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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. 198/22/15-RA /5309 Date of Issue: 13.09.2021

ORDER NO. 307/2021-CX (WZ) /ASRA/MUMBAI DATED 08.09.2021 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 : Commissioner of Central Excise, Ahmedabad-III

Respondent: M/s Lubi Industries LLP

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against Order-in-Appeal No. AHM-EXCUS-003-APP-161-14-15 dated 13.03.2015 passed by the Commissioner (Appeals-1), Central Excise, Ahmedabad.

**ORDER**

This Revision Application has been filed by the Commissioner of Central Excise, Ahmedabad-III (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. AHM-EXCUS-003-APP-161-14-15 dated 13.03.2015 passed by the Commissioner (Appeals-1), Central Excise, Ahmedabad

2. The case in brief is that the M/s Lubi Industries LLP, A1 & A2, Lubi Industrial Park, Vadsar, Taluka-Kalol, Dist. Gandhinagar, Gujarat – 382 725 (herein after as "the Respondent") manufacturer had exported vix End Suction Mono Block Pumps falling under Chapter No. 84137010 and then filed a rebate claim dated 02.05.2014 in respect of ARE-1 No. 0009/2013-14 dated 14.04.2013 for Rs. 2,73,249/- (Rupees Two Lakhs Seventy Three Thousand Two Hundred and Forty Nine Only) under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/04-CE(NT) dated 06.09.2004 as amended. On scrutiny of the claim, it was observed that the Respondent had not submitted Original copy of ARE-1 and invoice issued under Rule 11 of the Central Excise Rules, hence they were issued a Show Cause Notice dated 28.07.2014. The Deputy Commissioner, Central Excise, Kalol Division, Ahmedabad-III vide Order-in-Original No. AHM-CEX-2821/R/2014 dated 13.10.2014 rejected the refund claims for Rs. 2,73,249/- . Aggrieved, the Applicant filed appeal with the Commissioner (Appeals-1), Central Excise, Ahmedabad. The Commissioner(Appeals) vide Order-in-Appeal No. AHM-EXCUS-003-APP-161-14-15 dated 13.03.2015 allowed the appeal filed by the Respondent by way of remand with consequential relief and set aside the impugned order.

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

(i) The Commissioner (Appeals) had erred in passing an order by way of remand with consequential relief. In his arguments the Commissioner (Appeals) has not considered the provisions of Rule 18 of Central

Excise Rules, 2002 and Chapter 8 of CBEC's Excise Manual of Supplementary Instructions.

(ii) As per the provisions of Rule 18 of the Central Excise Rules, 2002, where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification. The conditions, limitation and procedures for rebate of duty on export of goods has been specified vide Notification No. 1912004-CE(NT) dated 06.09.2004 as amended from time to time. As per the procedures laid down in the said notification:

> *"(i) the claim of the rebate of duty paid on all excisable goods shall be lodged alongwith the original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacturer or warehouse or, as the case may be, the Maritime Commissioner;*
>
> *ii) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacturer of warehouse or, as the case may be, Maritime Commissioner of Central Excise shall compare the duplicate copy of application received from the officer of customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise officers and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part."*

(iii) As per Chapter 8 of CBEC's Excise Manual of Supplementary Instructions. ,Original copy of ARE-1 and invoice issued under Rule 11 along with other self attested copy of the requisite documents shall be required for filing claim of rebate and after satisfying that the goods cleared for export under the relevant ARE-1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of ARE-1 duly certified by Customs, and that the goods are of " duty paid" character as certified on the triplicate copy of ARE-1 received from the jurisdictional Superintendent of Central Excise (Range office) the rebate sanctioned authority will sanction the

rebate, in part of full. The production of an ARE-1 form in original and in duplicate must be construed as being mandatory since that is the basic condition to establish that the goods were exported and that they had a duty paid character.

