

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. 195/610/13-RA

15/10

Date of Issue: 18/09/2018

ORDER NO. 311/2018-CX (WZ) /ASRA/Mumbai DATED 18/09/2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Shekhawati Syntex P. Ltd., 101-B Lotus House, 4th floor, 33-A New Marine Lines, Mumbai – 400 020.

Respondent : Deputy Commissioner (Rebate), Central Excise, Mumbai-III, 4th floor, Vardaan, MIDC, W.I.E., Thane – 400 604.

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BC/578/M-III/2012-13 dated 11.02.2013 passed by the Commissioner (Appeals) of Central Excise Mumbai-III.



ORDER

This revision application is filed by M/s. Shekhawati Syntex P. Ltd. (hereinafter referred to as "the applicant") against the Order in Appeal No. No. BC/578/M-III/2012-13 dated 11.02.2013 passed by the Commissioner (Appeals) of Central Excise Mumbai-III.

2. The issue in brief is that the applicant, a merchant exporter had filed rebate claim for Rs. 1,59,433/- (Rupees One Lakh Fifty Nine Thousand Four Hundred and Thirty Three only) under Rule 18 of the Central Excise Rules, 2002 read with the Notification No.19/2004 CE(NT) dated 6.09.2004 for the duty paid on the goods exported. The rebate sanctioning authority vide Order in original No. 157 R/VKJ/AC(RC)/M-III/11-12 dated 19.10.2012 rejected the entire rebate on the ground that the applicant did not submit

a) the duplicate copy of the ARE-1 application duly endorsed by the Customs in a sealed envelope alongwith the rebate claim

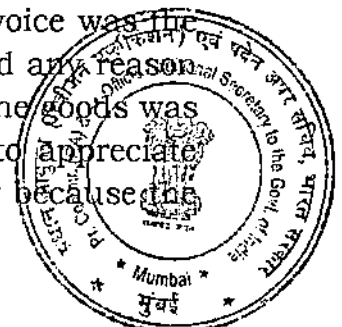
b) the triplicate copy of the ARE-1 application duly certified by the jurisdictional Supdt. certifying the duty payment particulars along with the rebate claim.

3. Being aggrieved by the said rejection, the respondent filed appeals before the Commissioner (Appeals) against the Orders in Original.

4. The Commissioner (Appeals) vide impugned Order in Appeal No. BC/578/M-III/2012-13 dated 11.03.2013 rejected the appeal filed by the applicant.

5. Being aggrieved, the applicant filed aforementioned revision applications against the impugned Order in Appeal on the following common grounds that :-

5.1 The learned adjudicating authority as well as the appellate authority has erred in concluding that there was no proof of payment of duty. They failed to appreciate that invoice was the basic proof of payment of duty and unless they had any reason to doubt its genuineness, the duty paid nature of the goods was not disputable. Both the lower authorities failed to appreciate that the applicant cannot be made to suffer merely because the



customs officer sealed the triplicate copy of ARE-1 instead of the duplicate copy. They failed to appreciate that the documents presented before them proved beyond doubt that the duty paid goods had been exported. They erred in passing the order without issuing any show cause notice and without granting personal hearing to the applicant. They also erred in passing the order in haste and without obtaining report from the jurisdictional C. Excise authorities.

- 5.2 Inaction by the officer does not tantamount to adverse report 2.1. It is submitted that vide letter dated 03/10/2012, the rebate sanctioning office had asked the Superintendent, C. Excise, Igatpuri (having jurisdiction over the manufacturer of the goods) to

"Verify the veracity of the export and payment of duty particulars"

It seems that the said Range Superintendent did not reply to the above letter.

'No report' from the Superintendent is not equivalent to 'adverse report'.

- 5.3. However, neither the original authority nor the Commissioner (Appeals) made any effort to compel the Superintendent to provide report.
- 5.4 The applicant submit that the learned Commissioner (Appeals) has erred in not calling for the report of the Superintendent having jurisdiction over the manufacturer. It is submitted that another case of the applicant was decided by the same learned Commissioner (Appeals) vide order dated 22/01/2013 where she had called for a report from the jurisdictional range Superintendent. She had allowed the rebate when the said Superintendent reported that duty had been paid on the goods.
- 5.5 It is submitted that when in one case it was reported that duty had been paid, there was no reason to presume that the duty had not been paid in the other one. Government has always been supporting exporters for grant of their legitimate benefit. Therefore, it would have been proper on the part of the learned Commissioner (Appeals) to call for the report in the second case also, instead of holding a technical view that triplicate copy of the ARE-1 is not signed by the C. Excise authority (it was signed by the Customs Authority instead).

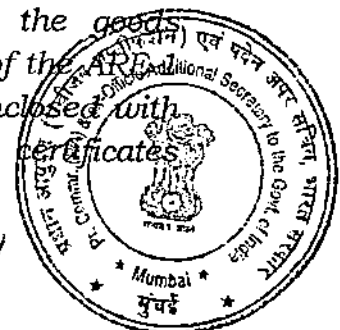


Mumbai-III was endorsed to the Jurisdictional Supdt. i.e. Supdt. Range-V, Central Excise, Division-II Nashik, Igatpuri to verify the veracity of the export and payment of duty. As it was clearly mentioned in this letter that the sealed cover received from the Customs Authorities contained triplicate copy endorsed by them, the jurisdictional Supdt of Central Excise instead of verifying and communicating authenticity of duty payment, informed the non-submission of triplicate copy of ARE-1 by the applicant for verification under the Notification No. 19/2004-CE(NT) dated 06.09.2004.

