

REGISTERED POST
SPEED POST



**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. 198/28/14-RA / 3966 Date of Issue: 04.08.2021
F.No. 198/29/14-RA / 3966
F.No. 198/35/14-RA

249-251
ORDER NO. /2021-CX (WZ) /ASRA/MUMBAI DATED 26.07.2021
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.

Applicants : Commissioner of Central Excise & Service Tax, Kolhapur

Respondents : M/s Oswal F.M. Hammerle Textiles Ltd.

Subject : Revision Applications filed under Section 35EE of Central
Excise Act, 1944 against Orders-in-Appeal Nos. PUN-EXCUS-
002-APP-124-125-13-14 dated 28.11.2013, PUN-EXCUS-002-
APP-130-13-14 dated 29.11.2013 and PUN-EXCUS-002-APP-
150 to 154-13-14 dated 26.12.2013 passed by the
Commissioner (Appeals), Central Excise, Pune-II.

ORDER

The three Revision Applications have been filed by the Commissioner of Central Excise & Service Tax, Kolhapur (hereinafter referred to as "the Applicants") against the Orders-in-Appeal Nos. PUN-EXCUS-002-APP-124-125-13-14 dated 28.11.2013, PUN-EXCUS-002-APP-130-13-14 dated 29.11.2013 and PUN-EXCUS-002-APP-150 to 154-13-14 dated 26.12.2013 passed by the Commissioner (Appeals), Central Excise, Pune-II. The details of the Revision Application are as given below:

Sr. No.	Rebate claim Amt(Rs.)	No. of ARE-1	OIO No. dt	OIA No. & dt	Revision Application
1	27,788 dt 6.12.12	06 nos	Simple Order dt. 28.1.13 sanctioned the rebate of Rs. 27,788/-	PUN-EXCUS-002-APP-124-125-13-14 dated 28.11.2013 upheld the OIO and rejected the deptt. appeal	198/28/14-RA
	40,332 dt 12.12.12	07 nos	Simple Order dt. 28.1.13 sanctioned the rebate of Rs. 40,332/-		
2	1,14,279	7 nos.	ADJ/194/KOP-I/2012-13 (184/REB/2012-13) dt 23.1.13 sanctioned the rebate of Rs. 1,14,279/-	PUN-EXCUS-002-APP-130-13-14 dated 29.11.2013 upheld the OIO and rejected the deptt. appeal	198/29/14-RA
3	18,465 dt 3.12.12	7 nos	Simple Order dt. 28.1.13 sanctioned the rebate of Rs. 18,465/-	PUN-EXCUS-002-APP-150 to 154-13-14 dated 26.12.2013 upheld the OIO and rejected the deptt. appeal	198/35/14-RA
	1,14,987 dt 20.11.12	06 nos	ADJ/205/KOP-I/2012-13 (195/REB/2012-13) dt 28.1.13 sanctioned the rebate of Rs. 1,14,987/-		
	4,47,357 dt 1.11.12	08 nos	ADJ/196/KOP-I/2012-13(186/REB/2012-13) dt 28.1.13 sanctioned the rebate of Rs. 4,47,357/-		
	59,811 dt 1.11.12	07 nos	ADJ/193/KOP-I/2012-13(183/REB/2012-13) dt 28.1.13 sanctioned the rebate of Rs. 59,811/-		
	22,262 dt 12.12.12	05 nos	Simple Order dt. 28.1.13 sanctioned the rebate of Rs. 22,262/-		

2. The cases in brief is that M/s Oswal F.M. Hammerle Textiles Ltd., T-5 +T-5/Part/1, Five Star MIDC, Kagal, District-Kolhapur-416216 (herein after

as "the Respondents") manufacturer of excisable goods viz 100% Yarn Dyed Cotton Shirting Fabrics falling under Chapter Sub-heading No. 52084230 of the Central Excise Tariff Act, 1985. The Applicant had cleared excisable goods for export on payment of Central Excise duty and subsequently filed rebate claims.

