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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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

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F.No. 195/338/14-RA / 4660 Date of Issue: 01.09.2021

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ORDER NO. 278 /2021-CX (WZ) /ASRA/MUMBAI DATED 25.08.2021  
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 CENTRAL  
EXCISE ACT, 1944.

Applicant : M/s. New World Resources.

Respondent: Commissioner of Central Excise (Appeals), Mumbai III

Subject : Revision Applications filed, under Section 35EE of Central  
Excise Act, 1944 against Order-in-Appeal No.  
BC/118/RGD(R)/2013-14 dated 27.06.2013 passed by the  
Commissioner of Central Excise (Appeals), Mumbai III.

**ORDER**

This Revision Application has been filed by M/s. New World Resources, 31, Vaswani Mansion, 6<sup>th</sup> florr, Dinshaw Vachha Road, Churchgate, Mumbai 400 020 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. BC/118/RGD(R)/2013-14 dated 27.06.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai III.

2. The case in brief is that the Applicant, Exportor had filed rebate claim No. 20254 dated 24.12.2012 for Rs. 22,062/- in respect of ARE-1 No. 01 dated 10.07.2012. On scrutiny of the rebate claim, it was observed that the Triplicate copy of the ARE-1 was not produced/have not been received from the jurisdictional Range Superintendent. Further, the quantities shown in the ARE-1 was in Kg, the Central Excise Invoice was shown as Ctn (whether it is carton or otherwise), on commercial Invoice it was shown in Rolls, Shipping shows pieces and in Bill of Lading it was shown in Roll form. From the above it was not clear whether the duty paid goods cleared under Invoice issued under Rule 11 of Central Excise Rules, 2002 had actually been exported or otherwise. Hence the Applicant was issued Deficiency Memo cum SCN dated 07.03.2013. The adjudicating authority Deputy Commissioner (Rebate), Central Excise, Raigad vide Order-in-Original No. 3316/12-13/DC(Rebate)/Raigad dated 29.03.2013 rejected the rebate claim on the grounds that the Applicant had not submitted the Triplicate copy of the ARE-1 and the Applicant had failed to follow the mandatory requirement for claiming the rebate claim. Aggrieved, the Applicant filed appeal before the Commissioner of Central Excise (Appeals), Mumbai III. The Commissioner (Appeals) vide Order-in-Appeal No. BC/118/RGD(R)/2013-14 dated 27.06.2013 rejected their appeal.

3. Aggrieved, the Applicant filed the current Revision Application on the following grounds:

- (i) Submission of Triplicate copy of ARE-1, after clearance of the goods from the factory, is a procedural formality to be undertaken by the

proper Central Excise Officer by sending the said copy 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. This is amply evident from Para 5.1 of Central Excise Law Manual ( Supplementary Instructions 2005) which governs the provisions regarding export under claim for rebate, specially as to how the ARE-1 copies are to be distributed. Further, as per Para 8.2, the rebate-granting authority has to satisfy the duty-paid character as certified on the triplicate copy of ARE-1 received from the jurisdictional Superintendent of Central Excise (Range Office). Further, as per Para 13.7 of Chapter 7 of the above said Manual which mentions about loss of documents, it is stated that in case of any loss of documents, the Divisional Officer or the Bond Accepting Authority may get the matter verified from the Custom authorities at the place of export or may call for collateral evidence such as remittance certificate, Mate's receipt etc. to satisfy that the goods have been actually exported.

- (ii) In the instant case, all the relevant documents, including the first and second copies of the ARE-1, duly certified by the Customs Authorities along with Central Excise Invoice had been submitted along-with the rebate claim. The claim was rejected only on the ground that Triplicate copy of ARE-1 was not available with the Department.
- (iii) On being ascertained from the Range Office, the Applicant was informed that the Triplicate copy has been directly forwarded to the Rebate Sanctioning Authority. The Applicant had also written to the concerned Range Supdt for certified copy of the same. However, they received a certified copy of ARE-1 in a sealed cover which was after rejections of their claim. The Applicant had enclosed the same along with their Appeal to the Commissioner(Appeals). They also came to know from the Range Office that the authentication of their claim was verified and the report was sent to the rebate sanctioning authority as per the Applicant's request. The Commissioner(Appeals) rejected their appeal stating the reason that the ARE-1 Triplicate copy was not submitted and that the true copy of ARE-1 issued by Supdt. of AR-II

- Surendranagar does not bear the duty payment particulars as it was kept blank (PART-A).
- (iv) The Applicant's contention is that their rebate claim had been rejected only because of the procedural lapse that had taken place at the Department's end, i.e. not receiving the Triplicate copy by the Rebate Sanctioning Authority from the concerned Range Supdt. How can the Applicant be held responsible for a lapse on the Department's side and deny them the benefit of rebate without the authority not even making an effort to ascertain the fact from the concerned Central Excise Range/ Authorities.
  - (v) The Applicant had made all the statutory provisions involved to clear the goods and the export had taken place. Original and Duplicate copies certified by Customs are available on Department's records, all the necessary records have been submitted with the rebate claim and as regards loss of documents, even if it is at the Department's side, the Department has to get the matter verified from the Customs/ Central Excise Authorities concerned or by calling for collateral evidences as already explained in the departmental clarification mentioned here-in-above.
  - (vi) The Applicant are a new and small exporter trying to establish themselves as such if they are denied their legitimate dues/refunds then they are discouraged to carry out export activities. The Applicant requested for immediate intervention is desired in this matter to restore their faith in the system or else they will suffer undue loss.
  - (vii) The Applicant prayed that in the matter of triplicate copy of ARE-1, to ascertain the duty paid nature of goods be taken up with the concerned Central Excise Authorities and the impugned Order-in-Appeal be set aside and grant them rightful rebate claim.
4. Personal Hearing was fixed for 10.05.2018, 16.01.2020 and 22.01.2020, but no one attended the hearing. Since there was a change in the Revisionary Authority, hearing were granted on 03.02.2021, 17.02.2021,

18.03.2021 and 25.03.2021, however none appeared for the hearing. Hence the case is decided on merits.