(iv) The above provisions imply that the rebate sanctioning authority has to be satisfied by comparing the duplicate copy of application received from the officer of customs with original copy received from the exporter and with the triplicate copy received from the Central Excise officer that the goods cleared for export under the relevant ARE-1 application mentioned in the claim were actually exported and if the claim is found in order, then only he can sanction the rebate either in whole or in part. Paragraph 8.4 of CBEC instruction specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported as evident from the original and duplicate copies of the ARE-1 form duly certified by customs. The second is that the goods are of a duty paid character as certified on the triplicate copy of the ARE-1 form received from the jurisdictional Superintendent of Central Excise. The object and purpose underlying the procedure been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.In absence of Original and duplicate copy of ARE-1 duly certified by the Customs Authority, the comparison as specified in the notification cannot be done. Further originally the Deputy Commissioner of Central Excise, Kalol Division had held the description of goods mentioned in the Shipping Bill did not match with the Quadruplicate copy of ARE-1 application available in Range office and since such corroboration could not be done, being dissatisfied about the fact that the goods were indeed exported, the rebate claim was rejected.

(v) The Commissioner(Appeals) had in his OIA erred in holding that as per CBEC instructions, main emphasis must be given to the fact that before sanctioning rebate claims, it should be ascertained that the goods were actually exported. On the one hand, the Commissioner(Appeals) himself admitted that submission of copy of ARE-1 duly endorsed by Customs is indeed an essential condition for sanction of claim for rebate prescribed in Notification No. 19/2004-CE(NT) dated 06.09.2004 (para 6 of OIA) and on the other hand has held that non production of original and duplicate copy of ARE-1 cannot invalidate rebate claim. The Commissioner(Appeals) had held in his findings that the assessee produced forceful, strong, logical and rational evidence to prove that the goods were exported. But the adjudicating authority had after scrutiny of the same goods, concluded that the description of goods mentioned in the ARE-1 did not match with the Shipping Bill.

(vi) The Commissioner(Appeals) had erred in holding that the adjudicating authority had travelled beyond the scope of subject Show Cause notice, However, the Commissioner(Appeal)'s above observation does not hold good. The rebate sanctioning authority had rejected the claim mainly on the ground that the description of goods cleared under said ARE-1 and that mentioned in the Shipping Bill was not tallied. The rebate is a benefit given to exporters, but is subject to scrutiny regarding the basic condition that the goods in question have indeed been exported. Scrutiny of such documents and recording such findings by rebate sanctioning authority are not to be considered as beyond the scope of subject show cause notice. Therefore, the Commissioner (Appeals)'s Order does not hold good and is improper and unjustifiable.

(vii) In the instant case, the Commissioner (Appeals) had committed gross error of law by remanding back the matter on the above grounds.

(a) Section 35(A) of the Central Excise Act, 1944 and Section 128A (3) of the Customs Act, 1962 as it stood before 11.05.2001 read as *"Commissioner (Appeals) shall, after making such further enquiry as*

*may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling decision or order appealed against or may refer the case back to the adjudicating authority with such direction as he may think fit for a fresh adjudication or decision as the case may be, after taking additional evidence, if necessary."*

(b) The above underlined phrase of the above referred Section was amended with effect from 11.05.2001 and the new section read as *"Commissioner (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against".*

(c) The said amendment with effect from 11.05.2001 withdrew the powers of remand which was earlier vested with the Commissioner (Appeals). The said amendment was made in the Finance Act, 2001 by way of approval/assent given by the Parliament. Since then, the Commissioner (Appeals) has been authorized to act as an Adjudicating Authority and pass necessary orders if it is found that the Original Adjudicating Authority has passed an order which is not legal and proper, by calling for the adjudication proceeding's record and re-examine the issue afresh/suo moto. The Commissioner (Appeals) has been given powers to issue orders after ascertaining the facts at his end while in the earlier he could order the original Adjudicating Authority to adjudicate the matter in question afresh, by way of remand directions.

