

REGISTERED 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. 195/508/13-RA / 4578 Date of Issue: 18/10/19

ORDER NO. 25/2019-CX (SZ) /ASRA/MUMBAI DATED 12.9.2019
OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s. M.M. Forgings Ltd.,
Plant No. 2, Erasanayakanpatti,
Virimalai - 621 316

Respondent : Commissioner, CGST, No. 1 Williams Road, Cantonment,
Trichy - 620 001.

Subject : Revision Applications filed, under section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
348/2012 dated 14.12.2012 passed by the Commissioner
of Customs & Central Excise (Appeals) Trichirapalli 620
001.

ORDER

This revision application is filed by M/s. M. M. Forgings Ltd., (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. 348/2012 dated 14.12.2012 passed by the Commissioner of Customs & Central Excise (Appeals) Trichirapalli 620 001.

2. The facts of the case, in brief are that the Applicant had filed rebate claims amounting to Rs. 57,18,315/- (Rupees Fifty Seven lacs Eighteen Thousand Three hundred and Fifteen only) on 21.05.2012 under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended in respect of duty paid on exported goods under 89 ARE-1s. The lower adjudicating authority sanctioned the rebate amounting to Rs. 42,49,943/-, an amount of Rs. 1,03,909/- was refunded under section 11B and allowed to be taken in Cenvat credit account. The lower adjudicating authority however, rejected the rebate amount of Rs. 13,64,463/- in respect of 22 ARE-1s nos. due to various discrepancies.

3. Aggrieved by this order the applicant filed appeal before the Commissioner (Appeals). The Commissioner (Appeals) set aside the rejection in respect of 11 (eleven) ARE-1s, and upheld the rejection of 11 (eleven) ARE-1s Nos. 738/15.12.2011, 739/15.12.2011, 715/09.12.2011, 722/12.12.2011, 798/31.12.2011, 758/22.12.2011, 762/23.12.2011, 765/24.12.2011, 741/15.12.2011, 740/15.12.2011, accepting the discrepancies pointed out by the lower adjudicating authority.

4. Being aggrieved and dissatisfied with the impugned orders-in-appeal, the applicant has filed this Revision Application inter alia on the following grounds;

4.1 The applicant submits that the order of the lower appellate authority is totally perverse and not in conformity with the Central Excise Act and Rules framed therein.

4.2 The Applicants submits that they rectified the discrepancies noted by the department and sufficient clarifications have been provided. Hence these minor discrepancies should have been condoned and substantive benefit should not be denied.

4.3 Without prejudice to the above the applicant submits that duty paid nature of the export goods and the fact of their being exported are ascertained by the following documents:-

- i. ARE-1s,
- ii. Shipping bills,
- iii. Bill of lading and
- iv. Bank realization certificate.

4.4 The lower authority in the case of applicants for other ARE-1s has allowed discrepancies noted in the quantity of goods mentioned in the ARE-1s by considering the quantity mentioned in other export documents. The same principle can be adopted for the rest of the rebate claims.

4.5 The goods were actually exported to the place it was destined earlier as mentioned in the Shipping bill and Bill of Lading. The typing of wrong date in the Bill of Lading and date of shipment is through oversight / clerical mistake and there being no dispute with regard to the actual export of the goods, omission ought to have been condoned by the respondent.

4.6 Further, there is no doubt on the part of the department that the goods had not been exported. The applicants submit that in order to grant rebate, what has to be seen is whether the goods have been exported and duty on those exported goods had been paid or not. Once the duty paid nature and export proof is submitted, then sanction of rebate claim becomes automatic.

4.7 The Applicant submits that in the case of In Re: Omsons Cookware Pvt. Ltd. Reported in 2011 (268) E.L.T. 111 (GOI) has held in Para 14..... *restricted and technical interpretation of procedure etc. is to be avoided in order not to defeat the very purpose of such schemes which serve as export incentive to boost export and earn foreign exchange and in case the substantive fact of export having been made*

is not in doubt, a liberal interpretation is to be given in case of any technical breaches. In the Union of India vs A. V. Narasimhalu. 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed the administrative authorities should instead of relying on technicalities, act in manner consistent with the broader concept of justice. Similar observation was made by the Apex Court in the Formica India v. Collector of Central Excise. 1995 (T E.L.T. 511 (S.C.) in observing that once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so, had elapsed'.

