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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
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Mumbai- 400 005

F.No.198/30-33/WZ/17-RA/4168 Date of Issue: 23.06.2023

ORDER NO. 287-290 /2023-CX(WZ)/ASRA/MUMBAI DATED 22.6.2023 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 : Pr. Commissioner, CGST, Mumbai South.

Respondent : M/s. Orbit Auto World Pvt. Ltd.
B-1105, Arihant Krupa,
Plot No. 40, Sector 27,
Kharghar, Navi Mumbai – 410210.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. SK/113-116/M-I/2017 dated 15.06.2017 passed by the Commissioner (Appeals), Central Excise, Mumbai-I.

ORDER

This revision application is filed by the Pr. Commissioner, CGST, Mumbai South (hereinafter referred to as "the applicant") against the Orders-in-Appeal No. SK/113-116/M-I/2017 dated 15.06.2017 passed by the Commissioner (Appeals), Central Excise, Mumbai-I in respect of M/s. Orbit Auto World Pvt. Ltd. B-1105, Arihant Krupa, Plot No. 40, Sector 27, Kharghar, Navi Mumbai – 410210 (hereinafter referred to as "the respondent") which decided an appeal filed by the respondent against the Orders-in-Original No. (1) 1974/MTC-R/2016-17 dated 20.01.2017, (2) 2159/MTC R/2016-17 dated 24.02.2017, (3) 2158/MTC-R/2016-17 dated 24.02.2017 & (4) 2245/MTC R/2016-17 dated 08.03.2017 passed by the Maritime Commissioner of Central Excise, Mumbai-I, wherein, he has rejected four Rebate Claims totally amounting to Rs. 10,75,990/- being inadmissible.

2. The Brief facts of the case are that the car manufacturer M/s. Renault Nissan Automotive India Pvt Ltd., situated at Kanchipuram, Tamil Nadu sold the cars manufactured by them to M/s. Renault India Pvt. Ltd. and M/s. Nissan Motors India Ltd. These companies further sold cars to M/s. Saideep Cars Pvt. Ltd., (SCPL), and M/s. Ritu Automobiles Pvt. Ltd., (RAPL) respectively. After purchasing the said cars either from SCPL/RAPL the respondent exported them out of India in respect of impugned orders no. 1, 3 and 4. In case of cars manufactured by M/s. Maruti Suzuki India Ltd. (MSIL) located at Gurgaon sold to M/s. Shivam Autozone India Pvt. Ltd., (SAIPL) were purchased by the respondent and exported in respect of impugned order No.2. The respondent after exporting the cars filed their total four claims under Notification No. 19/2004-CE (NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 for rebate of duty respectively amounting to Rs. 5,49,281/-, Rs. 88,445/-, Rs. 2,46,355/- and Rs.1,91,909/- along with the supporting documents to the Maritime Commissioner, Central Excise, Mumbai-I, who following the due process in law rejected the claims as respondent had not submitted some relevant documents and had not fulfilled some requirements.

3. Being aggrieved with the above Orders-in-Original, the applicant preferred an appeal with the Commissioner (Appeals), Central Excise, Mumbai-I, who, vide impugned Orders-in-Appeal No. SK/113-116/M-I/2017 dated 15.06.2017 set aside the Orders-in-Original and allowed the appeals.

4. Being aggrieved, the applicant department filed the instant Revision Application against the impugned Order in Appeal mainly on the following grounds :

(i) Neither the Triplicate nor the Quadruplicate copy of the ARE-1 bear any duty payment details and these ARE-1 copies have not been signed by the Supdt. of the Manufacturer's Range. Thus, the claimant has not proved beyond doubt that duty had been discharged on the exported goods, the refund of which has been claimed by them. When the payment of duty has not been proved beyond doubt, sanctioning of the refund will be prejudicial to the revenue.

(ii) That the merchant exporter claiming rebate is not the buyer of vehicles from the said manufacturers i.e. the manufacturers' invoices are not in the name of the claimant and the same do not have any Central Excise Duty particulars mentioned therein.

(iii) The claimant has also not been able to prove that the original purchaser, who purchased the goods from the manufacturers, ie. in whose names the manufacturers' invoices have been issued, did not claim any refund/rebate as no NOC or no claim certificate has been filed by the claimant along with the claim or at any subsequent stage. It is also not clear whether the original buyer had claimed the benefit of excise duty paid on the goods from the government in any other form.

