



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  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. NO. 195/196/13-RA/1984

Date of Issue: 22.11.2018

ORDER NO. 344/2018-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. Colospere Dyes and Intermediates, Surat, Gujarat.

Respondent : Commissioner of Central Excise, Raigad.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. US/769/RGD/2012 dated 07.11.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.



**ORDER**

This Revision Application has been filed by M/s. Colosperse Dyes and Intermediates, Surat, Gujarat (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/769/RGD/2012 dated 07.11.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai .

2. Brief facts of the case are that the applicant had filed 4 rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004 - C.E. (NT) dated 06.09.2004 amounting to Rs. 5,12,014/- (Rupees Five Lakh Twelve Thousand and Fourteen only). The original adjudicating authority viz. Deputy Commissioner, Central Excise (Rebate), Raigad sanctioned rebate of Rs.5,11,612/- (Rupees Five Lakh Eleven Thousand Six Hundred Twelve only) vide Order in Original No. 1114/11-12/DC(Rebate)/Raigad dated 05.11.2011.

3. Being aggrieved by the Order-in-Original, Department filed appeal before the Commissioner (Appeals) on the grounds that the exporter cleared the goods by certifying at Sr.No.3(b) of the ARE-1 is that they are availing benefit under Notification No. 21/2004-CE(NT) dated 06.09.2004 as per which the claim has to be dealt with by jurisdictional Assistant or Deputy Commissioner and exports are to be made under ARE-2. It was also observed that in ARE-1s filed in subject claims the rebate sanctioning authority was mentioned as "Assistant Commissioner of Central Excise, Div.V, 1<sup>st</sup> Floor, Samrudhi Building, Nanpura, Surat-395001" and "Maritime Commissioner Raigad Commissionerate, Khandeshwar". Hence the rebate should not have been sanctioned and should have been *ab initio* rejected. The Commissioner (Appeals) vide Order in Appeal No. No. US/769/RGD/2012 dated 07.11.2012 observed as under :-

*"Under the Notification No. 21/2004-CE(NT) dated 06.09.2004, it is mandatory to clear goods for export in form ARE-2 and file rebate claims with the jurisdictional Assistant or Deputy Commissioner. The respondents have not complied with the said procedure prescribed under the Notification. Instead they have cleared the goods under ARE-1.*



The ARE-1 is a statutory form prescribed under Notification No.19/2004 dated 26.6.2001 issued under Rule 18 of Central Excise Rules, 2002. The declaration given in the ARE-1's are required to be filled in so as to ascertain whether specified benefits have been availed by the exporter or not. This is a statutory requirement which has not been complied with by the respondents. Since the respondents are availing benefit under Notification No. 21/2004-CE(NT) dated 06.09.2004, the claim has to be dealt with by jurisdictional Assistant or Deputy Commissioner and ARE-2 is to be filed. I find that ARE-1 is an assessment document. After self-assessing the said document, the respondents presented the same to the proper officer. Once the said document is assessed by the respondents, it is not open for them to re-assess it. Board has also clarified under Circular No.510/06/2000-CX dated 3.2.2000 that any scrutiny of the correctness of the assessment shall be done by the jurisdictional Assistant/Deputy Commissioner only. In view of this, the order has to be set aside.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds that :-

- 4.1 they followed the procedure under the ARE-1 which is self-explanatory that goods has been exported the Notification No.19/2004-CE NT dated 06.09.2004 therefore procedural infraction of Notification / circulars etc are to be condoned if exports have really taken place and rebate should be granted:
- 4.2 they cleared and removed the duty paid excisable goods under the ARE-1 and excise invoice from the factory. They followed the procedures under the ARE-1 and not under ARE-2 procedure wherein input output ratio is decided for getting the benefit. This clearly shows that they followed the correct procedure under ARE-1 and benefit cannot be denied on merely mentioning of the incorrect declaration which was purely due to ignorance of the person who has made the ARE-1.
- 4.3 there is not dispute on fact that goods have been exported. They have received foreign currency-rebate should be granted.
- 4.4 the corroboration of the goods which has been cleared from the factory has actually been exported can also be evidenced from the following documents-

ARE-1, Duplicate for Transporter's copy of Invoice i.e. Excise Invoice, Shipping Bill (EP copy), Bill of lading, Mate Receipt, Custom Invoice and Packing List



The copies of the aforesaid excise as well as export documents contains the details regarding batch no of the goods, descriptions of goods, weight of the goods, details of the export invoice no which is correlating with other export documents.

