

F.No.195/800/12-RA

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, Cuffe Parade,
Mumbai- 400 005

F. NO. F.No.195/800/12-RA

Date of Issue:

ORDER NO. 301 /2020-CX (WZ) /ASRA/Mumbai DATED 04.03-2020 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 Kamud Drugs Pvt. Ltd., Sangli.

Respondent : Commissioner, Central Excise, Kolhapur.

Subject : Revision Application filed under Section 35EE of the Central Excise
Act, 1944 against Order-in-Appeal No. PII/RKS/164/2012 dated
25.05.2012 passed by the Commissioner (Appeals) Central Excise,
Pune-II.



ORDER

This Revision Application has been filed by M/s M/s Kamud Drugs Pvt. Ltd., N-6&8, MIDC, Kupwad Block, Dist. Sangli (hereinafter referred to as "the applicant") against Order-in-Appeal No. PII/RKS/164/2012 dated 25.05.2012 passed by the Commissioner (Appeals), Central Excise, Pune-II.

2. The brief facts of the case is that the applicant during the month of January 2011 exported their final product under ARE-1 No.375/6.1.2011; No.381/11.1.2011; & No.403/31.1.2011 on total payment of Central Excise duty of Rs.56,831/- (Rupees Fifty Six thousand Eight Hundred Thirty One only). The applicant filed three rebate claims for Rs.16,985/- (in respect of ARE-1 No.375), for Rs.28,645/- (in respect of ARE-1-No.381) and for Rs.11,201/- (in respect of ARE-1 No.403). vide their letters all dt.18.11.2011. The applicant received a show cause notice bearing F.No.V(17)18/RC-367-369/2011, dt.13.2.2012 from the original authority requiring them to show cause as to why the rebate claim of Rs.56,831/- should not be rejected under the provisions of Sec.11B of the Central Excise Act, 1944 as the particulars mentioned in the said three rebate claims were not consistent for the purpose of acceptance of proof of export.

3. The Original Authority in its Order in Original No. SLI/140/Adj/2011-12 dated 14.02.2012 observed as under :-

" The confusion aroused in the present case in respect of the ARE-1 Number 375 dtd. 06/01/2011 and ARE-1 number 381 dtd. 11/01/2011 is because the date of Let export order mentioned on the Shipping bill is 17/01/2011 whereas the date of actual export as per the Customs endorsement on the backside of ARE-1 is 16/01/2011. Thus the date of actual export is prior to the date of let export order. In this regard the contention of the assessee is that as per Customs endorsement and the certificate of transport agency M/s. Penta Freight Pvt. Ltd. the goods have been actually exported and had been reached to the destination, hence their claim is admissible as per law.

" in this regard the procedure is laid down in the CBEC's Customs Manual regarding the export procedure in the chapter 3. In the said procedure it is mentioned at the para 'k' that "The exporter or his agent should hand over the Exporter's copy of the Shipping Bill duly signed by the Appraiser permitting "Let Export" to the steamer agent who would then approach the proper officer (Preventive Officer) for allowing the shipment." Thus from this it is clear that only after the Let Export order the goods can be shipped or loaded in the vessel or the



air craft and then the actual export can take place. Thus from this contents it is crystal clear that in any case the date of actual export cannot be prior to let export order. Whereas in present case the date of actual export mentioned is 16/01/2011 and that of let export order is 17/01/2011 these facts are contrary to the procedure, hence I am inclined to hold that the claimant is failed to prove to my satisfaction that the goods had been actually exported. In the circumstances I find that the rebate claims for ARE-1 Number 375 dtd. 06/01/2011 and ARE-1 number 381 dtd. 11/01/2011 are not admissible to the claimant as they failed to prove the export of goods beyond doubt.