(d) The Hon'ble Supreme Court of India in its judgment dated 01.07.2007 in Civil Appeal No. 6988/2005 in the case of M/s MIL India Ltd. [2007 210 ELT 188 (S.C.)] has noted the provisions of amended law by observing that *"in fact, the power of remand by the Commissioner (Appeals) has been taken away by amending Section 35A with effect from 11.05.2001 under the Finance Bill, 2001. Under the Notes to clause 122 of the said Bill it is stated that Clause 122 seeks to amend Section 35A so as to withdraw the power*

*of the Commissioner (Appeals) to remand matter back to the adjudicating authority for fresh.' consideration."*

(e) The Hon'ble High Court of Punjab & Haryana in the case of

- M/s Enkay (India) Rubber Co. Pvt. Ltd. [2008 (224) ELT 393 (P & H)];
- M/s B.C. Kataria f2008 (221) ELT 508 ( P & HP); and
- M/s Hawkins Cookers Ltd.

has stated that the observations made by the Hon'ble Supreme Court in the above referred order in Civil Appeal No. 6988/2005 decided on 01.03.2007, are part of the ratio decided by the Apex Court in its judgment passed in case of M/s MIL India Ltd. [2007 (210) ELT 188 (S.C.)].

(f) All the above referred Orders passed by Hon'ble High Court of Punjab & Haryana have been passed in 2007 and 2008 i.e. after passing of order in case of M/s Medico Lab by the Hon'ble Gujarat High Court on 21.09.2004. Even the Hon'ble Supreme Court's judgment in the case of M/s MIL India Ltd. dated 01.03.2007, has been passed after the order passed by Hon'ble Gujarat High Court. All these orders affirm the amendment made in the Finance Act, 2001 by the Parliament vide which remand back powers of the Commissioner (Appeal) have been done away with.

(g) The Commissioner (Appeals) had failed to follow the judicial discipline since the said authority was bound to follow the judgments and Circular which prohibited Commissioner (Appeals) to remand the case back to the original Adjudicating Authority. In view of the settled propositions of law, the Commissioner (Appeal)'s Order-in-Appeal under reference, was bad in law and deserves to be set aside

(viii) The Applicant prayed that the Order-in-Original dated 13.10.2013 be upheld and the impugned Order-in-Appeal dated 13.03.2015 be set aside.

4. The Respondent in reply dated 26.10.2015 to the Show Cause Notice dated issued under Section 35EE of Central Excise Act, 1944 submitted the following:

(i) Though it is the ground made by the Revenue in this Revision Application that the Commissioner(Appeals) should not have remained the case back and also that the Commissioner(Appeals) had no jurisdiction under Section 35A of the Central Excise Act to remand the case, Original Adjudicating Authority had already decided the case remanded to him by the Commissioner(Appeals), and a regular adjudication order being Order-in-Original No. 21/CE/Ref./DC/2015-16-Refund dated 24.07.2015 has already been passed thereby deciding our rebate claim, which was again rejected. Thus, when the order of the Commissioner (Appeals) has already been implemented and a new/fresh adjudication order has been made in the remanded proceedings, the present Revision Application against such remand order would no longer be competent, nor maintainable. A regular adjudication now having been made by the Deputy Commissioner of Central Excise in the case remanded by the Commissioner (Appeals), no challenge against such remand order would survive; and therefore, the Revenue's Revision Application deserves to be dismissed on this ground itself.

(ii) The first ground raised in the application is that Rule 18 of the Central Excise Rules and Supplementary Instructions contained in Chapter 8 of CBEC's Excise Manual lay down that original copy of ARE-1 and invoice issued under Rule-11 along with self-attested copy of the requisite documents were required for filing rebate claim; and these provisions imply that the rebate sanctioning authority must be satisfied by comparing the duplicate copy of application received from the Custom Officer with the original copy received from the exporter. In this regard, it is further submitted by the Revenue that the first requirement was that the goods cleared for export under the relevant ARE-1 were actually exported as evident from the original and duplicate copies of the ARE-1, and the second requirement was that

the goods were of duty paid character as certified on the triplicate copy of ARE-1 received from the jurisdictional Superintendent. Since all the three copies of ARE-1 had been lost/misplaced in the present case, the above ground was raised.

(iii) But the procedure referred to in Chapter 8 of the CBEC's Excise Manual of Supplementary Instructions is for regulating grant of rebate, and it is permissible to deviate from strict compliance of such procedure inasmuch as, the only requirement is that any procedure should be substantially complied with so as to ensure that the objective of allowing export benefit was not defeated altogether. It is a settled law that procedure is a handmaid and not the mistress of law, and therefore, export benefits like rebate are always to be allowed notwithstanding a procedural infraction or non-compliance.

