



**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. 198/50/14-RA / 5620 Date of Issue: 11.12.19

ORDER NO. 343/2019-CX (WZ) /ASRA/MUMBAI DATED 10.12.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT, 1944.

Applicant : Commissioner, Central Excise, Kolhapur.

Respondent : M/s Thread Lines (India), Kolhapur.

Subject : Revision Application filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. PUN-EXCUS-002-APP-182-13-14 dated 06.02.2014 passed by the Commissioner (Appeals), Central Excise Pune-II.

ORDER

This Revision Application has been filed by the Commissioner of Central Excise, Kolhapur (hereinafter referred to as the "applicant") against the Order –in –Appeal No. PUN-EXCUS-002-APP-182-13-14 dated 06.02.2014 passed by The Commissioner (Appeals) Central Excise, Pune-II.

2. The brief facts of the case is that M/s Thread Lines (India), Kolhapur (respondent) had cleared excisable goods for export on payment of central excise duty vide 20 ARE-1s and subsequently filed 20 rebate claims totally amounting to Rs.17,79,757/- (Rupees Seventeen Lakh Seventy Nine Thousand Seven Hundred and Fifty Seven only). These rebate claims were sanctioned by the Deputy Commissioner, Central Excise Kolhapur-II Division (original authority) vide Order in Original No. 04/ADJ/K-II/2013 dated 18.04.2013.

3. On scrutiny of rebate claims it was observed that there were some mismatch in details like date of shipment, Flight No. etc. mentioned in export documents. The details of ARE-1s amount of rebate claimed / sanctioned and the nature of mis-match appearing in the export documents was as under:-

TABLE

Sr. No.	ARE -1 No.	Date	Amount of Rebate sanctioned	Mis-match noticed in export documents
1	25	30.08.2012	60,952/-	Mate's receipt showed the export goods sailed on 03.09.2012 whereas Bill of Lading mentioned that the export goods were shipped on Board on 05.09.2012
2.	32	12.10.2012	60,908/-	Part B of the ARE-1 certified that the goods were uplifted on FLT No. FX5050 on 17.10.2012, however in concerned Airway Bill it was mentioned that the goods were uplifted on FLT No. FX 5034 on 16.10.2012
3.	33	14.10.2012	61,596/-	Part B of the Original copy of the ARE-1 it is certified that the vessel had left on 15.10.2012 however, in duplicate copy of the said ARE-1 and Mate Receipt it is certified that the vessel left on 22.10.2012.
4.	35	29.10.2012	63,256/-	Part B of the ARE-1 certified that the goods were uplifted on FLT No. FX5033 on 01.11.2012, however in concerned Airway Bill it was mentioned that the goods were uplifted on FLT No. FX 5034 on 01.11.2012
5.	10	14.06.2012	94,858/-	Mate's receipt showed the export goods sailed on 18.06.2012 whereas Bill of Lading mentioned that the export goods were shipped on Board on 19.06.2012.

As shown in above Table, the information given in various documents did not tally with each other and therefore, the documents submitted were not evidence of proof of export. Further, in respect of ARE-1 No. 26 dated 06.09.2012 involving rebate of Rs.1,53,506/- it was observed that the respondent had debited only Rs.1000/- of H Ed Cess, however, the correct amount of H.Ed. Cess is Rs.1495/-. Hence though the H.Ed. Cess of only Rs. 1000/- was paid, however, the respondent claimed rebate of Rs.1495/-. In view of this the applicant, not being satisfied as to the legality and propriety of the above Order in Original reviewed the same and on being directed, the jurisdictional Deputy Commissioner filed appeal before Commissioner (Appeal) against the said Order in Original.

~~4. Commissioner (Appeals) upheld the Order in Original No. 04/ADJ/K-II/2013 dated 18.04.2013 and rejected the appeal filed by Department.~~

5. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application on the grounds of discrepancies mentioned at Table at para 3 above and also relying on Sr. No. (3) (xiv) of the Notification No. 19/2004 C.E. (N.T.) dated 06.09.2004 and procedure prescribed under para 8.4 of Central Excise Manual. The applicant also relied on Hon'ble High Court of Allahabad Judgment in Writ Tax No.1020 of 2013 in respect of M/s Vee Excel Drugs & Pharmaceuticals Pvt. Ltd.

