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**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. 198/49/14-RA | 5444

Date of Issue: 24.09.2021

ORDER NO. 308/2021-CX (WZ) /ASRA/Mumbai DATED 13.09.2021
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 THE CENTRAL
EXCISE ACT, 1944.

Applicant : The Commissioner of Central Excise, Kolhapur.

Respondent : M/s Emerson Climate Technologies (I) Ltd.
Atit Pali Road, Atit, Tal & Dist. Satara - 415 519.

Subject : Revision Applications filed, under section 35EE of the
Central Excise Act, 1944 against the Orders-in-Appeal
No. PUN-EXCUS-002-APP- 193 to 195 -13-14 dated
26.02.2014 passed by the Commissioner of Central
Excise (Appeals), Pune-II.

ORDER

This revision application is filed by the Commissioner of Central Excise, Pune (hereinafter referred to as "the Department") against the Order-in-Appeal PUN-EXCUS-002-APP- 193 to 195 -13-14 dated 26.02.2014 passed by the Commissioner of Central Excise (Appeals), Pune-II.

2. Brief facts of the case are that M/s Emerson Climate Technologies (I) Ltd., Satara (herein after referred to as "the respondent") are engaged in the manufacture of Gas Compressors falling under Chapter No. 84 of the CETA, 1985. The respondent had cleared excisable goods for export on payment of Central Excise duty and filed the rebate claims under Rule 18 of the Central Excise Rules, 2002. The Rebate Sanctioning Officer sanctioned the impugned rebate claims vide Orders in Original as detailed below:-

Sr. No.	OIO No.	Date	Amount of Rebate Sanctioned (Rs.)
1.	Satara /36/Adj./2013	30.05.2013	70,11,497/-
2.	Satara /39/Adj./2013	04.06.2013	9,55,587/-
3.	Satara /38/Adj./2013	04.06.2013	1,06,88,215/-

3. Being not satisfied with the legality and propriety of the Orders in Original, the Department filed an appeal before Commissioner (Appeals), Central Excise, Pune-II on the following grounds :-

- a) In respect of the rebate claim amounting to Rs. 70,11,947/- in the ARE-1 Nos. 324 dated 29.06.2012 involving rebate of Rs. 4,50,362/-, 603 dated 23.09.2012 involving rebate of Rs. 4,43,692/-, 398 dated 23.07.2012 involving rebate of Rs. 22,876/- and 594 dated 21.09.2012 involving rebate of Rs. 4,43,692 /- (involving total rebate amount of Rs. 13,60,622/-) it was observed that in the Part-B of the said ARE- 1s the Mate Receipt date and the sailing date of the vessel mentioned are not tallying with the respective dates mentioned in the concerned Mate Receipt and Bill of Lading.
- b) In respect of the rebate claim amounting to Rs. 9,55,587/- in the ARE-1 No. 588 dated 20.09.2012 involving rebate of Rs. 9,55,587/-it was observed that in the Part-B of the said ARE-1 the Mate Receipt date and the sailing date of the vessel mentioned are not tallying with the

respective dates mentioned in the concerned Mate Receipt and Bill of Lading.

- c) In respect of the rebate claim amounting to Rs. 1,06,88,215/-, in the ARE-1 No. 304 dated 27.06.2012 involving rebate of Rs. 5,60,370/- it was observed that in the Part-B of the said ARE-1 name of the vessel of export is not mentioned.
4. The Appellate Authority vide Orders in Appeal No. PUN-EXCUS-002-APP- 193 to 195 -13-14 dated 26.02.2014 upheld the Order in Original and rejected the appeal filed by the department.
5. Being aggrieved and dissatisfied with the impugned order in appeal, the Department has filed this Revision Application on the following grounds that:
- 5.1 The Part B of the said ARE-1s the Mate Receipt date and the sailing date of the vessel mentioned are not tallying with the respective dated mentioned in the concerned Mater Receipt and Bill of Lading. Thus the documents submitted by the respondents were not tallying with each other. It was the sole responsibility of the exporter to confirm correctness of the details filled in at the time of clearance itself.
- 5.2 The format of ARE-1 prescribed as per law clearly stipulates that it has to be prepared in such a way that the details of goods to be exported appear on the face of format of ARE-1 prescribed as per law clearly stipulate that it has to be prepared in such a way that the details of goods to be exported appear on the face of the said ARE-1 and the certification by the various authorities in relation to the goods being exported are to be obtained on the reverse of the same.
6. A Personal hearing in the matter was granted on 05.02.2021, 19.02.2021, 18.03.2021 and 25.03.2021. However, no one appeared for the personal hearing so granted. Since sufficient opportunities for personal hearings have been offered, the case is taken up for decision on the basis of documents available on records.