(iv) By a number of decisions rendered by the Appellate Tribunal as well as the Government of India in its revisionary jurisdiction in cases like Allansons Ltd. [1999 (111) ELT 295 (G01)], Indo Euro Textiles Pvt. Ltd. [1998 (97) ELT 550 (G01)], 'Birla VXL Ltd. [1998 (99) ELT 387 (Trib.)] and Simplex Global Impex V/s Commissioner [2002 (145) ELT 470 (Trib.)], it is decided that a benefit given by the Government for enhancing exports could not be denied for an technical reasons or venial infractions. Thus, it is a settled legal position by virtue of the decisions of the Tribunal as well as the Govt. of India that substantive right of any benefits on exported goods cannot be denied if there is a substantial compliance of the provisions of law. A pragmatic view has to be taken for augmenting exports of the country so that the country may earn more foreign exchange; and therefore export benefit like rebate ought not to be rejected on the ground of procedural non-compliance raised by the Revenue in this application.

(v) In the present case, though original or duplicate copy of ARE-1 was not available with the Respondent, various other documents submitted with the rebate claim duly established that duty paid goods had actually been exported. Full price of the goods was also received by them from their foreign buyer, and remittance so received from the

foreign buyer was also fully corroborated by the export documents like Invoice and Shipping bill. Documents like Bill of Lading, Mate Receipt and abstract of RG 23A Part-II was also available on record of this case for the goods cleared for export under ARE-1 No. 9/2013-14 dated 14.04.2013, and thus, there was no real dispute about actual export of the goods in question.

(vi) It is the Revenue's case also that the provision imply that the rebate sanctioning authority should be satisfied about actual export of the goods and also about duty paid character of such goods. Rule 18 of the Rules or any other provision nowhere lays down that rebate should not be allowed if the original and/or duplicate copies of ARE-1 were not available with the exporter claiming such rebate; on the contrary there is an established practice in the Country to allow rebate even if one or the other document in respect of export of the goods was not available, by securing the interest of the Government by insisting upon a bond or an undertaking from the exporter claiming rebate as regards non-availability of such document and also not to claim any other benefit in future for the same export. In the present case also, this precaution was insisted upon by the Commissioner (Appeals) because there was no real dispute about the export of the goods in question and also payment of excise duty to the extent of Rs.2,73,249/- on such goods. Rebate was directed to be allowed by the Commissioner (Appeals) only if the adjudicating authority (i.e. the rebate sanctioning authority) was satisfied about actual export of duty paid goods, and therefore, this direction is in accordance with the scheme and scope of Rule 18 of the Central Excise Rules. Therefore, the ground raised in the Revenue's application that direction to allow rebate though ARE-1 was not available with the Respondent is illegal and does not hold any water.

(vii) The other ground in the Revenue's Application that the adjudicating authority had not travelled beyond the scope of the show cause notice is ex-facie incorrect inasmuch as there was undisputedly no allegation in the show cause notice that the description of the goods cleared

under ARE-1 and the description mentioned in the shipping bill did not tally. It is as clear as day light from a mere perusal of the show cause notice dated 28.07.2014 that the only allegation levelled there under was that the Respondent had not submitted original copy of ARE-1 and invoice issued under Rule 11 of the Central Excise Rules and accordingly, the Respondent had not fulfilled conditions of Notification No. 19/2004-CE (NT) read with Rule-18 of the Central Excise Rules. There was admittedly no allegation in the show cause notice that description of the goods mentioned in the shipping bill on one hand and the ARE-1 on the other hand did not tally. The Commissioner (Appeals) has therefore rightly and correctly held that there was no allegation in the show cause notice about different descriptions in the above two documents. Therefore, the ground now raised in the Revenue's Application that Commissioner (Appeals) committed an error in holding that the adjudicating authority travelled beyond the show cause notice does not merit any consideration.

