismissed as being devoid of merit.


(SHRAWAN KUMAR)

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

ORDER No 234/2023-CX (WZ) /ASRA/Mumbai DATED 26.04.2023

To,

1) The Commissioner of GST & Central Excise, Surat, Central Excise Building, Opp Gandhi Baugh, Chowk Bazaar, Surat 395 001

Copy to:

1. M/s Shakti Rubber Industries, 5/6, Krishna Industrial Estate, Kadodara, Surat 394237
2. The Commissioner of CGST & Central Excise, (Appeals) Surat, 3rd Floor, Magnus Mall, Althan Bhimrao Canal Road, Near Atlantis Shopping Mall, Althan, Surat 395 017

3. ~~Sr. P.S. to AS (RA), Mumbai~~
4. ~~Notice Board~~
5. ~~Spare Copy.~~