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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.195/119-120/14-RA /4502

Date of Issue: 25.08.2021

ORDER NO. ²⁶⁵⁻²⁶⁶ /2021-CX (SZ) /ASRA/MUMBAI DATED 20.08.2021 OF THE 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.

Applicant : M/s. Shri Cheran Synthetics India Limited,
S.F. No. 45/2, Anangur Road,
Nattavelampalayaam,
Tiruchengode- 637 304
Namakkal District,
Tamilnadu.

Respondent : The Commissioner, CGST, Salem.

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Orders-in-Appeal No.06 & 07/2014-CE(R) SLM-CE dated 16.01.2014 passed by the Commissioner (Appeals), Central Excise, Salem.

ORDER

These revision applications are filed by M/s. Shri Cheran Synthetics India Limited, S.F. No. 45/2, Anangur Road, Nattavelampalayaam, Tiruchengode- 637 304, Namakkal District, Tamilnadu against the Orders-In-Appeal No. 06 & 07/2014-CE(R) dated 16.01.2014 passed by the Commissioner of Central Excise (Appeals), Salem with regard to Orders-In-Original No. 1) 286/2013(R) & 2) 287/2013(R) both dated 12.08.2013 passed by the Assistant Commissioner, Central Excise, Erode -II Division.

2. The brief facts of the case are that the applicants have filed two rebate claims under Notification No. 19/2004-C.E. (N.T.), dated 06-09-2004. The details are as under :-

Sr. No.	ARE-1 No. /Date	Shipping Bill / Date	Bill of Lading /Date	OTL Sr. No. as per Shipping Bill	Correct OTL No.	Amount (Rs.)
1	258/10-11 dt. 16.03.2011	2810332 dt. 15.03.2011	861728631 dt. 19.03.2011	A-00855549	A0085549	4,20,363/-
2	114/11-12 dt. 30.07.2011	4773212 dt. 29.07.2011	ZIMUTUT 0001689 dt.04.08.2011	A-A-0080367	A-0088367	2,23,144/-

2.1 The above mentioned rebate claims were rejected by the Assistant Commissioner of Central Excise, Erode-II Division for the following reasons.

A) Claim under ARE-1 No.258/10-11 dt. 16.03.2011- The applicant had cleared an export consignment from their registered premises on 16.03.2011 and filed rebate claim with all the relevant documents on 16.03.2011. The subject claim was returned by the Assistant Commissioner on 21.07.2011 stating that there was discrepancy in the OTL Sr. No. found in the shipping Bill. The correct OTL Sr. No. was A0085549 whereas in the shipping bill the OTL Sr. No. was wrongly mentioned as A-00855549. On 12.09.2011 the applicant resubmitted the rebate claim with due correction of OTL Sr. No. done by the Customs Official. However, the impugned claim was returned vide letter C. No. V/55/18/90/2011-RF dated 15.11.2011 stating that the

Inspector of Customs was not the competent authority to make the endorsement for correction and it had to be obtained by the Assistant Commissioner of Customs. As there was changes in the officers of the customs the applicant got it endorsed by the Assistant Commissioner of Customs vide Customs Letter C. No. VIII/06/36/2013-Exp. Assmt. Dated 26.04.2013. The applicant resubmitted the rebate claim with all the documents on 13.05.2013. However, the impugned rebate claim was rejected by the adjudicating authority vide Order in Original No. 286/2013(R) dated 12.08.2013.

B) Claim under ARE-1 No.114/11-12 dt. 30.07.2011- The applicant had cleared an export consignment from their registered premises on 12.09.2011 and filed rebate claim with all the relevant documents on 12.09.2011. The subject claim was returned by the Assistant Commissioner on 01.11.2011 stating that there was discrepancy in the OTL Sr. No. found in the shipping Bill. The correct OTL Sr. No. was A-0088367 whereas in the shipping bill the OTL Sr. No. was wrongly mentioned as A-A-0080367. On 03.11.2011 the applicant resubmitted the rebate claim with due correction of OTL Sr. No. done by the Customs Official. However, the impugned claim was returned vide letter C. No. V/55/18/898/2011-RF dated 13.12.2011 stating that the Inspector of Customs was not the competent authority to make the endorsement for correction and it had to be obtained by the Assistant Commissioner of Customs. As there was changes in the officers of the customs the applicant got it endorsed by the Assistant Commissioner of Customs vide Customs Letter C. No. VIII/06/36/2013-Exp. Assmt. Dated 26.04.2013. The applicant resubmitted the rebate claim with all the documents on 14.05.2013. However, the impugned rebate claim was rejected by the adjudicating authority vide Order in Original No. 287/2013(R) dated 12.08.2013.