F.No. 198/28/14-RA

2.1 Two rebate claims of Rs. 27,788/- and Rs. 40,332/- were sanctioned by the Deputy Commissioner, Central Excise, Kolhapur-1 Division vide two Simple Order-in-Original both dated 28.1.2012. On scrutiny of the sanctioned rebate claims, it was observed that in respect of the following ARE-1s the Applicant had failed to submit Original and Duplicate copies of the ARE-1 having signature of the Custom Officer on the reverse of the ARE-1 in support of the endorsement regarding details of export:

Sr.No.	Rebate claim sanctioned Amt(Rs.)	Appeal filed against		Reason to file appeal
		ARE-1 No. & dt	Amt (Rs.)	
1.(a)	27,788	838 dt 06.12.11	629	Non submission of Original and Duplicate copies
1.(b)	40,332	857 dt 14.12.11	4,405	
		859 dt 15.12.11	570	
		863 dt 17.12.11	1,439	
		Total	6,414	
1	Grant total		7,043	

Therefore, it appeared that proof of export had not been submitted and hence the rebate claims were not admissible. The Department then filed two appeals with the Commissioner (Appeals), Central Excise, Pune-II. The Commissioner(Appeals) vide Orders-in-Appeals Nos. PUN-EXCUS-002-APP-124-125-13-14 dated 28.11.2013 rejected the two Departmental appeals.

F.No. 198/29/14-RA

2.2 The rebate claim of Rs. 1,14,279/- was sanctioned by the Deputy Commissioner, Central Excise, Kolhapur-1 Division vide Order-in-

Original No. ADJ/194/KOP-I/2012-13 (184/REB/2012-13) dated 23.01.2013. On scrutiny of the rebate claim, it was observed that discrepancies were seen in respect of the following ARE-1s:

Sr.No.	Rebate claim sanctioned Amt(Rs.)	Appeal filed against		Reason to file appeal
		ARE-1 No. & dt	Amt (Rs.)	
1	1,14,279	765 dt 07.11.11	2,154	The value and duty shown on the Original and Duplicate copies of ARE-1 was Rs. 41,814 and Rs. 2,154/- resp. and on the Triplicate copy of ARE-1 it was shown as Rs. 57,902/- and Rs. 2,982/-i.e. the details on difference copies of ARE-1 are not matching.
		767 dt 8.11.11	5,266	Non submission of Original and Duplicate copies
		772 dt 11.11.11	14,011	
		773 dt 11.11.11	1,693	

Therefore, it appeared that rebate in respect of the above four ARE-1s were not admissible. Hence, the Department then filed appeal with the Commissioner (Appeals), Central Excise, Pune-II. The Commissioner(Appeals) vide Order-in-Appeal No. PUN-EXCUS-002-APP-130-13-14 dated 29.11.2013 upheld the Order-in-Original and rejected the Departmental appeal.

F.No. 198/35/14-RA

2.3 05 rebate claims were sanctioned by the Deputy Commissioner, Central Excise, Kolhapur-1 Division vide 05 Order-in-Original all dated 28.01.2013. On scrutiny of the rebate claims, it was observed that

- (a) Original/Duplicate copies of the ARE-1s were signed by one authorized person whereas the triplicate copy was signed by another authorized person, from which it appeared that the triplicate copy of the ARE-1 has not been submitted to the department within 24 hours of the removal of the goods and thereby contravened the provisions of Para 6.2 of the Chapter 8 of the CBEC's Excise Manual of Supplementary Instruction

2005. Under the circumstances, the rebate of Rs. 1,72,486/- was not admissible.

- (b) In r/o ARE-1 No. 760 dated 05.11.2011, on Original and Duplicate copy of the ARE-1, the value and duty amounts are shown as Rs. 34,406/- and Rs. 1,771/- respectively, whereas in Triplicate copy it was shown as Rs. 44,286/- and Rs. 2,280/- respectively. In other words, the details of different copies of ARE-1 was not matching with each other. Under the circumstances, the rebate of Rs. 1,771/-.

Hence, the Department then filed appeal with the Commissioner (Appeals), Central Excise, Pune-II. The Commissioner(Appeals) vide Orders-in-Appeal Nos. PUN-EXCUS-002-APP-150 to 154-13-14 dated 26.12.2013 upheld the Orders-in-Original and rejected the Departmental appeals.