- 4.5 they have debited the amount in RG23A vide Debit Entry Number which is reflecting on the ARE-1 and subsequently the same goods has been exported, hence rebate allowed to them is correct and proper In view of the above, it is submitted that rebate shall be granted.
- 4.6 further, it can be seen from all the ARE-1s wherein details of the descriptions of goods, weight of the goods, shipping bill no., export invoice no., vehicle nos., duty payment details. The said details are also therein corresponding with all export invoice numbers and corresponding with custom invoice and corresponding with excise invoice issued by the suppliers/manufacturers and corresponding bills of lading. Further, on page 3 of the shipping bill also contains endorsement of the mate receipts number by the custom officer. Thus, it can be established that said goods has actually been exported.
- 4.7 they have mentioned the address of the Maritime Officer on the ARE-1. However, the duty paid goods have been manufactured and exported by them. It is merely a procedural lapse, which may be condoned and rebate should be allowed.
- 4.8 Further, in case of Cotfab Exports 2006 (205) ELT 1027 (GOI) has held that description of goods is mainly tallying with the vital documents namely invoices/ARE-1s and shipping bills and substantially tallying with other collateral evidences. Goods have been exported under Customs supervision certifying that the goods exported are covered by the respective ARE-1. As the correlation can clearly established from the substantial documents and goods are exported as well as duty has been paid and therefore rebate should be allowed.
- 4.9 The procedural infraction of Notification / circulars etc. are to be condoned if exports have really taken place and the law is settled that substantive benefit cannot be denied for procedural lapses and rebate should be granted
- 4.10 It has been consistently held in the several judgments of Government of India / Tribunal that claiming rebate is substantive right given to an exporter and it should not be denied merely on the ground of technical mistake / lapse.



4.11 They rely on the following case laws:

Cotfab Exports 2006 (205) ELT 1027 (GOI),  
Atma Tube Products Ltd. 1998 (103) ELT 270 (T),  
Modern Process Printers 2006 (204) ELT 632 (GOI).

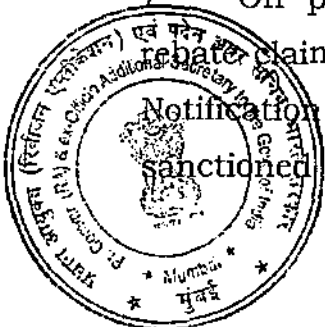
Thus, from the aforesaid mentioned judgments it can be seen that the fundamental requirement for rebate is manufacture of goods & subsequent export. Once, the substantive condition of export has been complied, the rebate claim should not be denied merely on ground of technical lapses. It is a settled law that substantive benefit should not be denied merely on grounds of procedural lapses. Accordingly, it is submitted that the rebate claims filed by the respondents should be allowed.

4.12 Without prejudice to the above, the fact the ARE-1 contains an endorsement on Triplicate ARE-1 of excise authority as well as an endorsement on Original & Duplicate ARE-1 by the Custom Officer, rebate should be granted to the respondent. The Original & Duplicate ARE-1 bears the endorsement of Customs Officer after satisfaction of that the same goods have been exported under the relevant shipping bills, bill of lading and mate receipt. Triplicate ARE-1 also bears the endorsement of Excise Officer on their satisfaction that goods have been exported. Further, in case of Aduler Fasteners 2007 (216) ELT 465 (GOI), it was held the fact that ARE-1 contains an endorsement both by the Excise as well as the Customs Officer rebate should be granted to the assessee. The ratio of the above judgment clearly applies and therefore rebate granted to them is correct and order-in-appeal is liable to set aside.

5. A Personal hearing held in this case was attended by Shri D.K. Singh, Advocate, duly authorized by the applicant. He reiterated the submission filed through Revision Application and case laws. It was pleaded that the instant Revision Application be allowed and Order in Appeal be set aside.

6. 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.

7. On perusal of records, Government observes that the applicant's rebate claim made under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 - C.E.(NT) dated 06.09.2004 was initially sanctioned by the original adjudicating authority. Department filed appeal

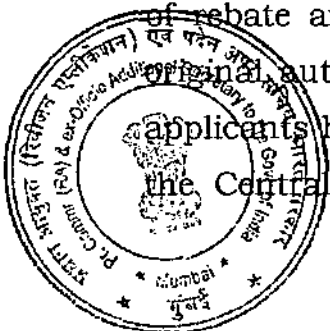


before the Commissioner (Appeals) on the ground that the applicant certified at Sr.No.3(b) of the ARE-1 that they were availing benefit under Notification No. 21/2004-CE(NT) dated 06.09.2004 and as per which the claim had to be dealt with by jurisdictional Assistant or Deputy Commissioner and exports are to be made under ARE-2. It was also observed that in ARE-1s filed in subject claims the rebate sanctioning authority was mentioned as "Assistant Commissioner of Central Excise, Div.V, 1<sup>st</sup> Floor, Samrudhi Building, Nanpura, Surat-395001" and "Maritime Commissioner Raigad Commissionerate, Khandeshwar". Hence department felt that the rebate should not have been sanctioned and should have been *ab initio* rejected. Now, the applicant has filed this Revision Application on grounds mentioned in para (4) above.