12. GOI in Revision Order No. 198/2011-CX, dated 24-2-2011 in case of *Sanket Industries Ltd.*, [2011 (268) E.L.T. 125 (G.O.I.)] while relying on the Certificate issued by Superintendent certifying duty payment details along with correlating goods exported with those cleared from factory and thereby confirming the Duty paid nature of exported goods and holding that procedural lapse of not getting ARE-1 endorsed, condonable, has observed as under :

"9. Government also observes that M/s Sanket Food Products Pvt. Ltd., Jalna applied to the Assistant Commissioner, Nanded Division regarding NOC for examination and stuffing of excisable cargo vide their letter dated 26-10-2009 before export of the goods. The Asstt. Commissioner gave the permission for examination and stuffing of the goods vide their letter F.No. VIII(CUS)NOC/sanket/2009, dated 29-3-2010. In the intervening period, the applicant exported the goods without the supervision/examination of the export of the goods.

10. In this regard, Government observes that the rebate sanctioning authority has to compare the original copy of the ARE-1 with the duplicate copy of the ARE-1 duly endorsed by the Customs Officer at the Port of Export with the triplicate copy of the ARE-1 received from the concerned Range Superintendent to satisfy himself about the export of the duty paid goods as prescribed under Notification No. 19/04-C.E. (N.T.), dated 6-09-2004. The purpose of the endorsement on the triplicate copy of the ARE-1 by the Superintendent Range is to ensure that the proper duty has been paid by the manufacturer at the time of clearance of goods from the factory/warehouse. In the instant case, the applicant manufacture/and merchant exporter exported the goods under self-sealing. They did not submit the triplicate copy of the ARE-1 to the concerned Range Superintendent, but these were enclosed with the rebate claims. Now, the applicant has submitted a



issued by the Superintendent Central Excise, Range Jalna certifying the given details of duty payment certificate alongwith basis of correlating the goods exported with the goods cleared from factory which reads as under :

"TO WHOM SO EVER IT MAY CONCERN

This is to be certified that the Goods Exported against ARE-1 No. 01 to ARE-1 No. 10 are manufactured by M/s Sanket Food Products Pvt. Ltd. (Unit -II) Gut No. 186, Dawalwadi, To Badnapur, Jalna during the month of Oct., Nov. & Dec.-2009. The Excise Duty for the month of Oct., Nov. & Dec.-2009 has already been paid by M/s Sanket Food Products Pvt. Ltd.(Unit-II) Gut No. 186, Dawalwadi, Tq Badnapur, Jalna along with interest before the filing of rebate claim against ARE-1 No. 01 to ARE-1 No. 10."

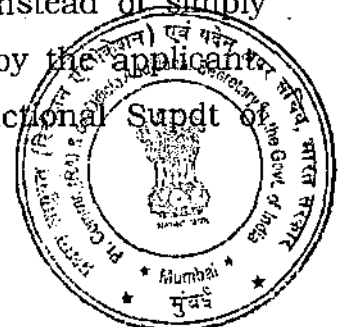
11. Duty payment on the goods cleared under the relevant ARE-1s for export is made before filing of the rebate claims. They also produced the letters pertaining to each ARE-1 duly signed by the Superintendent Central Excise, Range Jalna addressed to the Assistant Commissioner, Central Excise, Nanded certifying the duty payment against the relevant ARE-1s on which the goods were exported and rebate was claimed. In respect of each ARE-1, following certificate is given by Central Excise Range Superintendent :

Assessee have exported the goods from M/s Sanket Industries A9/25 Addl. MIDC Jalna and the foods have been manufactured by M/s Sanket Food Products Pvt. Ltd., Gut No. 186, Dawatawadi, Tq. Badnapur, Distt. Jalna."

(A.R.)

This confirmed the duty paid nature of the exported goods. The substantial requirement is that the goods should be duty paid. Once it is proved the procedural lapse for not getting the triplicate copy of the ARE-1 endorsed by the concerned Range Superintendent can be condoned.

13. Applying the rationale of the aforementioned observations Government is of the considered view that the Supdt. Range-V, Central Excise, Division-II Nashik, Igatpuri was required to confirm the duty paid nature of exported goods on the basis of available documentary evidence instead of simply reporting of non-submission. of triplicate copy of ARE-1 by the applicant. The non-verification of the duty payment by the jurisdictional Supdt of



Central Excise, Igatpuri thus resulted in rejection of the rebate claim by the original adjudicating authority.

14. In view of the facts and circumstances Government sets aside the impugned Order-in-Appeal and remands the case back to original authority for sanctioning of the claimed rebate, subject to verification of duty paid on the exported goods from the jurisdictional Central Excise Superintendent. The original adjudicating authority is directed to pass appropriate order in accordance with law after following the principles of natural justice, within 8 weeks from the receipt of this order.

15. The revision application is disposed of in terms of above.

16. So ordered.

(Signature)
18.9.18

(ASHOK KUMAR MEHTA)

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

ORDER No.311/2017-CX (WZ) /ASRA/Mumbai DATED 18/09/2018

To,
M/s. Shekhawati Syntex P. Ltd.,
101-B Lotus House,
4th floor, 33-A New Marine Lines,
Mumbai - 400 020.

ATTESTED

(Signature)
18/9/18

S.R. HIRULKAR

Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner, GST & CX, Navi Mumbai, 16th Floor, Satra Plaza, Palm Beach Road, Sector 19 D, Vashi, Navi Mumbai.
2. The Commissioner (Appeals), Raigad, 5th Floor, CGO Complex, C.B.D. \ Belapur, Navi Mumbai 400 614
3. The Deputy Commissioner, Division IV, GST & CX Navi Mumbai. 16th Floor, Satra Plaza, Palm Beach Road, Sector 19 D, Vashi, Navi Mumbai Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai.

✓ 5. Guard file.

6. Spare Copy.

Received Original Copy of Order

Dilip R. Paloo

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(Signature)