(iv) The lapses on the part of the claimant, which the Commissioner (Appeals) had ignored as procedural were not procedural requirements, but were statutory requirements which were vital in establishing that the goods in respect of which the refund is claimed have actually been exported. Sanctioning of the refund without establishing the actual export of the goods is again prejudicial to the revenue, a vital aspect ignored by the Commissioner (Appeal) while passing the order.

(v) The OIA has been passed without appreciating the facts of the case fully and properly and to that extent the Commissioner (Appeals) appears to have erred in his findings.

(vi) Conditions as prescribed in Board's Circular No.294/10/1997 dated 30.01.1997 have to be strictly followed. Refunds and exemption are governed by Rule of strict compliance. The ruling by the Appellate Authority that the appellant is entitled to the claim of rebate by holding the major deficiency pointed out by the adjudicating authority as mere procedural lapse/infraction is not within the spirit of law. In this regard, reliance is placed on the decision of 5 Member Bench of the Hon'ble Apex Court in the cases of Harichand Sri Gopal [2010 (260) E.LT. 3 (S.C.)) and Indian Oil Corporation Ltd. [2012 (276) E.LT. 145 (S.C.)] wherein it is held that in order to claim the benefit under the law, substantial compliance is not enough and the procedures prescribed in the statute should be mandatorily followed. This ratio laid down by the Hon'ble Apex Court overrides the Case Laws relied upon by the Appellate Authority,

In view of the above facts and circumstances, the matter is not free from doubt, and as such the impugned OIA is liable to be set aside being not legal and proper.

5. A show cause notice was issued to the respondent under Section 35EE of Central Excise Act, 1944 to file their counter reply. However, the Respondent failed to make any submissions.

6. Personal hearing was fixed on 06.10.2022, 19.10.2022, 08.12.2022 & 22.12.2022. Neither the applicant Department nor the respondent appeared for personal hearing or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

7. Government has carefully gone through the relevant case records available in case files, written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

8. Government observes that there was a delay of 24 days in filing the present Revision Application by the applicant. The applicant in its Application for condonation of delay submitted that they could not file the appeal against the impugned order with in the time limit of three months, the reason for delay was due to the administrative difficulty in view of the recent roll out of GST and ensuing transfer of files during the period. The applicant requested for condonation of delay of 24 days in filing the Revision Application. Since, the applicant filed this revision application 24 days after the initial 90 days period, which falls within condonable limit of 90 days and the grounds for seeking condonation of delay by the applicant are reasonable and justifiable. Government in the interest of justice condones the said delay and proceeds to examine the case on merits.

9. On perusal of records, Government observes that the lower authority has rejected the rebate claims on the grounds that the respondent had not

followed the procedure prescribed under Board's Circular No. 294/10/97-CX dated 30.01.1997 and that there was no co-relation between the exported goods to the goods cleared from manufacturer and that there is no remark /endorsement from the Central Excise officer about verification of the goods for export to prove the identity of the goods and its duty paid character as required in the above said circular however, in the case of Order-in-Original at Sr. No. 4 (OIO No. 2245/MTC R/2016-17 dated 08.03.2017) the invoice issued by the dealer M/s. Sandeep Cars Pvt. Ltd., is in the name of M/s. Orbit Computers Pvt. Ltd. and not the respondent.

10. Government observes that export was conducted from merchant export premises. The circular No. 428/61/98-CX dated 02-11-1998 states that counter signatures for disclaimer certificates are not required in these cases. Respondent in this matter exported vehicles that have unique identities specified by their engine numbers and chassis numbers. These identification details are also mentioned on their excise clearance documents, which accompany the goods during exportation and serve as proof of their identity. This means that the goods can be verified at any point in time against their export and duty payment documents, making it easy to identify any diversion of goods.

Additionally, the respondent submitted the triplicate and quadruplicate copies of the ARE-1 to the Kalamboli Range after the exportation. The Range Officers confirmed the duty payment particulars based on the purchase invoices obtained from the jurisdictional excise office of the manufacturer. The confirmation of duty payment was then endorsed on the reverse side of the ARE-1's by the Range Authorities. In some cases, the respondent presented certificates issued by the jurisdictional Central Excise office to confirm the duty payments. They also provided photocopies of invoices issued by the manufacturers of the vehicles, showing that the duty had been paid. The adjudicating authority did not dispute the endorsement made by the Range Officers regarding the confirmation of duty payment. The respondent has provided sufficient evidence to demonstrate that the exported goods have

their unique identities documented and can be traced back to their export and duty payment.