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. Government observes the department has disputed the rebate sanctioned by the Original Authority in respect of few ARE-1s on the grounds that :

a) the sailing dates mentioned on ARE-1 are not tallying with the dates mentioned on the shipping bills, bill of lading and Mate Receipts etc.

b) details of the vessel of export are not mentioned on ARE-1.

9. In the instant case, the Government notes that the respondent have filed Original / Duplicate / Triplicate Copies of relevant ARE-1s, Central Excise Invoices, Shipping Bills, Bills of Lading, Mate Receipts and other relevant declarations required to be submitted under Notification No. 19/2004-CE(NT) dated 06.09.2004. The Government opines that these collateral documents are sufficient to check whether the goods cleared under said ARE-1 had been exported or otherwise. Further, in case of any doubt arising with respect to the date of shipment, name of vessel etc., the genuineness of the document could have been referred to the Customs Authorities and Central Excise Authorities and could have been verified.

9.2 The Appellate Authority while passing the impugned order has drawn the following observations :

a) The date of shipment along with other details are mentioned at Part-B of the ARE-1 by the Customs Authorities. Barring the date of Shipment in various documents not tallying with each other, there are many more details like Shipping Bill Number 85 Date, Container Number, ARE-1 Number, Mate Receipt Number, Export Invoice Number etc which are comparable between the export documents and are tallying with each other when compared.

b) In respect of ARE-1 dated 27.06.2012, the Customs Officers have mentioned the Shipping Bill details & date of shipment and thereafter certified the ARE-1 along with their sign and stamps. The ARE-1 also bears the stamp of the Jawaharlal Nehru Custom House, Nhava Sheva. However, the Departmental Officers have not given the vessel of export

details. There is merit in the Respondents' argument that they have no control over the Departmental Officers' report. They are not supposed to countersign the report.

- c) In respect of all the 6 ARE- Is in dispute, Part B of the said ARE- Is have all been signed and stamped by the concerned Customs Officers certifying export of goods. The respondents have submitted other connected documents like Shipping Bill, Bill of Lading, Mate Receipt etc. which also sufficiently prove that the goods have been exported and when the authenticity of the documents submitted by the respondents is not doubted then these documents can be accepted as proof of export.
- d) It is not the case that the duty payment and or export of the goods are under dispute or that the documents are forged. Therefore, the deficiencies in the documents, apparently owing to inadvertent mistakes by the Customs authorities which are beyond the control of the respondents, are purely procedural or technical, thus condonable.
- e) There are number of judgments on the issue where it has been held that substantive benefits cannot be denied for procedural lapses. The incentive oriented beneficial schemes are intended to boost exports and where the substantive fact of export made is not in doubt, liberal interpretation is to be accorded in cases of technical lapses so that the purpose of incentives is not defeated.

The Government finds that the observations of the Appellate Authority are based on the scrutiny of corroborative evidence and hence the same are rational and therefore sustainable.

9.3 Thus, Government finds that the grounds of the Revision Application are merely of procedural or technical nature. In cases of export, the essential fact is to ascertain and verify whether the goods were duty paid and 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 consistent 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 of duty paid goods have really taken place. Procedures have been prescribed to facilitate verification of substantive requirement. The fundamental requirement for rebate is the manufacture of goods, discharge of duty thereon and subsequent export.

10. In view of above circumstances, Government finds no infirmity in the impugned order-in-appeal and therefore upholds the same.

11. The revision application is dismissed.

Shrawan
13/9/21
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 308/2021-CX (WZ) /ASRA/Mumbai DATED 13.09.2021

To,
M/s Emerson Climate Technologies (I) Ltd.
Atit Pali Road, Atit, Tal & Dist.
Satara – 415 519.

Copy to:

1. The Commissioner of CGST & CX, Kolhapur Commissionerate, Vasant Plaza Commercial Complex, 4th & 5th Floor, C.S. No. 1079/2 K.H., Rajaram Road, Bagal Chowk, Kolhapur- 416 001.
2. The Commissioner of GST & CX, (Appeals-I), Pune, F-Wing, 3rd Floor, GST Bhavan, 41/A, Sassoon Road, Pune-411 001.
3. The Deputy Commissioner, Satara-I Division, Plot-11/14, Old MIDC, Satara- 415 004
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.