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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.198/32/2015-RA/4491

Date of Issue: 25.08.2021

ORDER NO. 263 /2021-CX (WZ)/ASRA/MUMBAI DATED 20.08.2021
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 THE CENTRAL
EXCISE ACT, 1944.

Applicant : Commissioner of Central Excise, Ahmedabad-III.

Respondent : M/s Makcur Laboratories.
46/4-7, Village- Zak,
Tal : Dehgam, Dsit. Gandhinagar,
Gujrat - 382325.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Orders-in-Appeal No. AHM-
EXCUS-003-APP-166-14-15 dated 17.03.2015 passed by the
Commissioner (Appeals-I), Central Excise, Ahmedabad.

ORDER

This revision application is filed by the Commissioner of Central Excise, Customs & Service Tax, Ahmedabad-III (hereinafter referred to as "the department") against the Orders-in-Appeal No. AHM-EXCUS-003-APP-166-14-15 dated 17.03.2015 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad.

2. The issue in brief is that the ~~respondent~~, viz. M/s. Makcur Laboratories Ltd., Gandhinagar, 46/4-7, Village- Zak, Tal : Dehgam, Dsit. Gandhinagar, Gujrat are manufacturer of Excisable goods viz. 'PP Medicaments' falling Chapter 30 of 1st Schedule to the Central Excise Tariff Act, 1985. The respondent had filed a rebate claim in respect of ARE-1 No. 41/13-14 dated 12.08.2014 for amount of Rs.79,269/- (Rupees Seventy Nine Thousand Two Hundred and Sixty Nine only) for the duty paid on goods cleared for export under the provisions of Rule 18 of CER, 2002 read with Notification No.19/2004-CE(NT) dated 06.09.2004. The impugned rebate claim was sanctioned by the Rebate Sanctioning Authority vide Order in Original No. 593/Reb/Cex/2014 dated 30.05.2014. However, during the post audit scrutiny of the documents filed alongwith the rebate claim, the following discrepancies were noticed:-

- a) Containers No. mentioned on ARE-1 were AMFU-3099248 & TCKU-9331145 which were tallying with EP copy of Shipping Bill, but the last digit of one container no. AMFU-3099248 was mentioned 6 in the placed of 8 in Bill of Lading.
- b) While verifying through ICEGATE, it is further observed that the Shipping Bill No. 6874947 dated 09.08.2014 contained only one container bearing No. TCKU-9331145.
- c) The ARE-1 Number shown in the shipping bill No. 6874947 dated 09.08.2014 was mentioned as 40/13-14 dated 12.08.2013 whereas the

said Shipping Bill had been endorsed on overleaf of ARE-1 No. 41/13-14 dated 12.08.2013 by the Customs Officer.

- d) It was also observed that Export Invoice No. mentioned in the Shipping Bill was 10/13-14 dated 08.08.2013. However, the respondent submitted Export Invoice No. 11/13-14 dated 12.08.2013 with their rebate claim.

2.2 Since the claims sanctioned to the respondent appeared to be erroneously sanctioned and the applicant were not entitled to the benefit of rebate of Rs. 79,269/- availed by them, as they fulfilled the provisions of Rule 18 of Central Excise Rules, 2002 readwith Notification No. 19/2004-CE(NT) dated 06.09.2004. As such, a Show Cause cum Demand Notice dated 08.09.2014 was issued by the Deputy Commissioner, Central Excise, Gandhinagar Division, Ahmedabad-III Commissionerate for recovery of the erroneously sanctioned refund amount to the respondent.

3. The department filed an appeal before the Commissioner (Appeals-I), Central Excise, Ahmedabad contesting the decision given vide Order in Original No. 593/Reb/Cex/2014 dated 30.05.2014 on the grounds discussed above. The Appellate Authority vide Order in Appeal No. AHM-EXCUS-003-APP-166-14-15 dated 17.03.2015 rejected the appeal filed by the department. The Appellate Authority while passing the impugned Order in Appeal drawn following observations :-

3.1 The respondent had cleared the goods for export under two ARE-1s viz. 40 and 41 both dated 12.08.2013. However, the Customs authority had made endorsement for both the ARE-1s on ARE-1 No. 41 along with Customs Seal No. 01248 and 01249. These seal Nos. were also mentioned in the relevant Bill of Lading and Shipping Bills which were same as those mentioned in the said ARE-1.

