

REGISTERED SPEED POST



**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, Cuff Parade,
Mumbai- 400 005**

F. NO. 195/614-616/13-RA / 5898 Date of Issue: 12/12/2019

ORDER NO. ²⁹³⁻²⁹⁵ /2019-CEX (WZ) /ASRA/MUMBAI DATED 06.12.2019
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. Amoli Organics Pvt. Ltd., Mumbai

Respondent : Commissioner of Central Excise, Raigad. _____

Subject : Revision Application filed, under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal
No. BC/599/RGD(R)/2012-13 and No. BC/ 600/ RGD
(R)/2012-13 both dated 19.02.2013 and No. BC/08/
RGD(R)/2013-14 dated 18.04.2013 passed by the
Commissioner of Central Excise (Appeals), Mumbai -III.

ORDER

These Revision Applications have been filed by M/s Amoli Organics Pvt. Ltd. Mumbai (hereinafter referred to as the "applicant") against Orders-in-Appeal No. BC/599/RGD(R)/2012-13, BC/600/RGD(R) / 2012-13 both dated 19.02.2013 and No. BC/08/RGD(R)/ 2013-14 dated 18.04.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai -III.

2. The brief facts of the case are that the applicant, a Merchant exporter, had filed rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004 for the duty paid amounting to Rs.2,33,707/- (Rupees Two Lakh Thirty Three Thousand Seven Hundred Seven only), Rs.26,833/- (Rupees Twenty Six Thousand Eight Hundred and Thirty Three only) and Rs.51,665/- (Rupees Fifty One Thousand Six Hundred and Sixty Five only). The rebate sanctioning authority after observing that the applicant had not furnished the Self sealing certification on the ARE-1 and had not submitted the triplicate copies of the ARE-1s along with the claim and did not produce Bank Realisation Certificate issued deficiency Memo cum SCN dated 12.10.2012, 22.10.2012 and 06.12.2012. Later on Deputy Commissioner (Rebate), Central Excise, Raigad vide Orders in Original Nos. 1966/12-13/DC(Rebate)/Raigad dated 31.10.2012 and 2019/12-13/DC(Rebate)/Raigad dated 05.11.2012 and 2470/12-13/DC(Rebate)/Raigad dated 27.12.2012 respectively, rejected the aforementioned rebate claims filed by the applicant.

3. Being aggrieved with the said Orders in Original, the applicant filed appeals before Commissioner of Central Excise (Appeals), Mumbai -III. Commissioner (Appeals) vide impugned Orders observed that Self sealing and Self Supervision Certificate on the ARE-1 is a mandatory requirement which was required to be scrupulously followed by the applicant. Commissioner (Appeals) also observed that in the instant

case, the appellants had not submitted the copies of the ARE1 to the Rebate sanctioning authority. Hence, the rebate sanctioning authority was not in a position to ascertain the duty paid character of the exported goods; that the appellants have in their appeal stated that the said copy was misplaced by the manufacturer. The appellants were given sufficient opportunity to produce the same but they failed to do so. As regards submission of triplicate copies of ARE-1s during the personal hearing, Commissioner (Appeals) observed that submission of the triplicate copy of the ARE-1's at this stage cannot be entertained as the same does not fall under any of the exceptional circumstances referred to in Rule 5 of Central Excise (Appeals) Rules 2001. Commissioner (Appeals) therefore, relying on GOI Order in the case of Agarwal Marbles and Industries Pvt. Ltd. 2011(267) ELT 414 (GOI) Commissioner (Appeals) vide impugned Orders rejected appeals filed by the applicant.

4. Being aggrieved with the above Order-in-Appeal, the applicant has filed these Revision Applications under Section 35EE of Central Excise Act, 1944 before the Government mainly on the following similar grounds:

4.1 The one ground for rejection of the Appeal is that they did not submit the Triplicate copies of the ARE-1s before the Adjudicating authority. The reason for the same the manufacturer did not give the Triplicate copy in the sealed cover received from the Range Supdt. as the same was mis-placed by their employee. But the same was located thereafter and the they submitted the same before the Hon'ble Commissioner (Appeals) in the sealed cover and requested for sending the same to the Adjudicating authority for any verification of the same. These ARE-1s also contain the certificate of Duty Payment by showing the Debit Entry under CENVAT account. The Commissioner (Appeals), however, did not accept this fact while passing the order.

4.2 Bank Realisation Certificate was submitted along with the claim as well as before the Commissioner (Appeals). Actually the BRC

is not a document required to be submitted along with the rebate claim, however they have submitted the same.