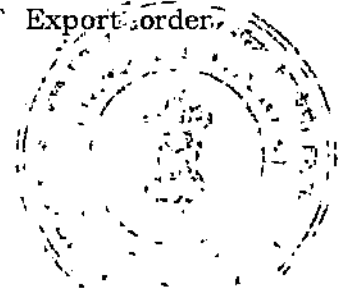
Now coming to the Rebate claim No. 367/2011 dtd.18/11/2011 for ARE-1 No. 403/31/01/2011, I find that the department was unable to find the actual date of export as there was no mention on the ARE-1 in the customs endorsement. In this regard I find that the assessee had submitted the copy of bank realization certificate issued by HDFC bank bearing number 315830 dtd. 09/09/2011, In this case as the bank realization certificate is available the export of goods gets ultimately proved as the sale proceed are received by the claimant hence there is no requirement to go in to other merits and I hold that the goods had been actually exported and sale proceeds are received hence rebate in this case is admissible to the claimant.

In view of his aforesaid findings, the original authority rejected the rebate claim of Rs.16,985/- in respect of ARE-1 Number 375 dtd. 06/01/2011 and of Rs. 28,645/- in respect of ARE-1 number 381 dtd. 11/01/2011 but sanctioned the rebate claim of Rs. 11,201/- in respect of ARE-1 No. 403 dtd.31.01.2011. The original authority also ordered appropriation of the sanctioned amount of Rs.11,201/- against the service Tax liability confirmed against the applicant vide OIA No. PII/VSGRAO/48/2011 dated 14.06.2011.

4. Being aggrieved by the above mentioned Order-in-Original the applicant filed an Appeal before the Commissioner (Appeals) Central Excise, Pune-II who vide Order-in-Appeal No. PII/RKS/164/2012 dated 25.05.2012 upheld the Order in original dated 14.02.2012 and rejected the appeal filed by the applicant.

5. Being aggrieved by the afore mentioned Order in Appeal the applicant has filed the instant revision application mainly on the following grounds :

5.1 After going through the various findings recorded by the Commissioner, C-Ex.(Appeals), Pune-II it appears that according to him since the date of actual export as per the customs endorsement on the backside of ARE-1s No.375 & 381 is 16.1.2011 whereas the date of LET Export order.



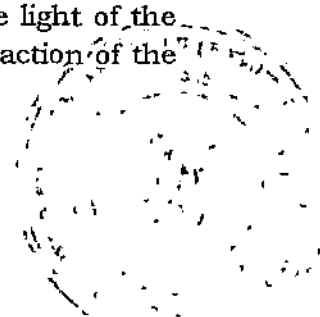
mentioned on the shipping bills is 17.1.2011, there is doubt about the export of the consignments covered under the said ARE-1s and since no supporting document to prove the export of the said consignments is adduced, the rebate of Rs.45,630/- is not allowable to them.

5.2 According to him, since under Sec.87 of the Finance Act, 1994 the Government has empowered the C.Ex.Officers to appropriate any amount payable to any person against the amount payable by the said person to the Government treasury, the appropriation of the sanctioned rebate claim of Rs.11,201/- against the demand for the service tax confirmed against them vide Order-In-Appeal No.PII/ VSGRAO/48/2011, dt.14.6.2011 especially since no stay order is obtained against the said Order-In-Appeal by the Applicants.

5.3 The difference in the dates can be due to oversight or due to lying of the consignments in the customs shade after customs clearance but prior to loading of the same in the ships, but in any circumstances, merely because of the said difference one can't conclude that the consignments are not at all exported. In fact, by raising the question about the actual export of the said consignments, the Commissioner, C.Ex.(Appeals), Pune-II is raising doubt about the honesty of the customs officer without making any enquiry in the matter. It is submitted that they, in no way, are in a position to clarify about the above said lacuna and the concerned customs officer is the only person who can throw light on the so called lacuna. In such cases, the Commissioner, C.Ex.(Appeals), Pune-II should have got the clarification from the Customs Officer about the said lacuna, before raising question about the actual export of the said consignments especially since once the custom officer has certified about the export of the consignments, only doubt remains about the actual date of export but no doubt remains about the physical export of the said consignment.