5. 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.

6. On perusal of the records, it is observed that the Applicant in support of their rebate claim had produced the set of the following documents:

- (i) Rebate claim application in Form 'C';
- (ii) Original copy of ARE-1 No. 07-01/12-13 dated 10.07.2012;
- (iii) Duplicate copy of ARE-1 No. 07-01/12-13 dated 10.07.2012;
- (iv) Copy of Central Excise Invoice No. 596 dated 10.07.2012;
- (v) Copy of Shipping Bill No. 9933268 dated 19.07.2012;
- (vi) Copy of Bill of Lading No. SAMCB 12004059 dated 05.09.2012;
- (vii) Copy of Commercial Invoice No. NWR/004/12-13 dated 05.09.2012;
- (viii) Disclaimer letter from M/s One Tape India Pvt Ltd., Mumbai;

7. Government observes the Applicant in their appeal before the Commissioner (Appeals) had submitted true copy of the Triplicate copy of ARE-1 No. 07-01/12-13 dated 10.07.2012 issued by Superintendent, AR-II, Surendranagar. Commissioner(Appeals) in the finds stated that

*"Further, it is observed that in the true copy of Triplicate ARE-1 issued by Range Superintendent, AR-II, Surendranagar duty payment particulars are kept blank (Part A), hence verification of the duty paid nature of the export goods can not be ascertained."*

The Applicant submitted that

*"The claim was rejected only on the Ground that triplicate copy of ARE-1 was not available with the department, on being ascertained from the Range Office, we were informed that the triplicate copy has been directly forwarded to the rebate Sanctioning Authority. We had also written to the concerned Range Supdt for certified copy of the same. However, we received a certified copy of ARE-1 in a sealed cover which is after rejections of their claim. We had enclosed the same along with their Appeal to the Commissioner of Central Excise (Appeals), New Mumbai. We also came to know from the range office*

*that the authentication of their claim was verified and the report was sent to the rebate sanctioning authority as per their request. The Commissioner of Central Excise has rejected our Appeal stating the reason that the ARE-1 Triplicate copy was not submitted and that the true copy of ARE-1 issued by Supdt. of AR-II Surendranagar does not bear the duty payment particulars as it was kept blank (PART-A). Our contention is that our rebate claim has been rejected only because of the procedural lapse that had taken place at the department's end, i.e. not receiving the triplicate copy by the Rebate Sanctioning Authority from the concerned Range Supdt. Sir, how can we be held responsible for a lapse on the department's side and deny us the benefit of rebate without the authority not even making an effort to ascertain the fact from the concerned Central Excise Range/ Authorities."*

8. Government observes that the primary requirements which have to be established by the exporter are that the claim for rebate relates to goods which were exported and the same were of a duty paid character. Government finds that the Part A of the ARE-1 No. 07-01/12-13 dated 10.07.2012 was not certified by the Central Excise Officer and the Part B shows that "Certified the consignment was cleared for export under my supervision under Shipping Bill No. "9933268" dated "19/7" by S.S.No. "Royal Hugli M.R. 7665 /5.9" which was certified by the Superintendent of Custom, JNCH. Government finds that Shipping Bill No. "9933268/ 19/07/2012" shows the ARE-1 as "07-01/12-13, 10/07/2012 S NAGAR", the Bill of Lading No. "SAMCB 12004059" Shipped on Board "05<sup>th</sup> SEPTEMBER 2012", S.B.No. "9933268 DT. 19.07.2012" and the Mate Receipt No. "7665" Sailed Date: "05/09/2012" shows Shipping Bill No. "9933268 19.07.2012"

9. 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*.*

10. Further, the Hon'ble High Court, Gujarat in *Raj Petro Specialities 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.

11. Government finds that ratios of aforesaid Hon'ble High Court orders are squarely applicable to the issue in question. Government finds that the documents furnished by the Applicant indisputably prove that duty paid goods under claim for rebate have been exported. It is incumbent upon the adjudicating authority to verify the documentary evidences furnished by the Applicant as resorting rejection on technical grounds/procedural lapses would not serve the purpose of justice. Hence the rebate cannot be denied to the Applicant.

12. In view of the above, Government remands the matter to the original authority for the limited purpose of verification of the claim with directions that the claim for rebate shall be considered on the basis of aforesaid documents submitted by the Applicant. After satisfying the authenticity of those documents, and the fact of export of duty paid goods, and original adjudicating authority shall pass the order and in accordance with law after giving proper opportunity within eight weeks from receipt of this order.

13. In view of above, Government sets aside the impugned Order-in-Appeal No. BC/118/RGD(R)/2013-14 dated 27.06.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai III and the matter is remanded to the Original Adjudicating Authority.

14. The Revision Application is allowed in terms of above.

*Shrawan*  
25/8/21  
(SHRAWAN KUMAR)

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

ORDER No 278/2021-CX (WZ) /ASRA/Mumbai Dated 25.08.2021

To,  
M/s. New World Resources,  
31, Vaswani Mansion, 6<sup>th</sup> floor,  
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Mumbai 400 020.

Copy to:

1. The Commissioner of CGST, Belapur Commissionerate, 1<sup>st</sup> floor, CGO Complex, CBD Belapur, Navi Mumbai 400 614
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.
4. Spare Copy