3. Being aggrieved by Impugned Orders-In-Original, the applicant filed an appeal before the Commissioner of Central Excise (Appeals), Salem. The Appellate Authority upheld the impugned Orders in Original mentioned at (A and (B) of Para 2 above vide Orders in Appeal No. 1) 06 & 07/2014 -CE dated 16.01.2014. The Appellate Authority while rejecting the appeal made following observations.

- a) The payment in these two claims had been made on 30.07.2011 and 16.03.2011 and so the rebate claims should have been filed within one year i.e. before 29.07.2012 and 15.03.2012 along with all relevant documents whereas the applicant had filed the refund claims only on 14.03.2013.
 - b) The CBEC vide Circular No. 13/41/95 Cx dated 30.05.1995 has clarified that where refund application is found to be incomplete a letter shall be issued stating the deficiencies therein. As per the Board's clarification, there is no infirmity in the Orders in Original considering the date of receipt of all requisite information / documents viz. 14.03.2013 as the date of refund application.
 - c) The Hon'ble Supreme Court has in various cases such as the cases of UOI Vs. Arviva Industries (I) Ltd. & oths. [2008(10)STR534(SC)] and in case of Paper Products Ltd. Vs. Commissioner of Central Excise [1999(12)ELT 765 (SC)] categorically held that the circulars issued by the CBEC are binding on the departmental authorities.
4. Being aggrieved by the impugned Orders-In-Appeal, the applicant has filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government pleading for allowing impugned rebate claims on the following grounds which are more or less similar in both the cases: -
- a) Their claims were filed well within the prescribed time limit under Section 11B of the Central Excise Act, 1944 i.e. within one year period.
 - b) The mistake in OTL Sr. No. was purely clerical mistake not by them.
 - c) For an act not committed by them and discrepancy found in the documents issued by the customs authorities, denying the benefit of exports was an injustice rendered to them.
 - d) They did not have any intention to claim ineligible rebate claim.
 - e) They had got the amendment in the OTL Sr. No. by Customs authorities which were wrongly mentioned in Shipping Bills.
 - f) The export of goods was not disputed by the department. The export of goods was within time limit.

- g) As per the Board instructions the claim was not returned within 15 days time limit
- h) The error in mentioning the OTL Sr. No. in the shipping bill was not mentioned by them and this document was being issued by the Customs Authorities and they were not responsible for the OTL reference mentioned in the shipping bill.
- i) The applicant rely on the following case laws :-
 - a. Garg Tex-O-Fab Pvt. Ltd. Order No. 1565/2010-Cx dated 12.10.2010 by GOI.
 - b. UM Cables Ltd. Vs. UOI before Bombay high Court in W.P. No. 3102 of 2013 & 3103 of 2013 dated 24.04.2013.

5. Personal hearing was fixed in this case on 22.07.2021. Shri M. Maheshwaran, Consultant appeared online and reiterated the earlier submissions. He submitted that his claim was not time barred as they had filed the claim well within one year (in three months only). He requested to allow the claims.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. Government observes that the applicant had filed two separate rebate claims on 16.03.2011 and 12.09.2011 respectively, claiming rebate of Central excise duty paid on inputs cleared as such for export, in terms of Rule 18 of Central Excise Rules 2002 read with Notification No.19/2004-CE dated 06.09.2004. Subsequently, the said rebate claims were returned by the department vide letters dated 21.07.2011 and 01.11.2011 respectively informed the discrepancy noticed in respect of OTL Sr. No. mentioned in the shipping bills. The applicant got the correction done by the Inspector of Customs and resubmitted the claims to the department. However, the compliance was not found satisfactory. Therefore, the aforementioned two rebate claims were again returned to the applicants for resubmission afresh after complying with the said query memos. The applicant re-submitted these three rebate claims on 14.05.2013. Since the date of re-submission of these claims was beyond the stipulated period of one year, the original authority rejected these three rebate claims as time barred.

