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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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. 195/27/WZ/2019-RA, 3452 Date of Issue: 01.05.2023

ORDER NO. 236/2023-CEX (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 : M/s. Weavetech Engineering Ltd.

Respondent : Principal Commissioner of CGST, Surat Commissionerate

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.– CCESA-SRT(Appeals)/PS-580/18-19 dated 27.11.2018 passed by the Commissioner(Appeals),CGST & Central Excise, Surat.

ORDER

This Revision Application has been filed by M/s. Weavetech Engineering Ltd. (hereinafter referred to as "Applicant") against Order-in-Appeal No.– CCESA-SRT(Appeals)/PS-580/18-19 dated 27.11.2018 passed by the Commissioner(Appeals),CGST & Central Excise, Surat.

2. The facts of the case are that the Applicant had filed rebate claim under rule 18 of CER, 2002 read with Notification No. 19/2004-CE dated 06.09.2004. On scrutiny of the claims, JRO had found that the applicant had removed the goods from the factory premises without payment of duty and without preparation of ARE-1 as required under the aforesaid notification. Therefore, SCN dated 19.06.2017 was issued to the applicant which was adjudicated vide OIO SRT-V/Adj-194/17-18-R dated 15.09.2017 vide which the claims got rejected. Aggrieved by the OIO, the Applicant filed appeal with the Commissioner(Appeals),CGST & Central Excise, Surat, who vide Order-in-Appeal No.- CCESA-SRT(Appeals)/PS-580/18-19 dated 27.11.2018 rejected their appeal and upheld the OIO.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application on the following grounds:

i. In para 3 of the captioned Show Cause Notice, it has been alleged that they had removed the goods from the factory without payment of duty. The said allegation is absolutely incorrect, as the evidence of payment of duty debited vide RG 23A Pt.II entry no. 518 dated 30.06.2016 was furnished along with our rebate claim, however, unfortunately, the SCN issuing authority had not taken note of the same. Thus, it is quite clear that the export was made on payment of duty only. It is not necessary that the duty payment in respect of the export clearances should be on the very same day or before the clearance of such goods. As per the provisions of Rule 8 of Central Excise Rules, 2002, the duty payment is permissible after the clearance of goods.

ii. Non preparation of ARE1 is just a procedural lapse. The Show Cause also speaks about procedural lapse only. In para 3 of the captioned Show Cause Notice, it has been further alleged that we had removed the said goods from the factory without preparation of ARE-1 and without following the procedure laid down under Notification No. 19/2004- CE(NT) dated 06.09.2004. In this regard, it is to submit that the only lapse on our part is that we were not aware that we were required to prepare the ARE-1 for such export of goods, hence, we had not prepared the relevant details in the form of ARE-1 and did not send the same to the Superintendent or Inspector of Central Excise having jurisdiction over our factory within twenty four hours of removal of the goods. However, the said lapse on our part is just a procedural lapse. Even in the Show Cause Notice in reference, in para 3 of the same, it is alleged that we have not followed the procedure as prescribed under Notification No. 19/2004- CE(NT) (as amended) and hence the rebate claim is liable to be rejected. Thus, the allegation in the Show cause Notice is regarding not following the ARE-1 procedure/procedural lapse. It is well settled now that the rebate claims cannot be rejected for such procedural lapse if it is proved that export has been made and duty has been paid on goods exported. The prime necessities for getting rebate on export are that export should have been made and duty should have been paid on goods exported. Both these necessities have been fulfilled by us. Also, the rebate claim cannot be rejected on the basis of non-availability of ARE-1. There are various judgments in our favour in this regard.

iii. Applicant has placed reliance on various case laws.

iv. In view of above, Applicant requested to set aside the impugned OIA.

4. Personal hearing in this case was scheduled on 10.11.2022, 13.11.2022, 14.12.2022 and 11.01.2023. However, neither the applicant nor respondent appeared for the personal hearing on the appointed dates, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions.

However, Applicant has submitted the written submission on 12.01.2023 reiterating their earlier submissions. Therefore, Government proceeds to decide these cases on merits on the basis of available records.

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

6. Government observes that the main issues in the instant case are whether the non-preparation of Form ARE-1 and payment of duty after the removal of goods on a later date, can be reasons for denying rebate under Rule 18 of Central Excise Rules,2002.

7. Government first proceeds to examine the statutory position with regard to the documents required for sanction of a rebate claim.

7.1 Rule 18 provides that Central Government may by notification grant rebate of duty on goods exported subject to conditions and limitations if any and subject to fulfilment of procedure as specified. Notification 19/2004-C.E. (N.T.), dated 6-9-2004 as amended issued under Rule 18 provides that the rebate sanctioning authority will compare the original copy of ARE-1 submitted by exporter with the duplicate copy received from Customs authorities and triplicate from the Excise authorities.

