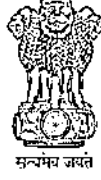


REGISTERED SPEED POST



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, Cuffe Parade,
Mumbai- 400 005

F. NO. 195/424/13-RA
F. NO. 195/425/13-RA

Date of Issue:

19.11.2018

ORDER NO. ³⁴²⁻³⁴³ /2018-CX (WZ) /ASRA/MUMBAI DATED 18.10.2018 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. Rawji Exports,
Survey No. 139, Paiki, Village Rahnal,
Opp. Holy Merry School, Bhiwandi,
Dist. Thane 421 302

Respondent : Commissioner(Appeals), Central Excise, Mumbai Zone-I,
Meher Building, Bombay Garage, Dadishet Lane,
Chowpatty, Mumbai-400 007.

Subject : Revision Applications filed, under section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
BR/ 352/Th-I/2012 dated 3.12.2012 & Order-in-Appeal
No. BR/371/Th-I/2012 dated 7.12.2012 passed by the
Commissioner(Appeals), Central Excise, Mumbai Zone-I.



ORDER

This revision application is filed by M/s. Rawji Exports, Bhiwandi, Dist. Thane (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BR/352/Th-I/2012 dated 3.12.2012 & Order-in-Appeal No. BR/371/Th-I/2012 dated 7.12.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

2.1 The applicant had filed two rebate claims amounting to Rs. 1,68,426/- (Rupees One Lakh Sixty Eight Thousand Four Hundred and Twenty Six only) on 11.04.2008 under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended in respect of goods i.e. FRP boxes claimed to have been exported under ARE 1 No.'s 21/06.08.2007 and 23/20.08.2007. The applicant had submitted various documents in respect of their rebate claims. On scrutiny of the rebate claims, it was observed that the claimant had not submitted original and duplicate copies of the abovementioned ARE 1's and also duplicate copies of relevant excise invoices issued under Rule 11 of the Central Excise Rules, 2002. Hence, the applicant was informed vide letter dated 08.07.2008 that as per para 8.3 of Chapter 8 of CBEC's Excise Manual of Supplementary Instructions, these documents are the prescribed/mandatory documents to be submitted alongwith claims and the rebate claims cannot be sanctioned in the absence of these documents.

2.2 During the hearing before the adjudicating authority, the applicant submitted that the required documents were lost in transit but the copy of FIR filed before the Police and the other papers were on record and therefore requested that the rebate claim may be sanctioned on the basis of these documents. The applicant contended neither the export under the aforementioned ARE 1's nor the payment of excise duty on removal of the said goods for export was in dispute. They further contended that mere non-submission of original documents cannot be ground for rejection of their rebate claim. In adjudication, the Assistant Commissioner held that in the absence of original and duplicate copies of ARE 1's bearing endorsement of the Customs authorities and cross reference of shipping, the details of



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exported goods cannot be confirmed. Further in the absence of the duplicate copies of the excise invoices which bear the vehicle number, lorry receipt or other details of transportation, duty payment particulars, quantity cleared, no. of packages etc., the details of clearance of goods cannot be confirmed. It was therefore held that in the absence of satisfactory proof of clearance of duty paid goods from the applicants premises and export thereof, the rebate claim could not be sanctioned. The Assistant Commissioner therefore rejected the rebate claims filed by the applicant.

3. On appeal by the applicant before the Commissioner(Appeals), the Commissioner(Appeals) went through the provisions of Rule 18 of the Central Excise Rules, 2002, Notification No. 19/2004-CE(NT) dated 06.09.2004, Chapter 8 of CBEC's Excise Manual of Supplementary Instructions. The Commissioner(Appeals) on the basis of this exposition, came to the conclusion that as per Chapter 8, Part-IV, Para 2.1 of CBEC's Central Excise Manual, 2005 provides that the following documents are to be submitted (a) Application on letterhead claiming rebate giving all details (b) original ARE-1 certifying that goods have been exported (c) invoice issued under Rule 11 as proof of payment of excise duty. In addition to these documents, generally the following documents are also called for, viz. (i) self-attested copy of shipping bill (ii) self attested copies of bill of lading. He opined that these facts made it clear that the Divisional DC/AC was to satisfy himself about export, duty payment, unjust enrichment etc. before taking a decision on the application for rebate/refund. It was observed that the invoice was the basic document and was required to be produced. Reliance was placed upon the decision of the Tribunal in the case of Skycell Communication vs. CC[2007(216)ELT 702(CESTAT)] wherein it was held that books of account and CA certificate cannot substitute sale invoices which is a document expressly recognized under the Act. The Commissioner(Appeals) therefore held that the applicant had failed to produce the documents required for sanction of the rebate. Therefore, as the applicant had not followed the proper procedure by failing to submit the documents required under Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended read with Rule 18 of the Central Excise Rules