3.2 There was mismatch of only last digit of container No. AMFU-3099248. In ARE-1, last digit was 8 whereas in Bill of Lading and Shipping Bill it was 6. So there is reason to believe that container No. AMFU 3099248 instead of AMFU 3099246 mentioned in the said ARE-1 is nothing but clerical

mistake and condonable when export and duty payment is not disputed by reviewing authority.

3.3 As regards the contention that records on ICEGATE indicated only one container No. TCKU9331145 against Shipping Bill No. 6874947 dated 09.08.2013 it was found that total no. of packages and FOB value were same as shown in the EP copy of the said Shipping Bill. EP copy is generated only after EGM is filed. If the second container was not exported, then EP copy of the said Shipping Bill was not appearing against said Shipping Bill was technical matter and can be solved by helpdesk of ICEGATE.

4. Being aggrieved, the Department filed aforementioned revision application against the impugned Order in Appeal on the following grounds that :-

4.1 The Appellate Authority had overlooked the provisions of Rule 18 of Central Excise Rules, 2002 read with notification No. 19/2004-CE(NT) dated 06.09.2004 as amended in respect of goods cleared for export.

4.2 The rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported as evident from the original and duplicate copies of the ARE-1 form duly certified by customs. The second is that the goods are of a duty paid character as certified on the triplicate copy of the ARE-1 form received from the jurisdictional Superintendent of Central Excise. The object and purpose underlying the procedure been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

4.3 The Appellate Authority had erred in holding container no. AMFU 3099248 instead of AMFU 3099246 mentioned in the said ARE-1 was nothing but clerical mistake and condonable when export and duty payment was not

disputed by the reviewing authority. The difference in description of goods or container numbers was part of the verification process by the rebate sanctioning authority before sanctioning rebate. Any discrepancy indicates that the export of the product is disputed.

4.4 The Appellate Authority had overlooked the fact that during verification through ICEGATE, the concerned Shipping bill no. contains only one container bearing number TCKU 9331145 and there was no mention of any other container number in the concerned Shipping bill number and had held that the issue was a technical matter and could be solved by helpdesk of ICEGATE. The Appellate Authority held that the total number of packages and FOB value were same as that shown in the EP copy of the said Shipping Bill; that EP copy was generated only after EGM was filed and that if the second container was not exported, then EP copy of the said S/b would indicate only one container no. However, the Commissioner(A) has not clearly explained in his findings the discrepancy in the ARE-1 number shown in Shipping bill number which is mentioned as 40/13-14 dated 12.8.2013, whereas the rebate claim has been filed for ARE-1 No. 41/13-14 dated 12.8.2013. Merely certifying that discrepancy in container number is a clerical mistake cannot be accepted if the documents are not corroborated with evidences.

4.5 The rebate is a benefit given to exporters, but is subject to scrutiny, regarding the basic condition that the goods in question have indeed been exported. The assessee had not produced any documents certified by Customs authority regarding the rectification of the error in the Shipping Bill showing only one container, even under belief that it is an error. The records in ICEGATE still show only one container in the concerned Shipping Bill. The absence of the second container number created doubts regarding the export of goods and subsequent rebate on such exports. The discrepancy remained on 3 counts i.e. in the container number, ARE-1 number and invoice number. Such discrepancies cannot be construed as technical errors for the purpose of grant

of rebate. Therefore, impugned Order in Appeal Order does not hold good and is improper and unjustifiable.

4.6 In view of the settled propositions of law, the Order-in-Appeal under reference is bad in law and deserves to be set aside in as much as rejection of the appeal of the department. The same could have been done by the Commissioner (Appeals) by calling for documents from the said claimant to come to a fair and just conclusion of finality.