- 4.3 The Self sealing certificate was missed by the manufacturer as they were not supplying goods regularly for export. Their main sale is home clearance only. After export the ARE1 was submitted to the Range within 24 hours for certification of duty paid and physical clearance of goods from the factory under ARE1. The Range officers also did not raise any such objection of sealing inspite of submitting the ARE1 within 24 hrs of export. Hence the endorsement remained to be made through oversight. Further Notification No. 19/2004-CE (NT) dated 06.09.2004 has two parts one part is "Conditions and Limitations" and Second part is "Procedures". Only Conditions and Limitations mandatory and not condonable, remaining conditions are procedural and they can be condoned.
- 4.4 Goods cleared had been physically exported and remittances were also received from abroad. They rely on CESTAT Order 2007(218) E.L.T. 174 (Raj) in the case of Suncity Alloys Pvt. Ltd.
- 4.5 As per CBEC Circular No.81/81/94-Cx dated 25.11.1994 all the conditions can be condoned except the time limit for filing the rebate claim as per Section 11 B of Central Excise Act,1944.
- 4.6 They also rely on following GOI Orders passed for condoning non-mandatory Procedural Provisions :
- Birla VXL 1998 (99) ELT 387, TI Cycles 1993 (66) ELT 497
 - M/s Banner International Order No.255/07 dated 27.04.2007,
 - M/s Vipul Dye Chem Ltd. Order No. 873/2006 dated 29.09.2006
 - M/s Britannia Industries Ltd. Mumbai. Order No.380-382/07 dated 29.06.2007
- 4.7 The ARE1 Number, date and Commissionerate of Central Excise is shown on the Shipping Bill along with Mate Receipt Number and date, duly countersigned by the Superintendent of Customs. For co-relation, on the back of the ARE1, Shipping Bill No. and date, ship on which goods are sailed, Mate Receipt Number and date is shown. This is also countersigned by the same Customs Officer who has signed the Shipping Bill. There is no dispute

against this. This itself shows that whatever goods has been cleared for export in fact has been exported. All the goods have been examined by Customs authorities as these can be seen from the endorsement of the Examining Officer of Customs on the Export Invoice after examination. It is the mandatory requirement that whenever any goods cleared without physical examination of Central Excise officer same should be compulsorily required to be examined by the Customs Authorities. Therefore the allegation in this connection is not proper and correct

- 4.8 The quality, quantity, value, FOB, Net Weight and Gross are all tallied by the Examiner of Customs. Further this is certified by the Central Excise Officer on the back of the ARE1. The Marks & Nos. in the ARE 1, Central Excise Invoice are tallying with that shown on the Shipping Bill and Export Invoice. The ARE1 Number, date, Division and Commissionerate of Central Excise is shown on the Shipping Bill along with Mate Receipt Number and date duly countersigned by the Superintendent of Customs. For co-relation on the back of the ARE1 Shipping Bill No. and date, Ship on which goods are sailed, Mate Receipt Number and date is shown. This is also countersigned by the same Customs Officer who has signed the Shipping Bill.
- 4.9 There is no dispute against this and this itself shows that whatever goods had been cleared for export in fact has been exported. Further to submit that all the goods have been examined by Customs authorities as these can be seen from the endorsement of the Examining Officer of the Customs on the Export Invoice after examination. It is the mandatory requirement whenever any goods cleared without physical examination of Central Excise office same should be compulsorily required to be examined by the Customs Authorities. Whatever cleared has been exported. Hence there is no question of violation of Rule 18 of Central Excise Rules,2002 and Notification No.19/2004.CE(NT) dated 06.09.2004. Main allegation is of procedural infraction hence needs to be rejected on this ground alone when the physical export of the goods is established the remittances received for the said export has been realized and there is no dispute in this connection.
5. Personal hearing in the matter was held on 17.09.2019 which was attended by Shri Pravin Nair, Head-Internal Audit on behalf of the

applicant. He reiterated the submissions filed through Revision applications and pleaded that Revision Applications be allowed.

6. Government has carefully gone through the relevant case records available in case files, written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal. The issues involved in all these Revision Applications being similar, they are taken up together and are disposed off vide this common order.

7. Government observes that the rebate claims in the instant cases have been rejected on the grounds that the applicant had not furnished the Self sealing certification on the ARE-1s and had also not submitted the triplicate copies of the ARE-1s along with the claim and did not produce Bank Realisation Certificate. The Commissioner (Appeals) also upheld the rejection of the rebate claims.

8. Government however observes that failure to comply with provision of self-sealing and self-certification as laid down in para 3(a) (xi) of the Notification No.19/2004-CE (NT) dated 06.09.2004 is condonable if exported goods are co-relatable with goods cleared from factory of manufacture or warehouse and sufficient corroborative evidence available to correlate exported goods with goods cleared under Excise documents. Such correlation can be done by cross reference of ARE-1s with shipping bills, quantities/weight and description mentioned in export invoices/shipping bills, endorsement by Customs officer to effect that goods actually exported etc. If the correlation is established between export documents and Excise document, then export of duty paid goods may be treated as completed for admissibility of rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. Export oriented schemes like rebate/drawback are not deniable by merely technical interpretation of procedures, etc.