8. The Government observes that the applicant have filed the rebate claims along with relevant documents on 16.03.2011 and 12.09.2011 respectively which were within the time limit of one year from the date of export. However, the Rebate Sanctioning Authority at the time of scrutiny of claims, noticed that the OTL Sr. No. mentioned in Shipping Bills were not correct. The Government notes that the endorsement on the shipping bill is done by the Customs Officials and as such neither the applicants were responsible for the error / mistake occurred while mentioning the OTL Sr. No. on shipping bills nor they had any control over it. It is also seen that the applicant have taken efforts and got the correction done by the Customs Authority to prove the genuineness of the exports.

8.1 In spite of the above, Government observes that as per the Notification No. 19/2004-C.E. (N.T.) dated 6.09.2004 certain conditions, limitations and procedures are specified and in the present case, the rebate claim was restricted only on the ground of procedural lapses though the character of duty paid on export goods, genuineness of the export has been accepted. It is observed that the applicant had submitted the necessary correction done by the Customs Authorities as requested by the department in support of their contention about genuineness of the export and mitigating procedural lapse.

8.2 It is now a trite law while sanctioning the rebate claim that the procedural infraction of Notification/Circulars etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacturer and subsequent export. As long as this requirement is met, other procedural deviations can be condoned. Such a view has been taken in *Birla VXL* - 1998 (99) E.L.T. 387 (Tri.), *Alfa Garments* - 1996 (86) E.L.T. 600 (Tri), *Alma Tube* - 1998 (103) E.L.T. 270, *Creative Mobous* - 2003 (58) RLT 111 (GOI), *Ikea Trading India Ltd.* - 2003 (157) E.L.T. 359 (GOI), and a host of other decisions on this issue.

8.3 In view of the discussions made above and keeping in mind the observations of Hon'ble Supreme Court in judgments cited supra and catena of decisions of Hon'ble CESTAT/Govt. of India that when substantive fact of

actual export is not disputed, Government feels that denial of export relief in this case on the sole ground of technical lapses is not justified.

9. The Government observes that the impugned rebate claims were rejected by the adjudicating authority claiming that the applicant filed the same after stipulated period of one year and hence hit by the limitation of time.

9.1 Government observes that Hon'ble High Court of Gujarat in a similar situation and while allowing Special Civil Application filed by United Phosphorus Ltd., vide its judgement dated 06.05.2003 [2005 (184) E.L.T. 240 (Guj.)] held that the refund sanctioning authority cannot part with the refund claim by returning the same. He is obliged to pass an order on the merits of such application. When the refund sanctioning authority who received the original refund claims has not rejected these refund claims on merits and has merely returned the same, further filing of the refund claims ought to be considered only as resubmission and not as fresh claims.

9.2 Government further observes that similar stands have been taken by Hon'ble High Courts, GOI and Tribunals vide following judgements/orders, holding that time-limit is to be computed from the date on which refund/rebate claim was originally filed; that original refund/rebate claim filed within prescribed time-limit laid down in Section 11B of Central Excise Act, 1944 and the claim resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held time-barred as the time limit should be computed from the date on which rebate claim was initially filed.