5. A personal hearing in the matter was fixed on 03.03.2021, 10.03.2021, 06.04.2021, 13.04.2021, 08.07.2021 and 22.07.2021. No one appeared for the personal hearing so fixed in the matter. Since sufficient opportunities have been given for personal hearing, the case is taken up for decision based on the documents available on records.

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. Government notes that the respondent filed a rebate claim for Rs.79,269/- for the duty paid on goods cleared for exports under ARE-1 No. 41/13-14 dated 12.08.2014 under the provisions of Rule 18 of CER,2002 read with Notification No. 19/2004 - CE (NT) dated 06.09.2004. Government notes that the Rebate Sanctioning Authority had sanctioned the impugned rebate claim. However, the department filed an appeal before the Commissioner (Appeals-I), Central Excise, Ahmedabad on the basic ground that there was mismatch of last digit of container in Bill of Lading and Shipping Bill; while verifying through ICEGATE, it was observed that the Shipping Bill No. 6874947 dated 09.08.2014 contained only one container bearing No. TCKU-9331145; the ARE-1 Number shown in the shipping bill No. 6874947 dated 09.08.2014 was mentioned as 40/13-14 dated 12.08.2013 whereas the said Shipping Bill had been endorsed on overleaf of ARE-1 No. 41/13-14 dated 12.08.2013 by the Customs Officer and lastly the Export Invoice No. mentioned in the Shipping Bill was 10/13-14 dated 08.08.2013 whereas the respondent submitted Export Invoice No. 11/13-14 dated 12.08.2013 with their rebate claim.

8. Government observe that in order to avail benefit of rebate under Rule 18 r/w Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 the applicant was required to comply with condition and procedure stipulated in the said Notification dated 6-9-2004. The original authority observed that the applicant failed to remove the goods by following ARE-I procedure under cover of ARE-1 as prescribed under Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. Since no ARE-I form was prepared/submitted for clearance of excisable goods for export.

9. In this regard, for proper understanding of issue, the relevant provisions of Notification and instructions regarding filing of rebate claim along with requisite documents are extracted below :-

9.1 Para 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.”

9.2 Para 3(a) and 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(a) Procedures :-

- (a) *Sealing of Goods and examination at the place of dispatch and export :-*
- (i) *The manufacturer exporters registered under the Central Excise Rules, 2002 and merchant-exporters who procure and export the goods directly from the factory or warehouse can exercise the option of exporting the goods sealed at the place of dispatch by a Central Excise Officer or under self-sealing;*
 - (ii) *Where the exporter desires self-sealing and self-certification, the manufacturer of the export goods or owner of the warehouse shall take the responsibility of sealing and certification;*
 - (iii) *The merchant-exporters other than those procuring the goods directly from the factory or warehouse shall export the goods sealed at the place of dispatch by a Central Excise Officer;*
 - (iv) *For the sealing of goods intended for export, at the place of dispatch, the exporter shall present the goods along with four copies of application in the Form ARE-I specified in the Annexure to this notification to the Superintendent or Inspector of Central Excise having jurisdiction over the factory of production or manufacture or warehouse;*
 - (v) *The said Superintendent or Inspector of Central Excise shall verify the identity of goods mentioned in the application and the particulars of the duty paid or payable, and if found in order, shall seal each package or the container in the manner as may be specified by the Commissioner of Central Excise and endorse each copy of the application in token of having such examination done;*
 - (vi) *The said Superintendent or Inspector of Central Excise shall return the original and duplicate copies of application to the exporter;*
 - (vii) *The triplicate copy of application shall be -*
 - (a) *sent to the officer with whom rebate claim is to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records, or*
 - (b) *sent to the Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration on Electronic Data Inter-change system of Customs;*
 - (viii) *The exporter may prepare quadruplicate copy of application for claiming any other export incentive. This copy shall be dealt in the same manner as the original copy of application :*
 - (ix) *Where goods are not exported directly from the factory of manufacture or warehouse, the triplicate copy of application shall be sent by the Superintendent having jurisdiction over the factory of manufacture or warehouse, who shall, after verification, forward the triplicate copy in the manner specified in sub-paragraph (vii);*
 - (x) *In case of export by parcel post after the goods intended for export have been sealed, the exporter shall affix to the duplicate application sufficient postage stamps to cover postal charges and shall present the documents, together with the package or packages to which it refers, to the postmaster at the office of booking;*
 - (xi) *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 or 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 on all the copies of the application that the goods have been sealed in his presence, and shall send the original and duplicate copies of the application along with the goods at the place of export, and shall send the triplicate and quadruplicate copies of the 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;