9. Government observes that the applicant has enclosed copies of the relevant ARE-1s and Bank Realisation Certificates to the Revision Applications, however, copies of other export documents such as Shipping Bill, Excise Documents, Bill of lading, Mate's receipt etc. are missing. Further there are no findings of the original authority in Orders in Original Nos. 1966/12-13/DC (Rebate)/Raigad dated 31.10.2012, 2019/ 12-13/DC (Rebate)/ Raigad dated 05.11.2012 and 2470/12-13/ DC (Rebate) / Raigad dated 27.12.2012 regarding correlation between Excise documents and export documents submitted by applicant in respect of Rebate claims filed by the applicant and this verification from the original authority is essential to establish that the goods cleared for export under the aforesaid ARE-I applications were actually exported. If the documentary evidences submitted by the applicant establish co-relation between goods cleared from the factory for export and goods exported then the substantial benefit of rebate cannot be denied for procedural lapse of not furnishing self-sealing and self-certification on the ARE-1s, if other conditions of notification are complied with.

10. As regards rejection of rebate claim on account of non submission of triplicate copy of ARE-1s, Government observes that the applicant has contended that the manufacturer did not give the Triplicate copy in the sealed cover received from the Range Supdt. as the same was misplaced by their employee. But the same was located thereafter and submitted before the Hon'ble Commissioner (Appeals) in the sealed cover and requested for sending the same to the Adjudicating authority for any verification of the same. The applicant also contended that the ARE-1s in the instant cases also contain the certificate of Duty Payment which shows the Debit Entry under CENVAT account. The applicant has also enclosed copy of letters O.C. No. 1076/2011 dated 14.12.2011, O.C. No. 1099/2011 dated 20.12.2011 and O.C. No. 451/2012 25.04.2012 as exhibits in subject Revision Applications, issued by Superintendent Cherlapally-I, Central Excise and Customs, Hyderabad

addressed to the Maritime Commissioner of Central Excise, Raigad, certifying the duty payment by the manufacturer viz. M/s Nifty Pharma Pvt. Ltd., Hyderabad in respect of ARE-1s involved in the instant Rebate claims.

11. Government in this regard also relies on GOI Order Nos. 612-666/2011-CX. dated 31-5-2011 in In Re: Vinergy International Pvt. Ltd., wherein GOI observed as under:

9.9 The triplicate copy of ARE-I was required to be certified by Range Superintendent regarding duty payment and forwarded to Asstt. Commissioner Central Excise. The factual position has not been brought on record regarding certification by Central Excise Range Superintendent.


10.

11. In view of above circumstances and keeping in view the existence of enough adduced evidence here in above, Government is of the considered opinion that what is compulsorily required here in the interest of justice is that the department should make positive efforts so as to confirm the basic ingredient of co-reliability specifically when there is nothing on record to out rightly negate the claim of applicant that duty paid goods cleared from M/s. BPCL Sewree Terminal were exported. Government, thus holds that duty paid goods have been exported in this case and rebate claim is admissible to the applicant. Thus, the impugned orders-in-appeal are hereby set aside and case is remanded back to the original authority to sanction the rebate claim after verifying the duty deposit particulars as stated in ARE-I forms. A reasonable opportunity of hearing will be afforded to the applicants.

12. Relying on the aforesaid GOI order and in view of the observations in foregoing paras, Government sets aside the Orders-in-Appeal No. BC/599/RGD(R)/2012-13, BC/600/RGD(R)/ 2012-13 both dated 19.02.2013 and No. BC/08/ RGD(R)/2013-14 dated 18.04.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai -III and remands the case back to the original authority to sanction the rebate claim after causing verification as specified at para 8. The applicant is also directed to submit all the export documents with respect to all concerned ARE-1s, BRCs, duty paying documents etc. for verification.

The original authority will complete the requisite verification expeditiously and pass a speaking order within six weeks of receipt of said documents from the respondent after following the due principles of natural justice.

13. Revision applications are disposed off in the above terms.



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

ORDER No. ²⁹³⁻²⁹⁵ /2019-CEX (WZ) /ASRA/Mumbai Dated 06.12.2019.

To,
M/s. Amoli Organics Pvt. Ltd. ,
407 Dalamal House, Jamanalal Bajaj Road,
Nariman Point,
Mumbai-400 021.

Copy to:

1. The Commissioner of CGST & CX, Belapur, CGO Complex, CBD Belapur, Navi Mumbai - 400 614
2. The Commissioner of CGST & CX (Appeals) Raigad, CGO Complex, CBD Belapur, Navi Mumbai - 400 614
3. The Deputy / Assistant Commissioner (Rebate), CGST & CX Belapur, CGO Complex, CBD Belapur, Navi Mumbai - 400 614.
4. ~~Sr. P.S. to AS (RA), Mumbai~~
5. Guard file
6. Spare Copy.