3. Aggrieved, the Applicants Department filed three Revision Applications on the following grounds:

- (i) The rebate of duty on export of goods is admissible under the provisions of Section 11B of the Central Excise Act, 1944. Further, the Notification No. 19/2004-C.E. (N.T.) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 lays down the conditions, limitations and procedure for filing rebate claims with the Department. The details of goods viz. description, classification, quantity, value and duty payable etc. to be exported are to be filed in by the exporter on the fact of the said ARE-1.
- (ii) It was the sole responsibility of the exporter to confirm the correctness of the details filed in at the time of clearance itself. Further, the said form is to be filed in at one stroke to a void deviations/ variations.
- (iii) The format prescribed for ARE-1 under the notification has four parts A, B, C and D each for a specific purpose. While Part-A, which is the "Certification by the Central Excise Officer", clearly mentions that the certification pertains to "...goods described overleaf....", Part B, which is

the "*Certification by the officer of Customs*" mentions that the certification pertains to "... that above mentioned consignment..". When read together, the format prescribed as per law clearly stipulates that it has to be prepared in such a way that the details of goods to be exported appear on the face of the said ARE-1 and the certifications by the various authorities in relation to the goods being exported are to be obtained on the reverse of the same.

(iv) It was observed that Original/duplicate copies of ARE-1 are signed by one authorized person whereas the triplicate copy had signed by another authorized person, from which it appeared that, the triplicate copy of the ARE-1 had not been submitted to the department within 24 hours of the removal of the goods. Further, in respect of ARE-1 Nos. 760 dated 05.11.2011, the value and duty amounts shown on original/duplicate copy of ARE-1 was not matching with the value and duty shown on triplicate copy of the said ARE-1. In such circumstances considerable doubt arise regarding the actual export details. Further such ARE-1s cannot be said to be providing proof of export.

(v) Further, Sr. No. (3)(xiv) of Notification No. 19/2004 C. E. (N.T.) dated 06.09.2004 reads as under:

"The Commissioner of Customs or other duly appointed officer shall examine the consignments with the particulars as cited in the application and if he finds that the same are correct and exportable in accordance with the laws for the time being in force, shall allow export thereof and certify on the copies of the application that the goods have been duly exported citing the shipping bill number and date and other particulars of export."

(vi) Also, in Chapter 8 of the Central Excise Manual, a procedure for sanctioning of claim for rebate has been given. Para 8.4 of the said Chapter reads as under:

"After satisfying himself that the goods cleared for export under the relevant ARE-1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of ARE-1 duly certified by Customs....., the rebate sanctioning authority will sanction the rebate, in part or full....."

- (vii) The Commissioner (Appeals) has also erred while passing the decision in as much as the following judgments, clearly applicable in the instant case, appear not to have been considered: -
- (a) IN RE West Coast Pigment Corporation [2013 (290) ELT 135 (GOI)],
- (b) IN RE Enkay Containers [2013 (295) ELT 165 (GOI)].
- (viii) The legal position as well as procedure for export and claiming rebate of duty, as outlined above, clearly indicates that documents viz. original/ duplicate copy of ARE-1 duly certified by Custom Officer are fundamental requirement for sanctioning rebate claim. In absence of Original/ Duplicate copy of ARE-1 duly endorsed by Customs, export of duty paid goods cleared on ARE-1 form, from factory cannot be established.
- (ix) In view of the aforesaid grounds, the point to determining is whether, the Commissioner (Appeals) is right in upholding the orders passed by the Deputy Commissioner, Central Excise, Kolhapur I Division, Kolhapur Commissionerate and setting aside the departmental appeal?

4. The Respondent vide their three letters all dated 13.11.2014 submitted the following:

- (i) The Respondent had filed separate rebate claims and separate Order-in-Originals were passed and separate appeals were filed by the Department before the Commissioner(Appeals). The Commissioner(Appeals) had passed Order-in-Appeal bearing separate numbers dealing with the different appeals and in such circumstances, the Department was bound to file separate Revision Applications under Section 35EE before the Revisionary Authority. However, the Department had filed only three Revision Applications for eight separate rebate claims. In view of the above, the impugned revision application is bound to be treated as filed only for three rebate claim.

