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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. 195/817/12-RA/808

Date of Issue: 18/01/2018

ORDER NO. 32/2017-CX (WZ) /ASRA/Mumbai DATED 29.12. 2017 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. Bayer Vapi Private Limited (Formerly Bilag Industries P Ltd.), Vapi

Respondent : Commissioner of Central Excise (Appeals-II), Mumbai-400051.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No.US/733/RGD/2012 dated 30.10.2012 passed by the Commissioner of Central Excise (Appeals-II).

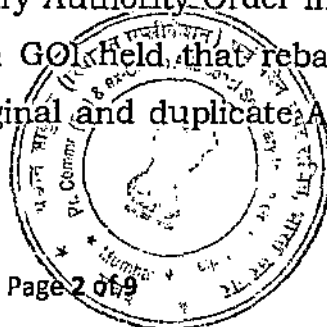


ORDER

This revision application is filed by M/s. Bayer Vapi Private Limited (Formerly Bilag Industries P. Ltd.), Vapi (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/733/RGD/2012 dated 30.10.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone - II with respect to the Order-in-Original No. 987/11-12/DC (Rebate)/Raigad dated 12.10.2011 passed by the Deputy Commissioner of Central Excise (Rebate), Raigad.

2. Brief facts of the case are that the applicants filed Rebate Claims as manufacturer exporter under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) date 06.09.2004 and filed four Rebate Claims totally amounting to of Rs.45,52,243/- (Rs. Forty five lakhs fifty two thousand two hundred and forty three only) before the Deputy Commissioner of Central Excise (Rebate) Raigad. Since the original and duplicate copies of ARE-1s were misplaced during travel from Mansarovar to Sanpada Railway station, applicant claimed rebate on the basis of quadruplicate copies of ARE-1 duly certified by jurisdictional central excise officers who also supervised the exports physically from the factory of the applicant. Upon examining rebate claims, Deputy Commissioner (Rebate) found that the original and duplicate of ARE-1s as required under Para 8.3 of Chapter 8 of CBEC's Manual of Supplementary Instructions was not submitted and rejected the rebate claims vide the Order-in-Original No 444/11-12/DC (Raigad) dated 15-05-2012.

3. Being aggrieved and dissatisfied with the Order-in-Original No 444/11-12/DC (Raigad) dated 15-05-2012, the applicant filed an appeal before the Commissioner (Appeals) who vide Order in Appeal No US/733/RGD/2012 dated 30-10-2012 dismissed the appeal of applicant and upheld the Order-in-Original No 444/11-12/DC (Raigad) dated 15-05-2012 mainly relying on Revisionary Authority Order in RE: Bajaj Electricals [2012(281)ELT.146(GOI)] wherein GO held that rebate claim is not to be sanctioned in the absence of original and duplicate ARE-1s as the same is



not admissible under Rule 18 of Central Excise Rules, 2002 read with Notification No.19/04-CE(NT) dated 06.09.2014.

4. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant have filed this Revision Application on the following grounds :

- that the reliance on 2012 (281) E.L.T. 146 (G.O.1.)-IN RE BAJAJ ELECTRICALS LTD. is completely misplaced as in the said case, rebate claimant exported their finished goods through Merchant Exporter and the entire order of Revisionary authority revolved around the possibility of unintended double/duplicate claims by both merchant exporter and manufacturer exporter. Since the present applicant is a direct exporter and exports have taken place under physical supervision of jurisdictional excise officers who sealed the export containers in which export goods were stuffed in the factory of the claimant, the said case law could not have been relied upon by the Respondent. Applicants, inter alia, rely upon the three member bench decision of Supreme Court reported as 2009 (13) S.T.R. 3 (S.C.)-COMMISSIONER OF CENTRAL EXCISE, BANGALORE Versus SRIKUMAR AGENCIES,
- that they rely upon the following authorities to submit that loss of ARE-1 (originals and duplicate copies) cannot be the ground for rejection of substantive benefit of export rebate when there is no chance of double benefit/loss to exchequer due to sanction of rebate claim.

2011 (271) E.L.T. 449 (G.O.I.)-IN RE: GARG TEX-O-FAB PVT. LTD;

Rebate - Exports, proof of - Documents (ARE-1) lost and applicant could not produce original documents - Claim rejected by lower authorities - Applicant could have reconstructed the documents - Instead of rejecting the rebate 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 Excise Manual of Supplementary Instructions - Impugned order set aside - Matter remanded to original Adjudicating Authority to decide the case afresh - Rule 18 of Central Excise Rules, 2002. [Para's: 7, 8, 9]



2001 (131) E.L.T. 726 (G.O.1.)-KRISHNA FILAMENTS LTD. Export rebate claim amounting to about Rs. 39.37 lakhs under Rule 12(1)(b) of Central Excise Rules, 1944 rejected on the ground of non-compliance with conditions 3, 7, 9, 11 and 17 of Notification 42/94-C.E. (N.T.) - Said conditions found to be of a procedural nature - No dispute about substantive grounds of goods having been exported and their inputs being duty paid - Exporter's explanation that it was new to the field and hence its unawareness of all the formalities understandable - Procedural lapses condoned and claim allowed subject to verification of documents relating to export of goods and the inputs being duty paid. [Para 9] 2011 (274) E.L.T. 496 (Del.)-PARSHVA OVERSEAS Versus JOINT SECRETARY.