11. The Commissioner (Appeals) at Para 9 (i) of his order observed as under:

> *"The adjudicating authority in respect of impugned orders no.1 and 4 held that exporter is not entitled for rebate of duty because they have not followed the procedures laid down in Circular No 294/10/1994-CX, dated 30.01.1994 read with notification no 19/2004 dated 06.09.2004 In respect of impugned orders No.2 and 3 the adjudicating authority held that appellant failed to prove the duty payment against the goods exported and also failed to prove payment of full price and duty to the manufacturer. In all these cases the essential requirement to establish that the goods were cleared after proper Central Excise duty payments and same are clearly identifiable and correlated against the exported goods with the export documents.*
>
> *So far as the confirmation of duty payment in respect of the claim under impugned Order no. 1 is concerned I find that the required confirmation for payment of duty was submitted by the Superintendent of Oragadam-I Range vide his letter dated 21.09 2016 except for the vehicle of engine no. E080247 and the same has also been discussed by the adjudicating authority in the impugned order no.1. I also find that a copy of tax invoice correlating the vehicle of engine no. E080247 has been submitted by the appellant in their submissions for confirmation of duty payment For confirmation of duty payment particulars in respect of impugned order no 2 photo-copies of invoices submitted by the appellant and Kalamboli Range has confirmed the duty payment for the exported goods. In respect of goods under impugned order no 3 the appellant submitted that duty payment confirmation was done by the Maritime Commissioner from the jurisdictional officer of manufacturer and the said Superintendent of Oragadam-I Range vide his letter dated 15.12.2016 confirmed the same. In respect of claims under order no.4, the appellant submitted the copies of excise invoices and submitted that the payment of duty can be confirmed from the same. On the basis of above I observe that duty payment can be confirmed in most of the cases The appellant has submitted the copies of invoices and if there is any such doubt the same shall be verified especially when export is undisputed and this is not a product which practically can be cleared clandestinely."*

The adjudicating authority has in orders 1 and 4, concluded that the exporter is not eligible for a rebate because they did not comply with the procedures outlined in Circular No. 294/10/1997-CX dated 30.01.1997 and notification No. 19/2004 dated 06.09.2004 and in the case of Order-in-Original at Sr. No.

4 (OIO No. 2245/MTC R/2016-17 dated 08.03.2017) the invoice issued by the dealer M/s. Sandeep Cars Pvt. Ltd., is in the name of M/s. Orbit Computers Pvt. Ltd. and not the respondent. Regarding orders 2 and 3, the authority determined that the respondent failed to provide evidence of duty payment for the exported goods and also failed to prove payment of the full price and duty to the manufacturer. The crucial requirement in all these cases is to establish that the goods were cleared after the appropriate Central Excise duty payments and that this can be clearly identified and correlated with the export documents.

Regarding the confirmation of duty payment for Order -1, the required confirmation was provided by the Superintendent of Oragadam-I Range, except for one vehicle with engine number E080247. The respondent has submitted a copy of the tax invoice correlating to that vehicle. For Order -2, the respondent submitted photocopies of invoices, and the duty payment was confirmed by Kalamboli Range. For Order -3, the respondent claimed that duty payment confirmation was obtained from the Maritime Commissioner and confirmed by the Superintendent of Oragadam-I Range. However, for Order- 4, the respondent has not been able to submit evidence of purchase of exported goods from M/s. Orbit Computers Pvt. Ltd. for export, hence chain of Central Excise Duty / Cenvat credit is broken and in absence of any such document establishing the transfer, eligibility for export benefits on these goods cannot be substantiated. Based on the evidence presented, it is observed that duty payment can be confirmed in most cases. The respondent has provided invoice copies, and any doubts can be further verified, particularly considering that the export is undisputed.

12. In order number 1, the adjudicating authority raised objections regarding the mentioning of incorrect numbers of Excise Invoices for Engine No. E074467 and E080247. They also pointed out the non-submission of correct copies of invoices and the non-existence of Engine No. E0805051. Respondent had already provided the necessary details of the invoice numbers associated with the vehicles of the mentioned engine numbers. The

respondent provided a copy of the tax invoice and supporting details for Engine No. E0085051, clarifying that it was a clerical error that should be disregarded.