2002, the Commissioner(Appeals) held that the rebate claim filed by the applicant was liable to be rejected. He therefore upheld the Order-in-Original and rejected the appeal filed by the applicant.

4. Similarly, the applicant had filed rebate claim for Rs. 1,44,661/- (Rupees One Lakh Forty Four Thousand Six Hundred and Sixty One only) on 29.09.2008 under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended in respect of goods i.e. sub-components of switching distribution enclosure for telephone/utilities of fibre glass reinforced polyester claimed to have been exported under ARE 1 No. 28/2007-08 dated 22.01.2008. On scrutiny of the rebate claims, it was observed that the claimant had not submitted original and duplicate copies of the ARE 1 No. 28/2007-08 dated 22.01.2008. Hence, an SCN under F. No. V/Rebate/Rawji/532/KI/08/9749 dated 04.12.2008 was issued to the applicant calling upon them to explain as to why the rebate claim should not be rejected. The applicant made written submissions at the time of hearing before the adjudicating authority that the original and duplicate copies of the ARE-1 were lost during transit for which they had already submitted copy of FIR filed before Police and affidavit affirming loss of documents. They therefore requested for sanction of rebate claim on such basis. The applicant contended that neither the export under the aforementioned ARE 1's nor the payment of excise duty on removal of the said goods for export was in dispute. They further contended that mere non-submission of original and duplicate copy of ARE-1 cannot be ground for rejection of their rebate claim. In adjudication, the Assistant Commissioner held that in the absence of original and duplicate copies of ARE 1's bearing endorsement of the customs authorities and cross reference of shipping, the details of exported goods cannot be confirmed. The Assistant Commissioner therefore rejected the rebate claims filed by the applicant.

5. Being aggrieved, the applicant filed appeal before the Commissioner(Appeals). The Commissioner(Appeals) went through the provisions of Rule 18 of the Central Excise Rules, 2002, Notification No. 19/2004-CE(NT) dated 06.09.2004, Chapter 8 of CBEC's Excise Manual of



Supplementary Instructions. The Commissioner(Appeals) on the basis of this exposition, came to the conclusion that as per Chapter 8, Part-IV, Para 2.1 of CBEC's Central Excise Manual, 2005 provides that the following documents are to be submitted (a) Application on letterhead claiming rebate giving all details (b) original ARE-1 certifying that goods have been exported (c) invoice issued under Rule 11 as proof of payment of excise duty. In addition to these documents, generally the following documents are also called for viz. (i) self-attested copy of shipping bill (ii) self attested copies of bill of lading. He opined that these facts made it clear that the Divisional DC/AC was to satisfy himself about export, duty payment, unjust enrichment etc. before taking a decision on the application for rebate/refund. It was observed that the invoice was the basic document and was required to be produced. Reliance was placed upon the decision of the Tribunal in the case of Skycell Communication vs. CC[2007(216)ELT 702(CESTAT)] wherein it was held that books of account and CA certificate cannot substitute sale invoices which is a document expressly recognized under the Act. The Commissioner(Appeals) therefore held that the applicant had failed to produce the documents required for sanction of the rebate. Therefore, as the applicant had not followed the proper procedure by failing to submit the documents required under Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended read with Rule 18 of the Central Excise Rules, 2002, the Commissioner(Appeals) held that the rebate claim filed by the applicant was liable to be rejected. He therefore upheld the Order-in-Original and rejected the appeal filed by the applicant.

6.1 Being aggrieved and dissatisfied with the impugned orders-in-appeal, the applicant has filed Revision Applications on the same grounds on which they had filed appeals before the Commissioner(Appeals). The grounds on which the applicant had filed appeal before the Commissioner(Appeals) against Order-in-Original No. R-325/08-09 dated 31.07.2007 are as concisely stated hereinbelow:

- (i) The adjudicating authority has erred in rejecting the rebate claims for want of original & duplicate copies of ARE-1 and duplicate copies of invoices as all details are available on



customs certified copies of ARE-1, self-attested copies of central excise invoices, shipping bills, bills of lading and other documents.