- that in paragraph 10 of the impugned order, reference was made to the case law cited by the applicant that procedural lapses may be ignored, if there is substantial proof of export. The applicant had not submitted Form No. ARE-2. The said form requires certification of the Customs Officer, but this aspect has not been examined by the Revisionary Authority. Constitutional Bench of the Supreme Court in the recent judgment in the Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and Ors., (2011) 1 SCC 236 = 2010 (260) ELT 3 (S.O) have examined the question of interpretation of exemption or concession provision and whether it is to be strictly construed or not. After referring to earlier judgments in Novopan India Ltd. v. C.C.E. and Customs, 1904 Supp (3) SCC 606 = 1994 (73) ELT 769 (S.C.); Hansraj Gordhandas v. CCE and Customs, (1969) 2 SCR 253 = 1978 (2) ELT J350 (S.C.) and TISCO Ltd. v. State of Jharkhand, (2005) 4 SCC 272, the Supreme Court has opined:

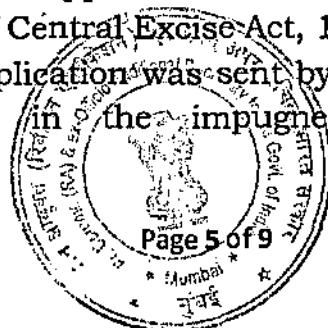
"29. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption.

- Thereafter it has been observed that distinction must be made between a provision in a statute which is substantive and enacted with certain specific objective to fulfill objective of policy; and provisions which are procedural and technical in nature. The eligibility condition is to be given strict meaning; whereof the notifications have to be interpreted in terms of their language. But once the applicant-assessee satisfies and meets the eligibility conditions, procedural provisions have to be construed liberally. Then doctrine of substantial compliance applies. The said doctrine is equitable in nature and designed to avoid hardship. Substantial compliance depends upon facts and circumstances of each case, the purpose and object to be achieved in the context of exemption and purpose of the Rule and the Regulations. However, such defence cannot be pleaded if there is a clear statutory prerequisite which effectuates the object and purpose of the statute which has not been met. Substantial compliance means "actual compliance in respect of the substance essential to every reasonable objective of the statute". In Commissioner of Central Excise v. Hari Chand Shri Gopal and Ors. (Supra), it has been observed:-

"34. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance with those factors which are considered as essential."

5. Applicant also filed Application for Condonation of delay on the following grounds :-

- That the impugned Order in Appeal dated 30.12.1012 was received by them on 08.11.2012, the limitation period of three months for filing the revision application in terms of Section 35 B read with Section 35EE of Central Excise Act, 1944 expired on 08.02.2013;
- The revision application was sent by courier on 05.02.2013 to the address given in the impugned order of the appellate



Commissioner, namely, Jeevandeep Building Parliament Street, New Delhi.

- Due to wrong address given in the impugned OIA and followed by the applicant, a delay of around a week has occurred beyond the stipulated three months in the Revision Application reaching your Honour's office.
- In view of the facts of the case and grounds urged in this application the delay in filing the Revision Application be condoned and admit the same for hearing on merits.

6. The applicant filed the application for Condoantion of Delay in the name of M/s Bayer Vapi Private Limited; by enclosing a copy of Fresh Certificate of Incorporation dated 21.05.2013 issued by Registrar of Companies consequent upon change of name of the applicant from M/s Bilag Industires Private Limited to M/s Bayer Vapi Private Limited.

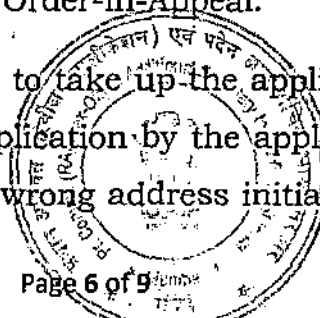
7. A Personal hearing was held in this case on 27.12.2017 and Shri S. Suriyanarayanan, Advocate duly authorized by the applicant, appeared for hearing and reiterated the submission filed through Application of Condonation of delay as well as also relied upon the following case laws.

- 2017(345)ELT 496 Guj and
- 201 (293) ELT 641 Bom.

As regards delay of 9 days in filing of the Application, Advocate, pleaded that the Revision Application was sent to old address which was not accepted and returned back and then was filed at the correct address of Joint Secretary (RA). He therefore, requested to condone delay of 9 days in filing the Revision Application. He also pleaded that the Order-in-Appeal be set aside and Revision Application be allowed.