6. A Personal Hearing in this matter was held 01.10.2019, Shri D.D.Patil, representative of the respondent appeared for the hearing. He re-iterated submissions made on 15.06.2018 and contested the grounds of Revision Application. He also ~~submitted co-relation table in respect of all the five ARE-1s covering the present case.~~

7. Government has carefully gone through the relevant case records & written submissions and the impugned Order-in-Original and Order-in-Appeal and the submissions made by the respondent vide their letter dated 15.06.2018 alongwith the correlation statement. Government observes that the applicant vide present Revision Application has sought to determine whether the Commissioner (Appeals) was right in disallowing the Department's appeal and granting rebate to the respondent in respect of 5 ARE-1s mentioned under Table at para 3 supra.

8. In respect of ARE-1 No. 25 dated 30.08.2012 there is difference in date of sailing of goods shown in Mate's receipt is and the date of shipment of goods on Board shown in Bill of Lading. However, from the copies of the Bill of lading and Mate's receipt it is observed that details such as Shipping Bill No., Container No., Agent/Customs Seal No. Quantity, Description, weight, Name of the consignee etc. shown on Bill of Lading match with those shown on the Mate's receipt. Also, the name of the vessel is correct in the Bill of Lading. The date shown on the mate receipt is certified by the Customs Officer on the ARE-1. The same shipping bill number is mentioned on the mate receipt as well as bill of lading and ARE-1. Further, the Customs Authorities have countersigned the shipping bills by showing the mate receipt number and date of sailing. In view of this correlation it is established that the goods sailed on Board vessel Maersk Kiel are the same goods for which the Bill of Lading has been issued by the carrier. Similarly, in respect of ARE-1 No. 10 dated 14.06.2012, wherein there is difference in date of sailing of goods shown in Mate's receipt is and the date of shipment of goods on Board shown in Bill of Lading, from the correlation made as above, it is clear that the goods sailed on Board vessel TABEA are the same goods for which the Bill of Lading has been issued by the carrier. The date, i.e. 18.06.2012 shown on the Mate's receipt is certified by the Customs Officer on the ARE-1.

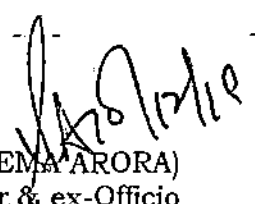
9. As regards ARE-1 No. 33 dated 14.10.2012, the endorsement above the Let Export Order issued by Superintendent of Customs Nhava Sheva in Shipping Bill No. 2175057 dated 15.10.2012 indicates Mate's Receipt No. 641 dated 22.10.2012. As regards ARE-1 32 dated 12.10.2012 and 35 dated 29.10.2012 though there is a discrepancy in the Flight Nos., the correlating documents such as ARE-1's duly certified by customs authorities, self-attested copies of export invoices, Bill of lading and shipping bills, realization certificate from the Bank submitted by the respondent leaves no doubt that the goods were duly exported.

10. In view of above discussion and findings, and keeping in view the existence of enough adduced evidence here in above, Government is of the considered opinion that what is compulsorily required here in the interest of justice is that the department should make positive efforts so as to confirm the basic ingredient of co-relatability

specifically when except for mismatch dates of Bill of Lading and Mate's Receipt and flight nos. there is nothing on record to out rightly negate the claim of respondent. Government holds that duty paid goods have been exported in this case and is in agreement with the Commissioner (Appeals) observations that substantial benefits cannot be denied on the basis of procedural lapses and that the respondents are entitled to the rebate claims. Thus, Government upholds Order- in Appeal No. PUN-EXCUS-002-APP-182-13-14 dated 06.02.2014 passed by the Commissioner (Appeals) Central Excise, Pune-II.

11. The revision application is therefore rejected being devoid of merit.

12. So ordered.


(SEEMA ARORA)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 313 /2019-CX (WZ)/ASRA/Mumbai

10.12.2019

M/s Threadlines (India),
Plot No. D-4/2, MIDC Industrial Area,
Gokul-Shirgaon,
Kolhapur - 416 234.

Copy to:

1. The Commissioner of Central GST, Vasant Plaza-Commercial-Complex, 4th & 5th Floor, C.S. No. 1079/2 K.H., Rajaram Road, Bagal Chowk, Kolhapur-416001
2. The Commissioner Of Central Gst (Appeals-I) Pune F-Wing, 3rd Floor, GST Bhavan, 41/A, Sassoon Road, Pune-411001.
3. The Assistant Commissioner Central GST-Division-III Kolhapur 228/229. 'E' Wad, Tarabai Park, Kolhapur-416003.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.