- (ii) It was further averred that there is no dispute about the fact of export or the payment of duty on removal of the goods for export. Rejection of rebate claim merely on the basis of the fact that some documents could not be submitted in original as required due to them being lost in transit, would not suffice the purposes of law and would be cause for great hardship to a genuine exporter and against the principles of natural justice.
- (iii) Copy of FIR, affidavit of Ramnarayan Tripathi undertaking to indemnify against any revenue loss due to non-submission of the documents lost was evidence of the genuine hardship and honest intentions of the exporter.

6.2 It was therefore submitted that taking into consideration the genuine facts and all other supporting documents, a lenient view may be taken and the rebate claims may be allowed against the exports made by the applicant. It was prayed that the impugned orders-in-appeal be set aside and the revision applications be allowed with consequential relief.

7. The grounds on which the applicant had filed appeal before the Commissioner(Appeals) against Order-in-Original No. R-613/08-09 dated 6.01.2009 are as stated hereinafter :

- 7.1 The adjudicating authority has erred in rejecting the rebate claims for want of original & duplicate copies of ARE-1. The triplicate copy of ARE-1 dated 22.01.2008 had been handed over to the central excise officer on 29.09.2008 alongwith copy of FIR, Indemnity Bond.
- 7.2 The applicant had complied with the requirements of para 8.3 of Chapter 8 of the CBEC Manual. However, the Deputy Commissioner has adopted a very technical approach. It was further submitted that only fact of export was to be ascertained before granting rebate.



- 7.3 Chapter 8 of CBEC Manual does not provide for rejection of rebate if original/duplicate copy of ARE-1 is not available. Para 11.1 of CBEC Circular No. 81/81/94-CX. dated 25.11.1994 gives AC the power to condone/relax any condition relating to grant of rebate of excise duty. Therefore, AC should have condoned the non-submission of original and duplicate copy of ARE-1 as theirs was a genuine case.
- 7.4 The triplicate copy of the ARE-1 in sealed envelope had been handed over to central excise officer under whose supervision the goods had been exported. It was further submitted that there is no allegation that the sealed envelope had been tampered with. Description of goods, their value, quantity in shipping bill tallies with ARE-1.
- 7.5 It was submitted that the goods had been sealed in container as evidenced by the endorsement on the reverse of the ARE-1. The container had been shipped on vessel on 26.01.2008. Thus it was proved beyond doubt that the goods had been cleared on payment of duty & exported.
- 7.6 The applicant had submitted indemnity bond to indemnify government against any loss if rebate is sanctioned. They stated that no duplicate rebate claim had been filed against the said consignment.
- 7.7 It was also pointed out that the export manifest for the steamer shows that the goods had been shipped and exported.
- 7.8 Moreover, the excise records and documents also prove beyond doubt that the goods had been manufactured.
- 7.9 It was further pleaded that the fundamental aspect for grant of rebate is manufacture of goods, clearance on payment of duty and actual export of the goods. The discrepancies in the procedures are condonable. Reliance was placed upon the case law of Coflab Exports[2006(205)ELT 1027] & Khabros Steel (I) Ltd.[2002(141)ELT 257].
- 7.10 It was submitted that in case where original documents are lost, secondary evidence can be relied upon. In this regard, the case



laws of Kanwal Engineers[1996(87)ELT 141], Model Buckets & Attachments[2007(217)ELT 264] & Hebenkraft [2001(136)ELT 979] were relied upon.

It was prayed that the impugned orders-in-appeal be set aside and the revision applications be allowed with consequential relief.

8. A Personal hearing was held in respect of RA No. 195/424/13-RA & RA No. 195/425/13-RA. Shri Kumar Pal Rawji, Partner of M/s Rawji Exports attended on behalf of the applicant. In the interest of justice, the applications for condonation of delay of 22 days and 13 days in filing the two revision applications was condoned. The submissions made in the two revision applications were reiterated. It was pleaded that the ARE-1's in both revision applications had been lost and FIR's had been filed in Narpoli Police Station at Bhiwandi. It was therefore requested that the orders-in-appeal be set aside and revision applications be allowed.

9. 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.