(viii) Moreover, there is no difference in description of the goods in the above two documents also. The goods exported by us have been "End suction mono block pumps, Bare shaft pump, S.S. end Suction pump, horizontal split case pump, and drainage and sewage submersible set". The model and identification numbers of such goods are mentioned with the above description in ARE-1 No. 9/2013-14 dated 14.04.2013. In the Shipping Bill No. 4960221 dated 16.04.2013, it is stated that the goods and their marks were as per invoice, and thus, the description of goods shown in the Invoice No. 20 dated 13.04.2013 were incorporated in the Shipping Bill. However, on subsequent pages of the Shipping Bill. the detailed description of the goods for export with their identification marks was also typed. When the invoice is considered. it becomes clear that mark numbers and identification of the goods were shown therein, and such information is on face of it co-relatable with the description of goods for export given in the shipping bill and also the concerned ARE-1. By very nature of the

document, description of the goods for export is given in more details in the shipping bill since this document serves purpose of the packing list also; whereas description in ARE-1 is not that elaborate because of space constraint and also because the purpose of ARE-1 is not that of a packing list. However, the same goods are described in all the export documents, and there is no justification in the allegation that description of goods under ARE-1 was different from that shown in the shipping bill. This ground raised in the Revenue's Application therefore deserves to be rejected at once in the interest of justice.

(ix) The last objection raised in the Revenue's Application is that the Commissioner (Appeals) no longer possessed powers to remit a case back by virtue of amendment made in Section 35A of the Central Excise Act w.e.f. 11.05.2001. But this objection merits outright rejection because it is now a settled legal position that the Commissioner (Appeals) still possesses power and jurisdiction to remit a case back to the original adjudicating authority whose order was under challenge before him. It is also a settled legal position that power to annul the decision or order appealed against vested in the Commissioner(Appeals) carries the power to remit a case back for further inquiry etc. also, and this is so laid down by the Hon'ble Supreme Court in case of U01 V/s. Umesh Dhaimode [1998 (98) ELT 584 (SC)] and also by the Hon'ble Gujarat High cases like Medico Labs [2004 (173) ELT 117 (Guj.)], Commissioner V/s. Associated Hotels Ltd. [2015 (37) STR 723(Guj.)] etc. The reference given in the Revenue's Application to a judgment of the Hon'ble Apex Court in the case of M/s. MIL India Ltd. is inappropriate and inapt because no law is laid down in this judgment by the Hon'ble Supreme Court that the Appellate Commissioner had no power to remand any case w.e.f. 11.05.2001, but a passing observation only is recorded by the Hon'ble Supreme Court in this judgment about the scheme of Section 35A of the Central Excise Act. The Hon'ble Delhi High Court has also held in case of Commissioner V/s. World Vision [2011 (24) STR 650 (Del.)] that the order of remand to adjudicating authority by the

Commissioner (Appeals) was justified. The present case arises in the State of Gujarat and the law laid down by the Hon'ble Gujarat High Court as regards the scheme of Section 35A of the said Act shall have to be applied in the present case because it is the Hon'ble Gujarat High Court that has territorial jurisdiction over the subject matter involved in this case. Therefore, in view of the above referred judgments of the Hon'ble Gujarat High Court, the Revenue's objection as regards the remand of the case back to the adjudicating authority does not hold any water.

(x) The original adjudicating authority has accepted the order of remand made by the Commissioner (Appeals) and passed a fresh adjudication order also in the remanded proceedings, and therefore also, the ground raised in the Revenue's Application about incompetence of the Commissioner (Appeals) in directing remand of a case does not merit any consideration in this proceedings.

(xi) The order of the Commissioner (Appeals) was perfectly legal and valid, and this order does not call for any interference in the Revision Application filed by the Revenue. There is no error committed by the Commissioner(Appeals) in deciding their appeal and therefore, the objection raised by the Revenue against such order deserve to be rejected in the interest of justice.