8. 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.

9. Government first proceeds to take up the application for condonation of delay in filing the revision application by the applicant. The Government has observed due to mention of wrong address initially, the delay of 9 days



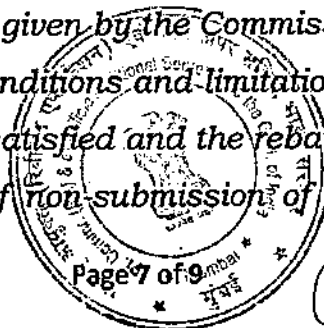
occurred. The applicant filed this revision application in 9 days after initial 90 days period, which falls within condonable limit of 90 days. Hence, Government in the interest of justice condones the said delay and proceeds to examine the case on merits.

10. Government observes that rebate claims were rejected for the reasons of non-submission of original/duplicate copies of ARE-1 by the applicant which were misplaced during travel from Mansarovar to Sanpada Railway station. In this regard Government observes that the Revisionary Authority vide Order dated 26.11.2014 in RE: United Phosphorus Ltd.: 2015 (321) E.L.T. 148 (G.O.I.) in the identical issue before it observed as under :

7.....In this regard, 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.) has held that rebate sanctioning authority shall not reject the rebate claim on the ground of non-submission of original and duplicate copies of ARE-1 forms if it is otherwise satisfied that conditions for grant of rebate have been fulfilled. Government, therefore, applying the ratio of above said judgment of Hon'ble High Court of Bombay in the said case, is of the view that the proof of export may be examined on the basis of collateral evidences where original and duplicate ARE-1 form is not submitted.....

Further, Government observes that Hon'ble High Court , Gujarat in Raj Petro Specialities Vs Union of India (2017(345) ELT 496 (Guj) while deciding the identical issue, relying on *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 as under:

7. "Considering the aforesaid facts and circumstances, more particularly, the finding given by the Commissioner (Appeals), it is not in dispute that all other conditions and limitations mentioned in Clause (2) of the notifications are satisfied and the rebate claim have been rejected solely on the ground of non-submission of the original and duplicate

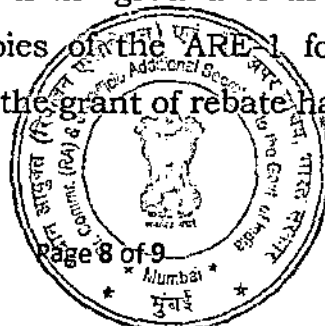


ARE1s, the impugned order passed by the Revisional Authority rejecting the rebate claim of the respective petitioners are hereby quashed and set aside and it is held that the respective petitioners shall be entitled to the rebate of duty claimed for the excisable goods which are in fact exported on payment of excise duty from their respective factories. Rule is made absolute accordingly in both the petitions”.

11. Government finds that rational of aforesaid Hon'ble High Court orders are squarely applicable to this case also. From the Order-in-Original No. 987/11-12/DC (Rebate)/Raigad dated 12.10.2011 Government observes that applicant has submitted the following documents to the rebate sanctioning authority along with his claims:

1. Green copy of ARE-1 duly endorsed by the officer of Customs,
2. Triplicate ARE-1 (received in sealed envelope) duly endorsed by the Supdt in-charge of the manufacturing unit,
3. Excise Invoices under which the export goods were removed from the factory of manufacturer,
4. Self attested copies of Shipping Bills /Bills of Lading and Mate Receipt,
5. Declaration/undertaking regarding refund of rebate amount in case of excess or erroneous sanction of the same,
6. Proforma Invoice,
7. Bank realization certificate.

12. Accordingly, the matter is remanded back to the original adjudicating authority for the limited purpose of verification with directions that he shall reconsider the claim for rebate on the basis of the aforesaid documents submitted by the applicant after satisfying itself in regard to the authenticity of those documents. However, the rebate sanctioning authority shall not upon remand reject the claim on the ground of the non-production of the original and the duplicate copies of the ARE-1 forms, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled.




Qm


13 In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. US/733/RGD/2012 dated 30.10.2012 and remand the case back to original adjudicating authority to pass the order within 8 weeks from receipt of the order on the terms detailed supra.

14. Revision Application thus succeeds in above terms.

15. So ordered.

True Copy Attested


एस. आर. हिरुलकर
S. R. HIRULKAR


29.12.17
(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 32/2017-CX (WZ) /ASRA/Mumbai DATED 29.12.2017

To,
M/s. Bayer Vapi Private Limited (Formerly Bilag Industries P. Ltd.),
Plot No.308/3, 2nd Phase,
GIDC, Vapi-306195
Dist. Valsad, Gujarat

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5thFloor,CGO Complex, Belapur, Navi Mumbai, Thane.
3. The Deputy / Assistant Commissioner (Rebate), GST & CX BelapurCommissionerate.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