- (ii) The very vital fact are that it was the case of the Department that
- (a) though Respondent had filed the Original/Duplicate copies of the disputed ARE-1s, still on the reverse side of the ARE-1s i.e. at Part-B of the ARE-1, there was no signature of the Custom Officers and hence the rebate claim can't be sanctioned.
 - (b) there was difference in value/duty as mentioned in Original/Duplicate copies and Triplicate copies of the disputed ARE-1s
 - (c) the Original/Duplicate copies of the disputed ARE-1s were signed by one authorized person whereas Triplicate copies the said ARE-1s were signed by another authorized person, from which it appeared that the Triplicate copy of the said ARE-1 had not been submitted to the Department within 24 hours of the removal of the goods.
- (iii) The Commissioner(Appeals) while passing the impugned Orders-in-Appeal had considered the said objection and after verifying the various collateral documents has concluded that the lacuna of not having signature of the Custom Officer on the reverse side of the ARE-1 is technical/procedural in nature and there is no dispute about the fact that the goods are actually exported and are duty paid and hence the rebate claim cannot be rejected for such technical/procedural lapse on the part of the Custom Officers. In this they place reliance on the case law of Aarti Industries [2014 (305) ELT 196 (Bom-HC)].
- (iv) The reliance placed by the Department on the decision of M/s West Coast Pigment Corporation and M.s Enkay Containers to reject the rebate claim was also wrong since in the said case, the assessee had submitted the dubious extra copy of the ARE-1 and had also quoted any reason for not submitting the original copies of the ARE-1 and hence the Revisionary Authority in the said case had rejected the rebate claim. In the current case, the Department is not at all disputing the genuiness of the documents submitted by the

Respondent in support of their claim and hence the ratio down in the said said decisions is not applicable in the current case.

- (v) The Respondent prayed that the three Revision Applications be dismissed and the impugned Orders-in-Appeal be upheld.

5 Personal Hearing was fixed for 16.01.2020 and 22.01.2021. On behalf of the Applicants, the Assistant Commissioner, Central GST, Division-III, Kolhapur vide letter dated 10.01.2020 (received on 21.01.2020) reiterated the submissions made in their three revision applications. No one appeared on behalf of the Respondent. Since there was a change in the Revisionary Authority, hearing was granted on 04.02.2021, 18.02.2021, 17.03.2021 and 24.03.2021, however none appeared for the hearing. Hence the case is decided 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.

7. On perusal of the records, it is observed in all the three Revision Applicants filed by the Applicants Department the issues to be decided are whether the rebate claims are admissible nor not

- (a) when the Original and Duplicate copies of the ARE-1 having signature of the Custom Officer on the reverse of the ARE-1 in support of the endorsement have not been submitted; and
- (b) when the value and duty shown on the Original / Duplicate copy of ARE-1 and on the Triplicate copy of ARE-1 are not matching and the Original/Duplicate copies of the ARE-1s were signed by one authorized person whereas the triplicate copy was signed by another authorized person and it appeared that the triplicate copy of the ARE-1 has not been submitted to the department within 24 hours of the removal of the goods.

F.Nos. 198/28/14-RA & 198/29/14-RA

8. Issue : The Original and Duplicate copies of the ARE-1 having signature of the Custom Officer on the reverse of the ARE-1 in support of the endorsement have not been submitted.