5. Personal Hearing was granted on 03.03.2021, 10.03.2021, 06.04.2021, 13.04.2021, 16.07.2021 and 23.07.2021, no one appeared for the hearing on behalf of the Applicant. On 23.07.2021, Shri C.R. Pillai, Authorized representative of the Respondent appeared for the online hearing and reiterated his earlier submissions. He mentioned that further written submission have been mailed today and the same may be taken on record. He requested to allow his application.

6. The Respondent in the written submission has reiterated the submission made in their reply dated 26.10.2015 to the Show Cause Notice dated issued under Section 35EE of Central Excise Act, 1944. No new submission has been given in the written submission. Further vide the

Respondent's email dated 01.09.2021 submitted copies of the following orders

(a) Order-in-Original No. AHM-CEX-2821/R/2014 dated 13.10.2014 passed by the Deputy Commissioner, Central Excise, Kalol Division, Ahmedabad-III – claim rejected.

(b) Order-in-Appeal No. AHM-EXCUS-003-APP-161-14-15 dated 13.03.2015 passed by the Commissioner (Appeals-1), Central Excise, Ahmedabad – case remanded to original adjudicating authority.

(c) Order-in-Original No. 21/CE/REF/DC/2015-16-Refund dated 24.07.2015 passed by the Deputy Commissioner, Central Excise, Kalol Division, Ahmedabad-III – claim rejected.

(d) Order-in-Appeal No. AHM-EXCUS-003-APP-018-16-17 dated 25.05.2016 passed by the Commissioner (Appeals-1), Central Excise, Ahmedabad – case remanded to original adjudicating authority.

(e) Order-in-Original No. AHM-CEX-003-DC-064-2017 dated 22.02.2017 passed by the Deputy Commissioner, Central Excise, Kalol Division, Ahmedabad-III – rebate sanctioned.

7. 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.

8. On perusal of the records, Government observes that the Respondent manufacturer had exported vix End Suction Mono Block Pumps falling under Chapter No. 84137010 and filed a rebate claim dated 02.05.2014 in respect of ARE-1 No. 0009/2013-14 dated 14.04.2013 for Rs. 2,73,249/-. On scrutiny of the claim, it was observed that the Respondent had not submitted Original copy of ARE-1 and invoice issued under Rule 11 of the Central Excise Rules, hence they were issued a Show Cause Notice dated 28.07.2014. The Deputy Commissioner, Central Excise, Kalol Division,

Ahmedabad-III vide Order-in-Original No. AHM-CEX-2821/R/2014 dated 13.10.2014 dated 13.08.2012 rejected the refund claims for Rs. 2,73,249/- of the following grounds:

(i) Original, Duplicate and Triplicate copy of ARE-1 No. 0009/2013-14 dated 14.04.2013 was not submitted;

(ii) Duplicate Transporter copy of Invoice No 000021 to 000024 all dated 14.04.2013 issued under Rule 11 of the Central Excise Rules, 2002 was not submitted;

(iii) The detailed description of goods mentioned in the Shipping Bill No. 498031 dated 16.04.2013 and ARE-1 No. 0009/2013-14 dated 14.04.2013 were not tallying, hence it cannot be corroborated as to whether the goods mentioned in the said ARE-1 have been exported under the said Shipping Bill or not.

Aggrieved, the Applicant filed appeal with the Commissioner (Appeals-1), Central Excise, Ahmedabad who vide Order-in-Appeal No. AHM-EXCUS-003-APP-161-14-15 dated 13.03.2015 allowed the appeal filed by the Respondent by way of remand with consequential relief and set aside the impugned order. The Applicant then filed the current revision application.

8. Government observes that the Respondent in their reply dated 14.08.2014 to the show cause notice dated 28.07.2014 stated that:

*"1. That the goods cleared under the said ARE-1 has been exported within six months from the date of clearance and documentary evidence thereof i.e. Shipping bill and Bill of lading, BRC/Mate Receipt etc. have been submitted along with the claim.*

*2. that the original application was sent to you good office along with our claims, however, at the time of obtaining acknowledgment it has come to you notice that the file containing the original documents pertaining to this claim is lost/misplaced. Hence, we have immediately reconstructed the claim file and submitted the same along with copy of the said documents viz ARE-1 and invoice.*