- (xii) In case of self-sealing, the said Superintendent or Inspector of Central Excise shall, after verifying the particulars of the duty paid or duty payable and endorsing the correctness or otherwise, of these particulars -
- (a) send to the officer with whom rebate claim is to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records, or
 - (b) send to the Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration on Electronic Data Inter-change system of Customs;
- (xiii) On arrival at the place of export, the goods shall be presented together with original, duplicate and quadruplicate (optional) copies of the application to the Commissioner of Customs or other duly appointed officer;
- (xiv) 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 :
- Provided that if the Superintendent or Inspector of Central Excise sealed packages or container at the place of dispatch, the officer of customs shall inspect the packages or container with reference to declarations in the application to satisfy himself about the exportability thereof and if the seals are found intact, he shall allow export.
- (xv) The officer of customs shall return the original and quadruplicate (optional copy for exporter) copies of application to the exporter and forward the duplicate copy of application either by post or by handing over to the exporter in a tamper proof sealed cover to the officer specified in the application, from whom the exporter wants to claim rebate :
- Provided that where the exporter claims rebate by electronic declaration on the Electronic Data Inter-change system of Customs, the duplicate shall be sent to the Excise Rebate Audit Section at the place of export.
- (xvi) The exporter shall use the quadruplicate copy for the purposes of claiming any other export incentive.

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."

9.3 The Government finds that the department has not alleged non-compliance of the procedure, as laid down above, on the part of the respondent at any point of time. This evidently implies that the respondent had followed the necessary procedure required under Rule 18 of the Central Excise Rules, 2002 and Notifications issued thereunder. Further, it is found that the discrepancies noticed by the department such as mismatch of container numbers on various documents, mismatch of ARE-1 Nos. etc. were errors, more or less clerical in nature as discussed by the Appellate Authority, occurred on the part of Customs Officials while endorsing the relevant documents. In the event, it would be incongruous to hold the respondents accountable for an act beyond their control.

9.4 Further, Government opines that the queries noticed by the rebate sanctioning authority, apparently clerical errors as briefed by the Appellate Authority, could have been sorted out by requesting verification report from the Customs Officials. However, no such efforts appear to have been initiated by the lower adjudicating / departmental authorities. As such, Government holds that denial /demand of rebate amount merely on assumptions and presumptions without authentic verification would be unmerited and unlawful.

9.5 In view of above discussion, Government finds no infirmity in the impugned Order-in-Appeal No. AHM-EXCUS-003-APP-166-14-15 dated 17.03.2015 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad and, therefore, upholds the impugned order in appeal.

10. Revision application is disposed off as above.


20/08/21

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

ORDER No. 263 /2021-CX (WZ)/ASRA/Mumbai

DATED 20.08.2021.

To,
The Commissioner of CGST,
Gandhinagar Commissionerate,
2nd floor, Customs House,
Near All India Radio,
Navarangpura, Ahmedabad - 380 009.

Copy to:

1. M/s Makcur Laboratories. 46/4-7, Village- Zak, Tal : Dehgam, Dsit. Gandhinagar, Gujrat - 382 325.
2. The Commissioner of CGST, Ahmedabad Appeals, 5th Floor, GST Bhavan, Revenue Marg, Opp. Polytechnic, Ambawadi, Ahmedabad- 380 015.
3. The Deputy Commissioner, CGST, Gandhi Nagar Division, Central Excise Building, Sector 10/A, Opp. St. Xavier's School, Near CH-3 Circle, Gandhi Nagar-382 010.
1. Sr. P.S. to AS (RA), Mumbai
2. Guard file
3. Spare Copy.