8.1 On perusal of the records, Government observes that the rebate claims were sanctioned by the Rebate Sanctioning Authority. The Department then filed appeal in respect of the following ARE-1s as the Original and Duplicate copies of the ARE-1s having signature of the Custom Officer on the reverse of the ARE-1 were not submitted and the Commissioner(Appeal) appeals rejected the appeals:

Sr.No.	OIO No. dt	Appeal filed against		OIA No. & dt	Revision Application
		ARE-1 No. & dt	Amt (Rs.)		
1	Simple Order dt. 28.1.13 sanctioned the rebate of Rs. 27,788/-	838 dt 06.12.11	629	PUN-EXCUS-002-APP-124-125-13-14 dated 28.11.2013 upheld the OIO and rejected the deptt. appeal	198/28/14-RA
	Simple Order dt. 28.1.13 sanctioned the rebate of Rs. 40,332/-	857 dt 14.12.11	4,405		
		859 dt 15.12.11	570		
		863 dt 17.12.11	1,439		
Total		7,043			
2	ADJ/194/KOP-I/2012-13 (184/REB/2012-13) dt 23.1.13 sanctioned the rebate of Rs. 1,14,279/-	767 dt 8.11.11	5,266	PUN-EXCUS-002-APP-130-13-14 dated 29.11.2013 upheld the OIO and rejected the deptt. appeal	198/29/14-RA
		772 dt 11.11.11	14,011		
		773 dt 11.11.11	1,693		
	Total		20,970		

8.2 Government observes that the

(a) Commissioner(Appeals) findings in the Order-in-Appeal No. PUN-EXCUS-002-APP-124-125-13-14 dated 28.11.2013:

"9. A perusal of ARE-1 shows that certain export details are required to be mentioned in Part B of the ARE-1 and thereafter duly certified by the Customs. I find that in the said ARE-1s the connected Shipping Bill number and date along with the Vessel Number /Name are mentioned and they also bear stamp of the Jawaharlal Nehru Custom House, Nhava Sheva. There is also a stamp of the name and designation of the Superintendent

(Preventive/Customs) affixed but the same is not signed by the concerned Customs Officer. But in some of the ARE-1s in dispute the front side of the ARE-1 bears a signature and stamp of a Preventive Officer. I also find that the Respondents have submitted other connected documents like Shipping Bill, Bill of Lading, Export Invoice etc. along their rebate claim which tally with the details mentioned in the Part B of the ARE-1s. This sufficiently proves that the goods have been exported and thus can be accepted as proof of export when the authenticity of the documents submitted the Respondents is not doubted. The deficiency in the documents is purely procedural or technical and attributable to the lapses on the part of the Customs Officers. There are number of judgments on the issue where it has been held that substantive benefits cannot be denied for procedural lapses. The incentive oriented beneficial schemes are intended to boost exports and where the substantive fact of export made is not in doubt, liberal interpretation is to be accorded in cases of technical lapses so that the purpose of incentives is not defeated. I also find merits in the Respondents' argument that the said documents are prepared by the Department on which they have no control. The Respondents are not required to counter-sign the report prepared by the Customs officers and therefore they cannot be held responsible for any deficiency on the part of the departmental officer. I therefore do not agree with the Appellants' plea that the proof of export is not submitted."

- (b) Commissioner(Appeals) findings in the Order-in-Appeal No PUN-EXCUS-002-APP-130-13-14 dated 29.11.2013:

9. Further, in respect of the other 3 ARE-Is I find that in the said ARE-Is the connected Shipping Bill number and date, date of export and Mate Receipt number along with date are mentioned and they also bear stamp of the Jawaharlal Nehru Custom House, Nhava Sheva. There are also signatures along with stamps of the concerned Customs Officers. However, the name of the export vessel has not been mentioned by the Customs Officers. I also find that the Respondents have submitted other connected documents like Shipping Bill, Bill of Lading, Export Invoice, Mate Receipt etc. along with their rebate claim which tally with the details mentioned in the Part B of all the 4 impugned ARE-1s. This sufficiently proves that the goods have been exported and thus can be accepted as proof of export when the authenticity of the documents submitted by the Respondents is not doubted. The deficiencies in the documents are purely procedural or technical, some of which are due to the lapses on the part of the Customs Officers. There are number of judgments on the issue where it has been held that substantive

benefits cannot be denied for procedural lapses. The incentive oriented beneficial schemes are intended to boost exports and where the substantive fact of export made is not in doubt, liberal interpretation is to be accorded in cases of technical lapses so that the purpose of incentives is not defeated. I find merits in the arguments of the Respondents that (a) when there is no dispute regarding the export of goods and the rebate claim is for the amount of duty that is actually paid by them, the rebate is admissible to them and (b) that the said documents are prepared by the Department on which they have no control. The Respondents are not required to counter-sign the report prepared by the Customs officers and therefore they cannot be held responsible for any deficiency on the part of the departmental officer. I therefore do not agree with the Appellants' plea that the rebate is not admissible in respect of the impugned ARE- ls."