*3. that the claim was submitted within 12 months from the date of export along with proof of export and evidence of having paid the duty and acknowledgment thereof has been obtained.*

*4. It is hereby submitted that the duty on goods cleared have been paid and export of goods have been effected, hence the claim for rebate of duty paid is admissible. There are several court orders to the effect that claim of rebate cannot be is allowed in cases where original ARE-1*

*forms or invoice are lost/misplaced. We therefore, request to kindly allow the claim as sufficient evidence for having exported the goods out of India is submitted in this case."*

9. Government observes that the Original Adjudicating Authority in the findings stated that:

*"9.7 Further, I have gone through the Quadruplicate copy of the said A.R.E1 application availing in the Range Office, wherein the 'duty-paid' character has been certified by the jurisdictional Superintendent of Central Excise."*

Further, from the copies of the documents submitted by the Respondent, Government observes that

(i) ARE-1: *"0009/2013-14"* Date: *"14.04.2013"* shows description of goods as *"841370.10 ENDSUCTION MONOBLOCK PUMPS, BARESHAFT PUMP, S.S. END SUCTION PUMP, HORIZANTAL SPLIT CASE PUMP, 841370.10 DRAINAGE AND SEWAGE SUBMERSIBLE PUMPSET"* and the ARE-1 was duly endorsed by Superintendent and Inspector of Customs, I.C.D. Khodiyar Officer with remarks - Container No. *"GESU-6600157"*, Let Export Order given on *"23"* day *'4'* (month) *"13"* (year) on the shipping Bill No. *"4980321"* dated *"16/4/13"* and sealed /one time lock No. *"006224"* in my supervision.

*(ii)* The Triplicate Central Excise Invoice Nos. 000021, 000022, 000023 and 000024 all dated 14.04.2013 shows ARE-1 No and date as *"9"* and *"14/04/2013"*, Name & Address of Buyer: *"ROYAL MAX VENTURES-GHANA"*, Name of Excisable Goods: *"SUBMERSIBLE/CENTRIFUGUL PRESSURE BOOSTER PUMP"* and Tariff No. CSH No. *"8413 70 10"*

*(iii)* Shipping Bill No. *"4980321"* dated *"16/4/13"* shows the Consignee as *"M/s ROYAL MAX VENTURES"* , Invoice No & Date : 0020, 13.04.2013", ARE-1 No & date : "0009, 14/04/2013, KALOL, ABD III", Description: *"84137010 S.S. END SUCTION MONBLOCK PUMP"* and *""84137010 HORIZONTAL SPLIT CASE PUMPSET "*

(iv) Bill of Lading No. (Document No.): AEV3042600008 date 04.05.2013 shows Shipping Bill No. *"4980321"* DT *"16.04.2013"* , Container No. *"GESU6600157"*.

(v) Mate Receipt No: "38" Date: "04/05/2013" shows Shipping Bill No: *"4980321" , S/B* DATE" *"16.04.2013"*, Container No. *"GESU6-60015-7 "*.

Therefore the documents furnished by the Respondent indisputably prove that duty paid goods under claim for rebate have been exported and hence the rebate claim should not have been denied only on grounds of non-production of Original, Duplicate and Triplicate copy of ARE-1 and duplicate copy of the Central Excise Invoice. Further, the description of the goods are tallying with the goods mentioned in the ARE-1 and Shipping Bill.. Government finds that there are catena of judgments stating that substantive benefit cannot be denied on mere procedural lapse and hence the rebate claim is allowed.

10. 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.*

11. Further, the Hon'ble High Court, Gujarat in Raj Petro Specialties Vs Union of India [2017(345) ELT 496 (Guj)] also while deciding the identical issue, relied on aforestated order of Hon'ble High Court of Bombay.