10. Government observes that rebate claim was rejected by the original adjudicating authority for the reason of non-submission of original and duplicate copy of ARE-1 and duplicate copy of excise invoice by the applicant. Commissioner (Appeals) vide Orders in Appeal while rejecting the appeals filed by the applicant held that submission of original and duplicate copies of ARE-1 being mandatory, the adjudicating authority had rightly rejected rebate claim on this ground. He further held that in the absence of duplicate copies of excise invoices, the details of clearance of goods cannot be confirmed.

11. Government in the instant case notes that the Original and duplicate copy of ARE-1's and duplicate copies of excise invoices had been lost in transit by the employee of the applicant Shri Ramnarayan Tripathi.

12. In this regard Government observes 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.), at para 16 and 17 of its Order observed 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.

17. We may only note that in the present case the Petitioner has inter alia relied upon the bills of lading, banker's certificate in regard to the inward remittance of export proceeds and the certification by the customs authorities on the triplicate copy of the ARE-1 form. We direct that the rebate sanctioning authority shall reconsider the claim for rebate on the basis of the documents which have been submitted by the Petitioner. We clarify that we have not dealt with the authenticity or the sufficiency of the documents on the basis of which the claim for rebate has been filed and the adjudicating authority shall reconsider the claim on the basis of those documents 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. For the aforesaid reasons, we allow the Petitions by quashing and setting aside the impugned order of the revisional authority dated 22 May, 2012 and remand the proceedings back to the adjudicating authority for a fresh consideration. The rejection of the rebate claim dated 8 April, 2009 in the first writ petition is, however, for the reasons indicated earlier confirmed. Rule is made absolute in the aforesaid terms.



13. Government also observes that Hon'ble High Court, Gujarat in Raj Petro Specialities Vs Union of India [2017(345) ELT 496 (Guj)] also while deciding the identical issue, relying on aforesaid order of Hon'ble High Court of Bombay, vide its order dated 12.06.2013 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".*

14. Government finds that the rationale of aforesaid Hon'ble High Court judgments, are squarely applicable to the instant case. Further, Government observes that the applicant has submitted the following documents to the rebate sanctioning authority along with these claims :

- Form 'C' in triplicate
- Triplicate copy of ARE-1's
- Self attested copies of relevant shipping bills
- Self attested copies of relevant bills of lading
- Self attested copies of relevant central excise invoice
- Copy of FIR's for loss of original and duplicate copy of ARE-1's and duplicate copy of central excise invoice
- Indemnity Bonds to indemnify revenue loss arising due to loss of original and duplicate copies of ARE-1's and duplicate copy of central excise invoice.

15.1 Government observes that in case of the rebate claim where duplicate of excise invoice has been lost and FIR produced alongwith rebate



claim, the details of duty payment can be got confirmed from the jurisdictional Range Superintendent.

15.2 Government holds that if the bonafides of export are proved the rebate claim should not be withheld for non-production of original and duplicate copy of ARE-1.

16. In view of the above, Government holds that ends of justice will be met if the impugned Order in Appeal is set aside and the case remanded back to the original adjudicating authority for the limited purpose of verification of the claim 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/duplicate copy of the ARE-1 form or the duplicate copy of excise invoice. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

17. Government sets aside the impugned Order-in-Appeal No. BR/352/Th-I/2012 dated 3.12.2012 & Order-in-Appeal No. BR/371/Th-I/2012 dated 7.12.2012 and remands the case to the original adjudicating authority as ordered supra .

18. The revision application is disposed off in the above terms.

19. So ordered.

Ashok Kumar Mehta
18/10/18

(ASHOK KUMAR MEHTA)

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

ORDER No. ³⁴²⁻³⁴³ /2018-CX (WZ) /ASRA/Mumbai DATED 18.10.2018.

To,
M/s. Rawji Exports,
Survey No. 139, Paiki, Village Rahnal,
Opp. Holy Merry School, Bhiwandi,
Thane 421 302



ATTESTED
S.R. Hirulkar
19/11/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of CGST & CX, Thane Rural Commissionerate
2. The Commissioner of CGST & CX, (Appeals), Thane, 12th Floor, Lotus Info Centre, Near Parel Station(East), Mumbai 400 012
3. The Deputy / Assistant Commissioner , Thane Rural Division -I, Thane Rural GST & CX Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai
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