5.4 The Commissioner, C.Ex.(Appeals), Pune-II has acted simply on doubt rather than evidence and has rejected the rebate claim for no mistake of them and hence his action is arbitrary and unjust. Any how, they now, has got the bank realization certificate in respect of the above said consignments and the said fact also proves beyond any doubt that the said consignments are actually exported. Hence, the rebate of Rs.45,630/- involved in the said consignments is bound to be sanctioned to them.

5.5 When their stay application is pending for hearing, no action for recovery of the demand confirmed can be raised against them in the light of the various decisions of the Hon'ble High Court and hence the action of the

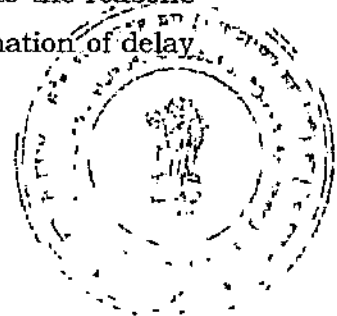


Commissioner, C.Ex. (Appeals), Pune-II of upholding the appropriation of the sanctioned rebate claim of Rs.11,201/- against the demand of the service tax confirmed vide Order-In-Appeal No.PII/VSGRAO/48/2011, dt.14.6.2011 is totally unjust and arbitrary.

5.6 Without prejudice to the above said submissions, they further submit that the Commissioner, C.Ex.(Appeals), Pune-II has totally ignored the specific decisions of the Hon'ble Tribunal [kindly refer the Hon'ble Tribunal's decisions in the cases of Voltas Ltd., 2008(9)STR-591; Poonam Trading Company, 2008(229)ELT-627; and Indian Aluminium Co.Ltd., 2006(196)ELT-253] declaring that the appropriation of the sanctioned against the demand confirmed pending the hearing of the against the order confirming the demand is totally wrong also the said action of the Commissioner, C.Ex. (Appeals), is totally unjust and arbitrary.

5.7 they further point out that Sec.87 of the Finance Act, 1994 will come into play only when no appeal/stay application is pending against Ise order confirming the demand against the assessee and the liability of the assessee has become final. The fact is not appreciated by the Commissioner, C.Ex.(Appeals), Pune-II and hence also his finding that the action of appropriation of the sanctioned rebate against the confirmed service tax demand is correct and legal, is totally unjust and arbitrary.

6. Personal hearing in this case was scheduled on 27.11.2017, 18.12.2017 and 20.08.2019; however neither the applicant nor its authorized representative appeared for the personal hearing. Further, there was no correspondence from the applicant seeking adjournment of hearing again. Hence, Government proceeds to decide the case on merits on the basis of available records. Government observes that there was a delay of 3 days' in filing the present Revision Application by the applicant. The applicant in its Application for condonation of delay submitted that they had received the impugned Order in Appeal on 07.06.2012; that as per provisions of Section 35EE of the Central Excise Act, 1944, they were supposed to file the Revision Application on or before 07.09.2012; that the said Revision application was sent through speed post on 30.08.2012 under the impression that the same will be delivered to Revision Application Unit, New Delhi on or before 07.09.2012 (applicant also enclosed copy of the registered speed post receipt) ; that the postal authority has delivered the same to the Revision Application Unit, New Delhi on 10.09.2012 and hence there is 3 days' delay in filing the said revision application and the said delay was due to the reasons beyond their control. In view of this, the applicant requested for condonation of delay



of 3 days arisen in filing the Revision Application in Revision Application Unit, New Delhi. Since, the applicant filed this revision application 3 days after the initial 90 days period, which falls within condonable limit of 90 days, Government in the interest of justice condones the said delay and proceeds to examine the case on merits.