8.3 Government finds that evidence of duty payment and export of goods have been submitted by the Respondents and it was not disputed by rebate sanctioning authority. The counter-sign in Part B of the ARE-1s are prepared and signed by the Custom Officers. Government is in agreement with the findings of the Commissioner(Appeals) that it is not fair on the part of the Department to raise objection on the subject issue, when it is for the Department to adduce evidence to prove the same. Hence Government finds the rebate claims in respect of the ARE-1s mentioned in Para 7.1 are admissible.

F.Nos. 198/29/14-RA & 198/35/14-RA

9. Issue : The value and duty shown on the Original / Duplicate copy of ARE-1 and on the Triplicate copy of ARE-1 are not matching and the Original/Duplicate copies of the ARE-1s were signed by one authorized person whereas the triplicate copy was signed by another authorized person and it appeared that the triplicate copy of the ARE-1 has not been submitted to the department within 24 hours of the removal of the goods.

9.1 On perusal of the records, Government observes that the rebate claims were sanctioned by the Rebate Sanctioning Authority. The Department then filed appeal on the following grounds.

- (a) in respect ARE-1 No 765 dt 07.11.11, the value and duty shown on the Original and Duplicate copies of ARE-1 was Rs. 41,814/- and Rs. 2,154/- respectively and on the Triplicate copy of ARE-1 it was shown as Rs. 57,902/- and Rs. 2,982/- respectively i.e. the details on difference copies of ARE-1 are not matching.
- (b) in respect ARE-1 No. 760 dated 05.11.2011, on Original and Duplicate copy of the ARE-1, the value and duty amounts are shown as Rs. 34,406/- and Rs. 1,771/- respectively, whereas in Triplicate copy it was shown as Rs. 44,286/- and Rs. 2,280/- respectively. In other words i.e. the details on difference copies of ARE-1 are not matching.
- (c) the Original/Duplicate copies of the ARE-1s were signed by one authorized person whereas the triplicate copy was signed by another authorized person and it appeared that the triplicate copy of the ARE-1 has not been submitted to the department within 24 hours of the removal of the goods.

The details are given below:

Sr.No.	OIO No. dt	Appeal filed against		OIA No. & dt	Revision Application
		ARE-1 No. & dt	Amt (Rs.)		
1	ADJ/194/KOP-I/2012-13 (184/REB/2012-13) dt 23.1.13 sanctioned the rebate of Rs. 1,14,279	765 dt 07.11.11	2,154	PUN-EXCUS-002-APP-130-13-14 dated 29.11.2013 upheld the OIO and rejected the deptt. appeal	198/29/14-RA
2	Simple Order dt. 28.1.13 sanctioned the rebate of Rs. 18,465/-	827 dt 01.12.11	667	PUN-EXCUS-002-APP-150 to 154-13-14 dated 26.12.2013 upheld the OIO and rejected the deptt. appeal	198/35/14-RA
		828 dt 01.12.11	533		
	ADJ/205/KOP-I/2012-13 (195/REB/2012-13) dt 28.1.13 sanctioned the rebate of Rs. 1,14,987/-	798 dt 23.11.11	20,646		
	ADJ/196/KOP-I/2012-13(186/REB/201	818 dt 29.11.11	1,023		
		819 dt	3,916		

2-13) dt 28.1.13 sanctioned the rebate of Rs. 4,47,357/-	30.11.11		
ADJ/193/KOP- I/2012- 13(183/REB/201 2-13) dt 28.1.13 sanctioned the rebate of Rs. 59,811/-	759 dt 05.11.11	636	
	760 dt 05.11.11	1,771	
Simple Order dt. 28.1.13 sanctioned the rebate of Rs. 22,262/-	872 dt 19.12.11	8,463	
Total		1,72,486	