8. Government notes that in impugned Order-in-Original, it has been observed by the original authority that the goods were exported under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 – C.E. (NT) dated 06.09.2004. Government further notes that the fact of duty payment and export of such duty paid goods was established in Order-in-Original in unambiguous terms.

9. Government observes that the applicant exported the goods and filed rebate claim under Rule 18 of the Central Excise Rules, 2002 read with the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. The applicant has contended that they cleared and removed the duty paid excisable goods under the ARE-1 and excise invoice from the factory following the procedures under the ARE-1 and not under ARE-2 procedure wherein input output ratio is decided for getting the benefit and the incorrect declaration was purely due to ignorance of the person who has made the ARE-1. The applicant also stated that they had mentioned the address of the Maritime Officer on the ARE-1.

10. Government finds that the applicant prepared the ARE-1 under claim of rebate and paid applicable duty at the time of removal of goods. The original authority in rebate sanctioning orders have categorically held that applicants have exported the goods under claim of rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E.



(N.T.), dated 6-9-2004 and also that range Superintendent confirmed the verification of duty payment.

11. In this regard Government places its reliance on GOI in Revision Order No. 32/2016 – CX Dated 04.02.2016 in the case of M/s Mahavir Synthesis Pvt. Ltd. Vs Commissioner of Central Excise, Raigad, wherein while allowing Revision application of the applicant the Revisionary authority observed as under :-

*On perusal of copy of relevant ARE-1, Government finds that the applicant prepared the ARE-1 under claim of rebate and paid applicable duty at the time of removal of goods. The original authority in rebate sanctioning orders have categorically held that applicant has exported the goods under claim of rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE/(NT) dated 06.09.2004 and also observed that triplicate copy of ARE-1 has been endorsed by the Central Excise officer which confirmed the verification of duty payment. As such, the exported goods are duty paid goods. Once, it has been certified that exported goods have suffered duty at the time of removal, it can be logically implied that provisions of Notification 21/04-CE (NT) dated 06.09.04 and Notification 43/01-CE(NT) dated 26.06.01 cannot be applied in such cases. There is no independent evidences on record to show that the applicant have exported the goods without payment of duty under ARE-2 or under Bond. Under such circumstances, Government finds force in contention of applicant that they have by mistake ticked in ARE-1 form declaration and they have not availed benefit of Notification 21/04-CE(NT) dated 06.09.2004 and Notification 43/01-CE(NT) dated 26.06.2001. In this case, there is no dispute regarding export of duty paid goods. Simply ticking a wrong declaration in ARE-1 form cannot be a basis for rejecting the substantial benefit of rebate claim. Under such circumstances, the rebate claims cannot be rejected for procedural lapses of wrong ticking. In catena of judgments, the Government of India has held that benefit of rebate claim cannot be denied for minor procedural infraction when substantial compliance of provisions of notification and rules is made by claimant.*



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12. Government notes that identical issue of ticking wrong declaration in case of M/s. Socomed Pharma Ltd. decided by GOI in Revision Order No.

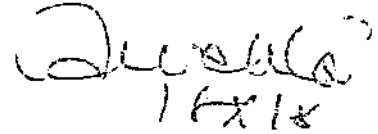
154/157/2014-CX dated 21.04.2014 (reported in 2014 (314) ELT 949 (GOI) wherein it has been observed that mere ticking of wrong declaration may not

be a reason for rejection of rebate claim especially when substantial condition of export of duty paid goods established. Government finds that ratio of aforesaid GOI orders is squarely applicable to this case also.

13. In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. US/769/RGD/2012 dated 07.11.2012 and upholds the Order in Original No. 1114/11-12/DC (Rebate) Raigad dated 05.11.2011.

14. The instant Revision Application, thus, succeeds in above terms.

15. So ordered.



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

ORDER No. 344 /2018-CX (WZ) /ASRA/Mumbai DATED 18.10.2018

To,  
M/s. Colosperse Dyes & Intermediates,  
Plot No.508/1, Road No. 4,  
Beside Prafful Dyeing Mills, G.I.D.C,  
Sachin, Surat-394 230 Gujarat.

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5<sup>th</sup>Floor, CGO Complex, Belapur, Navi Mumbai, Thane..
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Belapur Commissionerate.
4. Shri D.K. Singh, Advocate, Singh Associates, 16/267, 1<sup>st</sup> Floor, Gali No.9, Joshi Road, Karol Bagh, New Delhi-110005
5. Sr. P.S. to AS (RA), Mumbai
6. Guard file
7. Spare Copy.

**ATTESTED**



**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)

