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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
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.195/197/2013-RA/5879 Date of Issue: 12/12/19

ORDER NO. 289/2019-CX (WZ)/ASRA/MUMBAI DATED 05.12.2019 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 Kopran Ltd.

Respondent : Commissioner (Appeals-II), Central Excise Mumbai.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. US/754/RGD/2012 dated 31.10.2012 passed by the Commissioner (Appeals-II), Central Excise Mumbai.

ORDER

This Revision Application is filed by the M/s Kopran Ltd., Vill-Savroli, Tal-Khalapur, Dist.-Raigad-410 202 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. US/754/RGD/2012 dated 31.10.2012 passed by the Commissioner (Appeals-II), Central Excise Mumbai.

2. The issue in brief is that the Applicant, a merchant exporter, had filed 06 rebate claims amounting to Rs. 2,27,139/-. The Assistant Commissioner, Central Excise (Rebate) Raigad vide Order-in-Original No 1195/11-12/DC (Rebate)/Raigad dated 15.11.2011 sanctioned Rs. 2,27,137/- (Rupees Two Lakhs Twenty Seven Thousand One Hundred and Thirty Seven Only) under the provisions of Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules,2002. Aggrieved the Department then filed an appeal with the Commissioner (Appeals-II), Central Excise Mumbai on the grounds that the goods were exported under self-sealing and the self-sealing certificates as required under Para 3(a)(xi) of Notification No. 19/2004-CE(NT) dated 06.09.2004 was not given on the ARE-1s. The Commissioner (Appeals-II), Central Excise Mumbai vide Order-in-Appeal No. US/754/RGD/2012 dated 31.10.2012 set-aside the Order-in-Original dated 15.11.2011 and the departmental appeal was allowed (corriegendum issued to OIA No. 'US/734/RGD/2012' vide F.No. 49/R/RGD/2012 dated 31.10.2012).

3. Being aggrieved, the Applicant then filed the current Revision Application on the following grounds :

3.1 That the Order-in-Appeal is ex-facie illegal, erroneous and unsustainable.

3.2 That as per the provision of Para 3(a)(xiv) of Notification No. 19/2004-CE(NT) dated 06.09.2004 and also the provision of the Customs Act, the goods exported by the Applicants are required

to be and accordingly must have been examined by the customs authorities in accordance with the law and only thereafter the Customs authorities have given their endorsement on the ARE-1. The contention of the Commissioner(Appeals) and / or the department in the appeal that the customs authorities did not examine the goods is a serious one and unless the Commissioner disclosed his basis for coming to such a conclusion, it cannot be said that the goods were not examined.

3.3 That the Applicant has received the sale proceeds of the subject goods from the foreign buyer. If the foreign buyer had not received the goods, they would not have released the payment for the exported goods i.e. Bank Realization Certificate. Hence, it cannot be said that there is no certainty of the identity of the exported goods merely because the self-sealing certificate was not given by the Applicant, which was inadvertently not given.

3.4 That not giving self-sealing certificate was a mere procedural lapse and it is settled law that substantial benefit of rebate ought not to be denied on account of procedural/technical infraction. In this they relied on few cases law.

3.5 That they prayed the Order-in-Appeal be set aside with consequential relief.

4. A personal hearing in the case was held on 22.08.2019 which was attended by Shri Sparsh Prasad, Advocate on behalf of the ~~Applicant. The~~ Applicant submitted that Self-Sealing under Notification No. 19/2004, the stamp of self-sealing in ARE-1s was missing in certain claims. The Order-in-Original was in their favour and they relied in case law IN RE: SRF Polymer LTD [2013 (295) ELT 159 (GOI)] and IN RE : Vinergy International Pvt Ltd [2012 (278) ELT 4007 (GOI)].

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. The Government notes that the issue involved in the present Revision Application is non compliance of Self sealing procedure.