- (i) CCE, Delhi-I v. Aryan Export & Ind. - 2005 (192) E.L.T. 89 (DEL.),
- (ii) A Tosh & Sons Pvt. Ltd. v. ACCE - 1992 (60) E.L.T. 220 (Cal.)
- (iii) CCE, Bolpur v. Bhandiguri Tea Estate - 2001 (134) E.L.T. 116 (T. Kol.)
- (iv) Good Year India Ltd. v. CCE, Delhi - 2002 (150) E.L.T. 331 (T.-Del.)
- (v) CCE, Pune-I v. Motherson Sumi Systems Ltd. - 2009 (247) E.L.T., 541 (T. Mum.) = 2011 (22) S.T.R. 496 (Tribunal).
- (vi) In Re: IOC Ltd. 2007 (220) E.L.T. 609 (GOI).
- (vii) In Re: Polydrug Laboratories (P) Ltd., Mumbai (Order No. 1256/2013-CX dated 13.09.2013.
- (viii) IN RE : TATA BLUESCOPE STEEL LTD 2018 (364) E.L.T. 1193 (G.O.I.)
- (ix) Apar Industries (Polymer Division) Vs Union of India (2016 (333) E.L.T. 246 (Guj.))

9.3 Government also observes that the decision of High Court of Gujarat in *Apar Industries (Polymer Division) Vs Union of India* {2016 (333) E.L.T. 246 (Guj.)} [Sl. No. (ix) supra has been accepted by the department as communicated vide Board Circular No.1063/2/2018-CX dated 16.02.2018.

9.4 Government observes that the Board has issued a Circular No. 130/41/95-CX, dated 30-5-1995 on "Refund — Interest on delayed refunds" which states [at para 2(g)] that "*Where the refund application is found to be incomplete a letter shall be issued stating the deficiencies therein, the additional information/ document required within 48 hours of the receipt. In such cases the letter shall be issued only with the approval of a Superintendent and the period of 3 months, for purpose of Section 11BB, shall count from the date of receipt of all the requisite information or documents*".

9.5 Further, it is clearly observed that the department had failed to adhere the time limit of 48 hours of the receipt of the rebate claims, for issuing deficiency letter to the applicant. Hence, the reliance placed on this circular No. 130/41/95 Cx dated 30.05.1995 by the department is misplaced.

Further Para 2.4 of Chapter 9 of supplementary instructions also mentions that

..... Even if claim is filed by post or similar mode, the claim should be rejected or returned with query memo (depending upon the nature of importance of documents not filed).

Reading of above instructions clearly reveals that the query memo is to be issued depending upon the nature of importance of documents not filed. Moreover, when the replies submitted by the applicant to the queries raised by the department were not found satisfactory, the Adjudicating Authority ought to have rejected the rebate claims for non submission of requisite documents or information and returning back the rebate claims to the applicant was not in accordance of the said instructions.

9.6 Relying on various case laws discussed at above paras, Government holds that the time limitation in the instant cases is to be computed from the initial date of filing of such applications as available in relevant office records. Since the said applications are initially filed within stipulated time limit i.e. on 16.03.2011 and 12.09.2011 respectively, by the applicant, the same are to be treated as filed in time. However, these applications are required to be decided on merits in accordance with law on

verification of documents/records and the impugned orders are required to be set aside.

10. In view of above discussion, Government sets aside the Orders-In-Appeal No. 06 & 07/2014 SLM-CEX dated 16.01.2014 passed by the Commissioner (Appeals), Central Excise, Salem to the extent discussed above and remands the case back to original authority to decide the same afresh in view of above observations and for taking appropriate decision on these rebate claims in accordance with law after giving adequate opportunity to the applicant to furnish documentary proof, if any, in support of its claims. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

11. Revision application is allowed on above terms.


20/8/21
(SHRAWAN KUMAR)

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

ORDER NO. ²⁶⁵⁻²⁶⁶/2021-CX (SZ) /ASRA/MUMBAI DATED 20.08.2021

To,
M/s. Shri Cheran Synthetics India Limited,
S.F. No. 45/2, Anangur Road,
Nattavelampalayaam,
Tiruchengode- 637 304
Namakkal District,
Tamilnadu.

Copy to:

1. The Commissioner of CGST, Salem Commissionerate, No.1, Foulkes Compound, Anai Medu, Salem - 636001
2. The Commissioner of CGST & Central Excise, (Appeals), Coimbatore Commissionerate, 6/7, A.T. Devaraj Street, Race Course, Coimbatore-641 018.
3. The Assistant Commissioner, CGST, Erode -II Division II, No. 81, Bharathi Nagar, Veerappanchatram Post, Soolai. Erode 638 004
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.