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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, Cuffe Parade,
Mumbai- 400 005

F.No.195/179/WZ/2019-RA / 4521

Date of issue: 06.07.2023

ORDER NO. 321/2023-CX (WZ)/ASRA/MUMBAI DATED 30.6.2023
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 : M/s. Nitin Scooter Works
Respondent : Pr. Commissioner, CGST, Pune-1
Subject : Revision Application filed, under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
PUN-EXCUS-001-APP-616/18-19 dated 24.01.2019 passed
by the Commissioner of Central Tax (Appeals-1), Pune.

ORDER

This Revision Application is filed by the M/s. Nitin Scooter Works, 352-353, Shaniwar Peth, Pune - 411 030 (hereinafter referred to as "the Applicant") against the Order-in-Appeal (OIA) No. PUN-EXCUS-001-APP-616/18-19 dated 24.01.2019 passed by the Commissioner of Central Tax (Appeals-I), Pune.

2. Brief facts of the case are that the applicant, a merchant exporter, had filed a rebate claim for Rs. 10,98,803/- in respect of the duty paid goods which were claimed to have been exported by them. The adjudicating authority, vide Order-in-Original (OIO) No. P1/D-II/R-II/Reb-116/18-19 dated 29.08.2018, rejected the claim on the grounds that it had been filed with the wrong jurisdiction in terms of the Notification No. 19/2004 CE (NT) dated 6.9.2004. Aggrieved, the applicant filed an appeal. However, the Commissioner (Appeals) upheld the OIO and rejected the appeal vide the impugned OIA.

3. Hence, the applicant has filed the impugned Revision Application, mainly on the grounds that:

- a) The Commissioner grossly erred in holding that the Applicants have not countered the point of "Jurisdiction" or stated that the premises is registered and falling under the Jurisdiction of the concerned Deputy / Assistant Commissioner of the Division.
- b) The Commissioner ought to have appreciated the Applicants, at first place, filed their claim of rebate to the concerned Divisional Deputy / Assistant Commissioner in the normal course, without being aware of the restructuring of the Department. Consequently, the said Divisional Deputy / Assistant Commissioner, returned the instant claim of rebate to the Applicants, since he was not having Jurisdiction after the restructuring. Hence, being not sure / aware of their appropriate Jurisdictional Division Office, after the said restructuring, the Applicants with the utmost precaution, had filed

their claim of rebate to the Principal Commissioner. The Principal Commissioner thereafter, ascertaining the appropriate Jurisdiction, had transferred the Applicant's claim of rebate to the concerned Deputy / Assistant Commissioner of the Division, for processing the said claim. The Dy. Commissioner ought to have followed the directions of the Principal Commissioner and should have had processed the rebate claim accordingly.

- c) The Dy. Commissioner erred in issuing Show Cause Notice to the applicant. If he was of the opinion that he doesn't have jurisdiction to process the said claim, the Dy. Commissioner ought to have returned the claim to the Principal Commissioner on the grounds of having no jurisdiction for processing the rebate claim.
- d) The Commissioner, alternatively, ought to have transferred the rebate claim of the Applicant to the proper officer having Jurisdiction to adjudicate the said rebate claim instead of rejecting the same for lack of Jurisdiction or the Commissioner ought to have directed /advised the Applicant to submit the rebate claim to the Commissioner having Jurisdiction to adjudicate the said rebate claim. (IDS Denmed Pvt. Ltd. V. CCE (2015 (325) ELT 639 (Mad.)) (VIT Consultancy Pvt. Ltd. V. CST (2018 (9) GSTL 286 (Tri. Chennai))
- e) The Commissioner ought to have appreciated that in the instant case, goods were dispatched for export from the Applicant's "warehouse", which is his registered premises in terms of the provisions of Rule 9 of the Central Excise Rules, 2002, admittedly falling under the Jurisdiction of the Deputy / Assistant Commissioner, Central Tax, Division - II (Pimpri), Pune I GST Commissionerate, Pune, after re-structuring under GST Regime.
- f) The Commissioner ought to have further appreciated that according to the definition under Rule 2(h) of the Central Excise Rules, 2002, "warehouse" means any place or premises registered under Rule 9 and therefore it is absolutely wrong to allege that the Applicant have not fulfilled the condition laid down under Para 3(b) of the Notification No. 19/2004-CE (NT) dated 06.09.2004 of lodging the claim of the rebate of duty paid on all excisable goods

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.

On the above grounds, the applicant prayed to set aside the OIA and allow their appeal.

3.2 In their further written submission, the applicant inter alia submitted that:

- a) It is submitted that in the instant case, goods were directly dispatched for export from the warehouse of the Applicant situated in Pune, which is their registered premises as defined in Rule 2(h) of the Central Excise Rules, 2002 and which is under Jurisdiction of the Deputy Commissioner, Central Tax, Pimpri Division-II, Pune.
- b) All the goods in question were directly exported from the registered premises under supervision of jurisdictional Central Excise officers and goods were sealed by such officers for export in the registered premises of the applicant.
- c) The Commissioner (Appeals) has failed to consider that the Deputy Commissioner having Jurisdiction over the warehouse of the Applicant is a proper authority having jurisdiction to entertain and decide the rebate claim.