9.2 Government observes that

- (a) Commissioner(Appeals) findings in the Order-in-Appeal No PUN-EXCUS-002-APP-130-13-14 dated 29.11.2013:

"9. A perusal of the various copies of ARE-1 No. 765 dated 07.11.2011 shows that there has been a mistake in respect of the amounts of value and duty mentioned in various copies of the ARE-1. The Respondents have admitted to the mistake attributing it to oversight. I also find that on realizing their mistake the Respondents have under a letter dated 15.01.2013, brought this lapse to the notice of the concerned Deputy Commissioner. This also find mention in the findings of the impugned Order."

- (b) Commissioner(Appeals) findings in the Order-in-Appeal No. PUN-EXCUS-002-APP-150 to 154-13-14 dated 26.12.2013:

"9. In respect of the seven ARE-1s under dispute I find that the case is not that the consignment covered under these ARE-1s have not been exported but the objection raised by the Appellants is that the triplicate copies if the concerned ARE-1s were not submitted within 24 hours of despatch of the goods. The Respondents however submit that they had submitted the copies within 24 hours but the triplicate copies were signed by a different authorized authority vis a vis the authority who had signed the original and duplicate copies of the ARE-1s. In this regard I find merit in the argument of the Respondents that

when there is no dispute about the fact that the consignment covered under the disputed ARE-1s are duly exported then it is unjust to conclude that the proof of export has not been submitted. Further, a perusal of the various copies of ARE-1 No. 760 dated 05.11.2011 show that there has been a mistake in respect of the amounts of value and duty mentioned in various copies of the ARE-1. The Respondents have admitted to the mistake attributing it to oversight. I also find that on 'realizing their mistake the Respondents have under a letter dated 15.01.2013, brought this lapse to the notice of the concerned Deputy Commissioner. This also finds mention in the findings of the impugned Order. I also find that in respect of all the impugned 8 ARE-1s the Respondents have submitted other connected documents like Shipping Bill, all of Lading, Mate Receipt etc. along with their rebate claims which also sufficiently prove that the goods have been exported and can be accepted as proof of export when the authenticity of the documents submitted by the Respondents is not doubted. The deficiency in the documents is purely procedural or technical. There are number of judgments on the issue where it has been held that substantive benefits cannot be denied for procedural lapses. The incentive oriented beneficial schemes are intended to boost exports and where the substantive fact of export made is not in doubt, liberal interpretation is to be accorded in cases of technical lapses so that the purpose of incentives is not defeated. I therefore do not agree with the Appellants' plea that the proof of export is not submitted. "

- 9.3 Government finds that the Original Authority had discussed these issues in detail in the respective Orders-in-Original and then sanctioned the rebate claims. Government is in agreement with the findings of the Commissioner(Appeals) that the deficiency in the documents are purely procedural or technical lapse and hence the rebate claims in respect of the ARE-1s mentioned in Para 8.1 are admissible.

10. 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 TIOL 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.*

11. 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.

12. In view of above, Government upholds the Orders-in-Appeal Nos. PUN-EXCUS-002-APP-124-125-13-14 dated 28.11.2013, PUN-EXCUS-002-APP-130-13-14 dated 29.11.2013 and PUN-EXCUS-002-APP-150 to 154-13-14 dated 26.12.2013 passed by the Commissioner (Appeals), Central Excise, Pune-II as proper and legal.

13. The three Revision Applications filed by the Applicants Department are rejected.


26/7/21
(SHRAWAN KUMAR)

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

249-251
ORDER No /2021-CX (WZ) /ASRA/Mumbai Dated 26.07.2021

To,

The Commissioner of CGST,
Kolhapur Commissionerate
GST Bhavan,
Kolhapur 416 001

Copy to:

1. M/s Oswal F.M. Hammerle Textiles Ltd., T-5 +T-5/Part/1, Five Star MIDC, Kagal, District-Kolhapur-416216
2. Sr P.S. to AS (RA), Mumbai
3. Guard file.
4. Spare Copy