4.8 The Applicants submit that as per the settled legal position substantial benefits cannot be denied because of procedural infractions. In relying on the case of M/s Mangalore Chemicals and Fertilizers Ltd. v. DCCE - 1991 (55) E.L.T. 437 (S.C.). In fact, it is now trite law that the procedural infractions of notifications/circulars should be condoned if exports have really taken place and the law is settled that substantive benefit cannot be denied for procedural lapses.

4.9 As per para 8.3 of Chapter 8 of CREC's Central Excise Manual, all the documents required to be filed with the claim of rebate have been submitted. Having filed the documents the department cannot harp on clerical mistakes which happened beyond the control of the Applicants. As long as substantive compliance and the factum of export is not in doubt.

4.10 The Applicants prayed that the Hon'ble Revision Authority may be pleased to quash and set aside the impugned order in Appeal and consequently the order of the original authority with consequential relief and thus render justice.

5. A personal hearing in the case was held on 21.08.2019. The Applicants submitted that the rebate was denied due to minor discrepancies in the documents. The export of goods is not disputed and submitted case laws in favour of their case.

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. Government observes that the Revision Application for rebate claims in respect of 11 (eleven) ARE-1s which were rejected by the Commissioner (Appeals). The details of discrepancies in the rebate claims are detailed below....

Sl. No.	ARE-1 No. & Dt.	Discrepancy
1	727/13.12.2011,	Sailing Date has been Modified in the Original and Duplicate ARE-1 and the modification is not authorized. 2. Date of Sailing of vessel as per original ARE-1 is 19.12.2011 whereas contents received date as per Shipping bill is 20.12.2011.
2	738/15.12.2011	Shipping bill no. and the date of sailing of the vessel has been overwritten in the Original ARE-1 and duly not authorized by Customs.
3	739/15.12.2011	Sailing Date has been Modified in the Original and Duplicate ARE-1 and the modification is not authorized. 2. Date of Sailing of vessel as per original ARE-1 is 25.12.2011 whereas contents received date as per Shipping bill is 27.12.2011.
4 to 6	715/09.12.2011 722/12.12.2011, 741/15.12.2011	Sailing Date has been Modified in the Original and Duplicate ARE-1 and the modification is not authorized.
7 & 8	740/15.12.2011 798/31.12.2011	Date of Sailing of vessel as per original ARE-1 is prior to "laden on board" date.
9 to 11	758/22.12.2011 762/23.12.2011 765/24.12.2011	Sailing Date has been Modified in the Original and Duplicate ARE-1 and the modification is not authorized.

8. Government observes that for proper understanding of issue the relevant provisions of Notification and instructions regarding filing of rebate claim along with requisite documents to be perused are extracted as under :-

8.1 Paras 8.2, 8.3 and 8.4 of part I of Chapter 8 of C.B.E. & C. Excise Manual of Supplementary Instructions stipulates as under :-

“8.2 It shall be essential for the exporter to indicate on the A.R.E. 1 at the time of removal of export goods the office and its complete address with which they intend to file claim of rebate.

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, A.R.E. 1 numbers and dates, corresponding invoice numbers and dates amount of rebate on each A.R.E. 1 and its calculations,
- (ii) Original copy of the A.R.E. 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 A.R.E. 1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of A.R.E. 1 duly certified by Customs, and that the goods are of 'duty-paid' character as certified on the triplicate copy of A.R.E.-1 received from the jurisdictional Superintendent of Central Excise (Range Office), the rebate sanctioning authority shall 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.”

8.2 Para 3(b) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 issued under Rule 18 of the Central Excise Rules, 2002, envisage as under :-

“3(b) Presentation of claim for rebate to Central Excise :-

(i) Claim of the rebate of duty paid on all excisable goods shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner;

(ii) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime Commissioner of Central Excise shall compare the duplicate copy of application received from the officer of customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part.”

9. From above position, it becomes quite clear that ARE-1 application is the basic essential document for export of duty paid goods under rebate claim. Among the documents required to be submitted along with rebate claim only original/duplicate copy of ARE-1 are the original documents and in case of all other documents, photocopies of the same are admissible. The Customs certification on these copies of ARE-1 proves the export of goods.