12. Government finds that as per the direction of the Commissioner(Appeal)'s in Order-in-Appeal No. AHM-EXCUS-003-APP-161-14-15 dated 13.03.2015 the case was remanded to original adjudicating authority. In the remanded case, during the personal hearing before the adjudicating authority, the Respondent had submitted a bond regarding lost/misplacement of ARE-1 and original transporter copy of Excise Invoice Nos. 21 to 24. The Deputy Commissioner, Central Excise, Kalol Division, Ahmedabad-III vide Order-in-Original No. 21/CE/REF/DC/2015-16-Refund dated 24.07.2015 again rejected the rebate claim. Aggrieved the Respondent filed appeal before the Commissioner(Appeals), who vide Order-in-Appeal No. AHM-EXCUS-003-APP-018-16-17 dated 25.05.2016 held that:

*"4.3 I find that there are also other authoritative decisions in the matter that non-production of original, duplicate, triplicate copy of ARE-1 cannot invalidate*

*rebate claim. The Government of India, in their revision order dated12.10.2010 in the case of M/s Gard Tax-o-Fab Pvt Ltd has held that instead of rejecting the claims for non-submission of original documents, the original authority should have considered collateral evidence to verify whether duty paid goods have actually been exported or not as per provisions of C.B.E. & C.'s Central Manual of Supplementary Instructions. Further, in the case of M/s Zandu Chemicals Ltd. reported in 2015 (315) ELT 520 (Bom), the Hon'ble High Court of Bompay held that Rebate claim could not be rejected for their non-submission of original ARE-1s, as there was proof of export of goods in other documents like shipping bill on which ARE1 was mentioned; that condition of submission of original as well as duplicate copies of ARE1 was only directory/procedural, and mandatory.*

*4.4 In view of above discussed authoritative pronouncements, I am of the opinion that the order passed by the adjudicating is unsustainable and it is manifestly erroneous.*

*4.5 I further find that the adjudicating authority, in the impugned order, has stated that the department has filed an appeal before the Revisionary Authority, New, Delhi, challenging the Order-in-Appeal dated 13.01.2015 and one of the ground of appeal is regarding the essential condition for sanction of claim for rebate prescribed in Notification No.19/2004 CE (NT) dated 06.09.2004. It is pertinent to point out here that as per Board's Circular No.398/31/98-CX dated 02.06.1998 and F.No.276/186/2015-CX 8 A dated 01.06.2015, no refund/rebate claim should be held on the ground that an appeal has been filed agains the order diving the relief (order of Commissioner (Appeals)/Commissioner of Central Excise & Customs/Cestat), unless stay order has been obtained. Further, as per Board's circular No. 432/56/98-CX dated 22.09.1988, the departmental authority can issue protective demand under relevant provisions of the Central Excise Act, 1944 for recovery of such refund sanctioned. In the circumstances, I do not find any merit in the impugned order for rejecting the rebate claim by not following Commissione(Appeals) order dated 13.01.2015 and supporting case laws.*

*4.6 In view of above discussion and following the ratio of decisions as mentioned at para 4.3 and also following the ratio of M/s UM Cables Ltd case, I set aside the impugned order and remand back the case to the adjudicating authority for considering the rebate claim in above terms."*

The Superintendent(RRA), Central Excise(HQ), Ahmedabad-III vide letter dated 28.02.2017 informed the original adjudicating authority that the above Order-in-Appeal dated 25.05.2016 has been accepted by the department on merit. The Deputy Commissioner, Central Excise, Kalol Division, Ahmedabad-III Order-in-Original No. AHM-CEX-003-DC-064-2017

dated 22.02.2017 sanctioned the rebate claim of Rs. 2,73,249/-. Government finds that the case is res-judicata.

13. In view of above, Government upholds the impugned Order-in-Appeal No. AHM-EXCUS-003-APP-161-14-15 dated 13.03.2015 passed by the Commissioner (Appeals-1), Central Excise, Ahmedabad.

14. The revision application filed by the Applicant is rejected.

8/9/21

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

ORDER No 307 /2021-CX (WZ) /ASRA/Mumbai Dated 08.09.2021

To,
The Commissioner of CGST,
Customs House Building,
Navrangpura, Ahsaram Road,
Ahmedabad – 380 009.

Copy to:

1. M/s Lubi Industries LLP, A1 & A2, Lubi Industrial Park, Vadsar, Taluka-Kalol, Dist. Gandhinagar, Gujarat – 382 725.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.
4. Spare Copy