4. A Personal hearing was held in this case on 28.03.2023. Shri Makarand Joshi, Advocate appeared online and reiterated earlier submissions. He further submitted that they have a Central Excise registered warehouse in Pune and goods were exported under supervision of Central Excise officers. He further submitted that rejecting the claim on the ground of jurisdiction is wrong. He also submitted that there being no dispute on export of duty paid goods, their claim be allowed.

5. Government has carefully gone through the relevant case records available in case files, written and oral submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. Government observes that the main issue involved in the instant case is whether the rebate claim can be rejected on the procedural grounds or the same is sustainable?

7. Government observes the applicant had a Central Excise registration as a dealer of excisable goods. As a dealer, the applicant received duty paid goods from the factories of M/s. Bajaj Auto Ltd. situated at Pune and Aurangabad. They had filed a rebate claim for Rs.10,98,803/- in respect of export of duty paid goods - 'Automobile Spares/Accessories for two and three wheelers', exported under ARE-1 No. 05/17-18 dated 23.06.2017. The original authority rejected the rebate claim mainly on the ground that the same had been filed in wrong jurisdiction in terms of Notification No. 19/2004 CE (NT) dated 6.9.2004. The Appellate authority rejected the appeal observing that the applicant had not countered the point that they do not have a warehouse premises registered in the jurisdiction of original authority.

8. Government observes from the documents submitted by the applicant that Form RC - Central Excise Registration Certificate under Rule 9 of the Central Excise Rules, 2002 bearing No. AASPB8031CED001 was issued to them on 16.07.2013 by Assistant Commissioner, Central Excise, Pune-IV Division for their godown premises situated at Jambhe, Mulshi, Pune. Government also observes that in the GST era the demarcation of jurisdiction of GST offices was done on PIN code basis. On the basis of PIN code of Jambhe viz. 411033, the registered warehouse of applicant falls under the jurisdiction of Division-II, Pune-I Commissionerate, viz. the original authority in the instant case. Therefore, Government does not agree with the decision of the lower authorities that the registered warehouse of the applicant from where the impugned goods were exported under aforementioned ARE-1 does not fall in the jurisdiction of original authority.

9. Government observes that original authority has observed at para 10 of impugned OIO that:

It is also observed that the exporter did not have any warehouse approved under Rule 20 of the Central Excise Rule, 2002 within the jurisdiction of this office. Therefore, in terms of the conditions mentioned in the notification no.19/2004 ibid, this office did not have jurisdiction to sanction the claimants rebate claim.

Rule 20 of CER reads as under:

Rule 20 Warehousing provisions -

(1) The Central Government may by notification, extend the facility of removal of any excisable goods from the factory of production to a warehouse, or from one warehouse to another warehouse without payment of duty.

(2) The facility under sub-rule (1) shall be available subject to such conditions, including penalty and interest, limitations, including limitation with respect to the period for which the goods may remain in the warehouse, and safeguards and procedure, including in the matters relating to dispatch, movement, receipt, accountal and disposal of such goods, as may be specified by the Board.

(3) The responsibility for payment of duty on the goods that are removed from the factory of production to a warehouse or from one warehouse to another warehouse shall be upon the consignee.

(4) If the goods dispatched for warehousing or re-warehousing are not received in the warehouse, the responsibility for payment of duty shall be upon the consignor.

It is apparent that the Rule provides facility of removal of excisable goods without payment of duty from the factory to a warehouse, however, in the instant case the duty paid character of the impugned goods has not been challenged by the lower authorities hence Government finds this contention as baseless.

10. In view of the above discussion and findings, the Government sets aside the Order-in-Appeal No. PUN-EXCUS-001-APP-616/18-19 dated 24.01.2019 passed by the Commissioner of Central Tax (Appeals-I), Pune and allows the instant Revision Application by remanding the matter to

original authority for processing the impugned rebate claim. The applicant should be provided reasonable opportunity before deciding the matter.

Shrawan Kumar
20/6/23

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

ORDER No. 321/2023-CX (WZ)/ASRA/Mumbai dated 30.6.23

To,

M/s. Nitin Scooter Works,
352-353, Shaniwar Peth,
Pune - 411 030,

Copy to:

1. Pr. Commissioner of CGST, Pune-1
2nd Floor, 41-A, GST Bhavan,
Sassoon Road, Opp. Wadia College,
Pune - 411 001.
2. Adv. Makarand Joshi
Max Legal Advocates,
32, Lokmanya Nagar,
Off LBS Road,
Pune - 411030.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file