10. The Government notes that the reasons mentioned for rejection of the rebate claim in the Appellate order appears to be discrepancies in the dates in the documents and that the changes and overwriting that have been made are not authenticated by the Customs authority. For disallowing rebate the Appellate authority needs to substantially elaborate that the exports have not taken place. It is pertinent to note that the documents accompanying the rebate claim authenticate the fact of export of the impugned goods. The Appellate authority has not disputed the authenticity of the documents. Government also notes that the Customs Authority forwards the duplicate

copy of the ARE-1 directly to the rebate sanctioning authority by post or in a sealed cover. The department therefore cannot hold the Revision Applicant solely responsible for such errors. It is also noted that the lower authority clearly mentions that, the Applicants rebate claim was sent to the Range officer at Viralimalai for verification and the Range officer has reported the authenticity of the duty payment in respect of the goods exported. The Range officer has also certified that the claim is in order and that no dues are pending realization from the Applicant and the rebate claim can be sanctioned. Under the circumstances, the rebate claim has suffered scrutiny from the excise as well as customs authorities, and therefore the duty paid nature of the goods and its export is a undeniable fact. The Government therefore observes that the rejection of the rebate claims is due to the discrepancies noticed in the rebate claim documents, appear to be clerical errors, and does not dispute the export of the goods. The Appellate order apart from pointing out the discrepancies has not brought out any fact which dispute the export.

11. From the above it is clear that the ARE-1 is issued at the time of removal of the goods, whereas the Bill of Lading is issued by the carrier and /or his agent to acknowledge the receipt of the cargo for shipment and issued on filing EGM. In the international trade it is not uncommon that the sailing schedule changes owing to various reasons. The exporter may have planned the export to be shipped on a particular vessel keeping the approximate time lines, for transport of the goods to the port and Customs examination etc. However more often than not, inordinate delays and unforeseen exigencies may delay the cargo thus missing the cut off time of the vessel, planned at the time of preparation of ARE-1. This may result in rescheduling the export through a different vessel, this results in the change of vessel name on the subsequent documents. This also results in change in dates and export schedules. Therefore the most essential aspect to be scrutinized is for the rebate authority to establish the fact that the goods exported are the same as the one are cleared under subject ARE-1s.

12. Government observes that while deciding a similar 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.), at para 16 and 17 of its Order observed that "*.....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.*"

13. Government finds that the rationale of aforesaid Hon'ble High Court judgment, is squarely applicable to the instant case in so much as the original ARE-1s have been produced, albeit with a minor discrepancies. Further, In the case of M/s Suksha International v. UOI, 1989 (39) E.L.T. 503 (S.C.) relied upon by the Applicant, the Hon'ble Supreme Court has observed that *an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other.* The Government also relies on the judgement of the Apex court, in the case of Mangalore Chemicals and Fertilizers Ltd. v. DCCE - 1991 (55) E.L.T. 437 (S.C.). Hon'ble Supreme Court while drawing a distinction between a procedural condition of technical nature and a substantive condition in interpreting statute observed that "*procedural lapses of technical nature can be condoned so that substantive benefit is not denied for mere procedural infractions.*"

14. Government further observes that the Applicant has submitted all the required documents along with these claims viz., Original copy of ARE-1, Invoice issued under Rule II, Self-attested copy of Shipping Bills, Self-attested copy of Bill of Lading, Disclaimer Certificate (in case when claimant is other than exporter) to the rebate sanctioning authority. Having done so, the department instead of dwelling on technical discrepancies, needs to ascertain whether the exports have genuinely taken place and the goods are of duty

paid nature. As long as the factum of export is not in doubt rebate being a beneficial scheme, the same should not be denied.

15. In view of the above, Government holds that ends of justice will be met if the impugned ARE-1s are remanded back to the original adjudicating authority for the limited purpose of reverification of the claim with directions that he shall consider the claim for rebate on the basis of the aforesaid documents submitted by the applicant in the correct perspective and assess the claim after satisfying itself in regard to the authenticity of those documents. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

16. Government remands the rebate claims filed under the above mentioned 11 ARE-1s (eleven) to the original adjudicating authority as ordered supra.

17. The revision application is disposed off in the above terms.

18. So ordered.

(SEEMA ARORA)

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

ORDER No. 25/2015-CX (SZ) /ASRA/Mumbai

DATED 12.9.2019

To,

M/s. M.M. Forgings Ltd.,
Plant No. 2, Erasanayakanpatti,
Virimalai - 621 316

Copy to:

1. Commissioner, CGST, No. 1 Williams Road, Cantonment, Trichy - 620 001.
2. The Commissioner of CGST & CX, (Appeals), No. 1 Williams Road, Cantonment, Trichy - 620 001.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.