13. Government notes that Commissioner (Appeals) has already observed that the respondent has provided self-attested copies of the Excise Invoices. The Maritime Commissioner, in his Order, also acknowledged that the respondent had submitted self-attested copies of the Excise Invoices. Given these circumstances, it was not justified to conclude that the respondent had failed to submit the other necessary documents to determine the accurate assessable value and FOB value of the exported goods.

14. Government observes that in the instant case the applicant had produced Original and Duplicate copy of ARE-1s duly endorsed by the officer of Customs. Government further observes that where there is no examination by the jurisdictional officers of Central Excise, there are many cases where Government of India has conclusively held that the failure to comply with requirement of examination by jurisdictional Central Excise Officer in terms of Board Circular No.294/10/97-Cx dated 30.01.1997 may be condoned if the exported goods could be co-related with the goods cleared from the factory of manufacture or warehouse. Government places its reliance on para 11 of GOI Order Nos. 341-343/2014-CX dated 17.10.2014 (2015 (321) E.L.T. 160(G.O.I) In RE: Neptunus Power Plant Services Pvt. Ltd. In this case, in order to examine the issue of corelatibility, Government made sample analysis of the exports covered vide some of the shipping bills. Further, description, weight and quantities has to tally with regard to description mentioned in mentioned in ARE-1 and other export documents including Shipping Bill and export invoices. In the instant case Government notes that Commissioner (Appeals) has already observed that the subject goods were exported under statutory documentation with Customs Authorities who also scrutinized the documents and supervised the export of the cargo and there had been enough

compliance to establish the duty paid character and correlation of the goods in question.

15. Government also notes that, while allowing the Revision application in favour of the applicant, Government at para 12 of its Order No. 341-343/2014-CX dated 17.10.2014 (reported in 2015 (321) E.L.T. 160(G.O.I) observed as under:-

> *"In this regard Govt. further observes that rebate/drawback etc. are export-oriented schemes, A merely technical interpretation of procedures etc. is to be best avoided if the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical lapse. In Suksha International v. UOI - 1989 (39) E.L.T. 503 (S.C.), 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. In the Union of India v. A.V. Narasimhalu - 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a 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 (77) 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. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner - 1991 (55) E.L.T. 437 (S.C.). In fact, as regards rebate specifically, it is now a title law that the procedural infraction of Notifications, 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 requirement. The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned.- This view-of condoning procedural-infractions in favour of actual export having been established has been taken by Tribunal/ Govt. of India in a catena of orders, including Birla VXL Ltd. - 1998 (99) E.L.T. 387 (Tri.), Alpha Garments - 1996 (86) E.L.T. 600 (Tri.), T.I. Cycles - 1993 (66) E.L.T. 497 (Tri.), Atma Tube Products - 1998 (103) E.L.T. 270 (Tri.), Creative Mobus - 2003 (58) R.L.T. 111 (G.O.I.), Ikea Trading India Ltd. - 2003 (157) E.L.T. 359 (G.O.I.) and a host of other decisions on this issue".

16. Government further observes that the respondents were regularly being granted rebate claims on similar issue earlier from the office of adjudicating officer and also from earlier office at Dharavi. They are regularly being granted rebate claims from the Office of Central Excise, Maritime Commissioner Raigad as well.

17. In view of above discussion, Government holds that the instant rebate claims of duty paid on exported goods for Order-in-Original Sr. No. 1 to 3 are admissible under Rule 18 of Central Excise Rule, 2002 read Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. As such, Government finds that the impugned order of Commissioner (Appeals) is just and proper and hence, upholds the same. However, in case of Order-in-Original Sr. No. 4 the respondent having failed to prove transfer of possession/purchase of the exported goods, from M/s. Orbit Computers Pvt. Ltd., holds that the rebate is inadmissible to them. The Impugned Order in Appeal No. SK/113-116/M-I/2017 dated 15.06.2017 is modified to the above extent.

18. Accordingly, 4 Revision Applications viz. bearing Nos. 198/30-33/WZ/17-RA are disposed off in terms of above.

Shrawan 22/6/23

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

ORDER No. 287-290/2023-CX(WZ) /ASRA/Mumbai DATED 22.6.23

To,
Commissioner, CGST,
Mumbai South.
13th, Floor, Air India Building,
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Copy to:

1. M/s. Orbit Auto World Pvt. Ltd. B-1105, Arihant Krupa, Plot No. 40, Sector 27, Kharghar, Navi Mumbai – 410210.
2. Commissioner (Appeals), Central Excise, Mumbai-I.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.