7. Government observes that the applicant's rebate claims in present case were rejected by the original authority primarily on the ground that the date of actual export mentioned was 16/01/2011 and that of let export order was 17/01/2011 and as per the procedure laid down in the CBEC's Customs Manual regarding the export procedure in the Chapter 3, it was crystal clear that in any case the date of actual export cannot be prior to let export order and that the facts of the present case, mentioned supra, were contrary to the said procedure. Accordingly, Original authority held that the claimant failed to prove to his satisfaction that the goods had actually been exported and rejected rebate claims for ARE-1 Number 375 dtd. 06/01/2011 and ARE-1 number 381 dtd. 11/01/2011 totally amounting to Rs.45,630/-. The applicant however, in his present Revision Application has contended that anyhow, they have, now got the Bank Realization Certificate in respect of the above said consignments and the said fact also proves beyond doubt that the said consignments were actually exported and hence, the rebate of Rs.45,630/- involved in the said consignments is bound to be sanctioned to them. However, the copy of the said Bank Realization Certificate has not been enclosed by the applicant to the present Revision Application.

8. — ~~Government from the impugned Order in Original observes that the original authority in respect of ARE-1 No. 403/31.01.2011, where the department was unable to find the actual date of export as there was no mention on the ARE-1 in the customs endorsement observed that "in this case as the bank realization certificate is available the export of goods gets ultimately proved as the sale proceed are received by the claimant hence there is no requirement to go in to other merits and I hold that the goods had been actually exported and sale proceeds are received hence rebate in this case is admissible to the claimant".~~ Drawing similar analogy, Government notes that the applicant would be eligible for the rebate claims in r/o ARE-1 Number 375 dtd. 06/01/2011 and ARE-1 number 381 dtd. 11/01/2011 totally amounting to



Rs.45,630/- if the applicant has produced Bank Realization Certificate in respect of the consignments covered vide aforesaid ARE-1s.

9. As regards the appropriation of the sanctioned rebate claim of Rs.11,201/- against the demand of the service tax confirmed vide Order-In-Appeal No.PII/VSGRAO/48/2011, dt.14.6.2011 when the applicant's stay application is pending for hearing, Government from the records resting with the official CESTAT site observes that the appeal No. ST/545/2011 filed by the applicant against Order in Appeal No. PII/VSGRAO/48/11 dated 14.06.2011 passed by Commissioner of Central Excise (Appeals-II) Pune, has since been decided by CESTAT West Zonal Bench, Mumbai vide Final Order No. 3140/2015 dated 03.09.2015 by setting aside the said Order in Appeal and by allowing the appeal of the applicant. In view of this, Government sets aside the appropriation of the sanctioned rebate claim of Rs.11,201/- against the demand of the service tax confirmed vide Order-In-Appeal No.PII/VSGRAO/48/2011, dt.14.6.2011.

10. In view of above discussion, Government sets aside Order-in-Appeal No. PII/RKS/164/2012 dated 25.05.2012 passed by the Commissioner (Appeals) Central Excise, Pune-II and remands the case back to original authority only for the limited purpose of determining eligibility of rebate claims of Rs. 45,630/- after taking into account the Bank Realization certificate issued in respect of consignments exported vide ARE-1 Number 375 dtd. 06/01/2011 and ARE-1 number 381 dtd. 11/01/2011. The applicant is directed to submit the same to the original authority within two weeks of the receipt of this Order. A reasonable opportunity of hearing may be afforded to the applicant.

11. Revision application is disposed off in the above terms.

12. So, ordered.


(SEEMA ARORA)

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

ORDER No. 301 /2020-CX (WZ)/ASRA/Mumbai DATED 04.03.2020.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)



To,

M/s Kamud Drugs Pvt. Ltd.,
Plot No. 6 & 8, M.I.d.C., Kupwad,
Tal: Miraj, Dist. Sangli-416 436.

Copy to:

1. The Commissioner of Central GST, Vasant Plaza Commercial Complex, 4th & 5th Floor, C.S. No. 1079/2 K.H., Rajaram Road, Bagal Chowk, Kolhapur-416001.
2. The Commissioner Of Central GST (Appeals-I) Pune F-Wing, 3rd Floor, GST Bhavan, 41/A, Sassoon Road, Pune-411001.
3. The Assistant Commissioner Central GST-Division-IV At-Miraj, Opp. Mahasool, Bhvan, Sangli-Miraj Road, Miraj-416410.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