7. Government notes that the Notification No.19/2004-CE(NT) dated 6.9.2004 which grants rebate of duty paid on the goods, laid down the conditions and limitations in paragraph (2) and the procedure to be complied with in paragraph (3). The fact that the Notification has placed the requirement of "presentation of claim for rebate to Central Excise" in para 3(b) under the heading "procedures" itself shows that this is a procedural requirement. Such procedural infractions can be condoned, if they can be substantial correlation on the identity of the goods.

8. Government notes that the jurisdictional Deputy Commissioner(Rebate) while sanctioning the rebate claim found that

> *"3). The description and quantity of the goods as mention in the excise invoice/ ARE-1 vis-à-vis in Shipping Bill and Bill of Lading tallies and are in order.*
>
> *4). In the triplicate copy of ARE-1, the endorsement of Excise Officer in Part-A mention that the duty has been paid as mentioned therein.*
>
> *5). the assessment and determination of duty has been ascertained from the invoice and from the endorsement made on ARE-1 Part A by the C.Ex. Range Supdt over the manufacturer who has sent conformity of the duty payment against the relevant invoices. The verification of the claimants profile has already been done and seen that their name is not included in the alert list.*
>
> *6) The Export goods covered by the ARE-1s have been certified as actually exported by the Customs Officer in Part B of the relevant Original & Duplicate ARE-1s and the said aspect is also supported by co-relative information in Bills of Lading and Shipping Bills.".*

Government finds that this itself shows that whatever goods has been cleared for export in fact has been exported. Further, the Notification No.19/2004-CE(NT) dated 6.9.2004 itself shows the procedural infraction which can be condone and what is the mandatory infraction that cannot be

condoned. Hence here the mistake of not endorsing Self sealing certificate same is condoned.

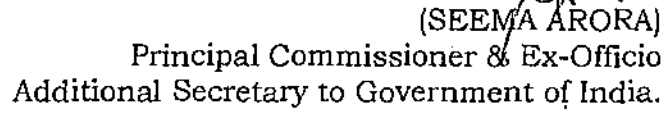
9. Government finds that the deficiency observed by the first appellate authority in this case are of procedural or technical nature. In cases of export, the essential fact is to ascertain and verify whether the goods have been exported. If the same can be ascertained from substantive proof in other documents available for scrutiny, the rebate claims cannot be restricted by narrow interpretation of the provisions, thereby denying the scope of beneficial provision. Mere technical interpretation of procedures is to be best avoided if the substantive fact of export is not in doubt. In this regard the Government finds support from the decision of Hon'ble Supreme Court in the case of Suksha International – 1989 (39) ELT 503 (SC) wherein it was held 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 UOI vs. A.V. Narasimhalu – 1983 (13) ELT 1534 (SC), the Apex Court observed that the administrative authorities should instead of relying on technicalities, act in a manner consisted with the broader concept of justice. In fact, in cases of rebate it is a settled law that the procedural infraction of Notifications, Circulars etc., are to be condoned if exports have really taken place, and that substantive benefit cannot be denied for procedural lapses. Procedures have been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is the manufacture of goods, discharge of duty thereon and subsequent export.

10. In view of the above discussions and findings, Government upholds the Order-in-Original No 1795/11-12/DC (Rebate)/Raigad dated 15.11.2011 and holds that the rebate claim of Rs. 2,27,137/- (Rupees Two Lakhs Twenty Seven Thousand One Hundred and Thirty Seven Only) is admissible to the Applicant in the instant case under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated

6.9.2004. Government therefore sets aside the impugned US/754/RGD/2012 dated 31.10.2012.

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

14. So ordered.



(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No.289/2019-CX (WZ)/ASRA/Mumbai DATED 05.12.2019.

To,
M/s Kopran Ltd.,
Vill-Savroli,
Tal-Khalapur,
Dist.-Raigad-410 202

Copy to:
1. The Commissioner of GST & Central Excise, Belapur Commissionerte.
2. The Deputy / Assistant Commissioner(Rebate), GST & CX , Belapur Commissionerte
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.