7.2 Also the provisions specified in Chapters 8 (8.3) & (8.4) of CBEC Basic Excise Manual as Supplementary Instructions are applicable in this case, which reads as under:-

> *"8. Sanction of claim for rebate by Central Excise*
> *8.3 The following documents shall be required for filing claim of rebate:-*
> *(i) A request on the letterhead of the exporter containing claim of rebate, ARE-1 nos. dates, corresponding invoice numbers and dates amount of rebate on each ARE-1 and its calculations.*
> *(ii) Original copy of ARE-1.*
> *(iii) invoice issued under Rule 11.*
> *(iv) self-attested copy of shipping bill and*
> *(v) self-attested copy of Bill of Lading*

(vi) Disclaimer Certificate [in case where claimant is other than exporter]

8.4. After satisfying himself that the goods cleared for export under the relevant ARE-1 application mentioned in the claim were actually exported, as evident by the original and duplicate copies of ARE-1 duly certified by Customs, and that the goods are of duty paid character as certified on the triplicate copy of ARE-1 received from the jurisdictional Superintendent of Central Excise (Range Office) the rebate sanctioning authority will sanction the rebate, in part or full. In case of any reduction or rejection of the claim an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued."

From the above, Government notes that original copy of ARE-1 and Excise invoice among other documents are essential documents for claiming rebate. Any non-submission of documents in the manner prescribed thus imparts a character of invalidity to the rebate claim. Also, in the absence of the original copies of ARE-1 duly endorsed by the Customs, the export of the same duty paid goods which were cleared from the factory cannot be established, which is a fundamental requirement for sanctioning the rebate under Rule 18 read with Notification 19/2004-C.E. (N.T.), dated 6-9-2004.

8. Government notes that the applicant has relied on the various judgments/Orders regarding procedural relaxation on technical grounds. Government observes that in all these case-laws the exporter had prepared the prescribed documents and complied with the laid down procedure. However, while filing rebate claim they could not submit original and duplicate copy of ARE-1 for various reasons such as:

- Documents lost by CHA. FIR filed.
- Documents lost in transit.
- Documents lost/misplaced.

Therefore, on the basis of triplicate/extra copy of ARE-1 and other related documents, authenticity of export and other verifications were possible, which is the main emphasis in these case laws. However, in the instant case the applicant had not prepared ARE-1 at all and had not informed the Central Excise authorities about the export being carried out by them,

though it was a requirement for claiming rebate. It therefore implies that they have simply skipped the procedure and want the Department to overlook it in the light of relied upon case laws. In other words, the point which needs to be emphasized is that when the applicant seeks rebate under Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, which prescribes compliance of certain conditions, the same cannot be ignored altogether.

9. Government place reliance on the judgment by Hon'ble High Court of Chhattisgarh in the case of Triputi Steel Traders [2019 (365) E.L.T. 497 (Chhattisgarh)] wherein at para 24 it is held that:-

> ***"24.*** *Upon such consideration we are, therefore, inclined to hold that ordinarily, the requirements of fulfilment of pre-conditions as stated in Rule 18 read with relevant notification, as mandated are required to be fulfilled to avail rebate. However, in exceptional cases it is open for the assessee to prove claim of rebate by leading other collateral documentary evidence in support of entitlement of rebate. As we have noticed, it would only be an exception to the general rule and not a choice of the assessee to either submit ARE-1 document or to lead collateral documentary evidence. We would further hold that where an assessee seeks to establish claim for rebate without ARE-1 document or for that matter without submission of those documents which are specified in relevant notifications he is required to clearly state as to what was that reason beyond his control due to which he could not obtain ARE-1 document. In cases of the nature as was noticed in the decision of U.M. Cables Limited, the assessee would be required to file at least affidavit of having lost the document required to be submitted to claim rebate. It will then be a matter of enquiry by the authorities as to whether the reason assigned by the assessee are acceptable to allow him to lead collateral documentary evidence in support of its claim of rebate. But we wish to make it clear that under no circumstances, it can be treated as parallel system as it is not established procedure under the law."*

10. With regard to the issue of payment of duty after the removal of goods on a later date, Government reproduces relevant portion of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004:

"G.S.R. 570(E). -In exercise of the powers conferred by rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No. 40/2001-Central Excise (NT), dated the 26th June 2001,[G.S.R.469(E), dated the 26thJune, 2001] in so far as it relates to export to the countries other than Nepal and Bhutan, the Central Government hereby directs that there shall be granted rebate of the wholeof the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), exported to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter,-

(2) Conditions and limitations : –

(a) 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;"

From the above, it is ambiguously clear that goods must be exported after payment of duty in order to get the benefit of rebate under the aforesaid notification. There are plethora of judgments wherein it is held that exemption notifications shall be construed strictly. In the present case, it is an admitted fact that the duty was paid by the Applicant after removal of goods on a later date. Therefore, benefit of rebate can not be allowed to the Applicant under this Notification.

11. In view of the findings recorded above, Government upholds the Order-in-Appeal No.– CCESA-SRT(Appeals)/PS-580/18-19 dated 27.11.2018 passed by the Commissioner(Appeals),CGST & Central Excise, Surat and rejects the impugned Revision Application.

Shrawan 27/4/23

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

ORDER No. 236/2023-CEX (WZ) /ASRA/Mumbai Dated 26.4.23

To,

1. M/s. Weavetech Engineering Ltd., Plot No. A 5/11, Road No. 11, Gate No. 2, Sachin Indutrial Estate, Surat- 394230.
2. The Principal Commissioner CGST, New Central Excise Building, Chowk Bazaar, Surat-395001.

Copy to:

1. The Commissioner of CGST &CX(Appeals), Surat Commissionerate, 3rd Floor, Magnus Mall, Althan Bhimrad Canal Road, Near Atlantas Shopping Mall, Althan, Surat- 395017.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.