

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. 198/27/14-RA/5957 Date of Issue: 12/12/19

ORDER NO. 345/2019-CX (WZ) /ASRA/MUMBAI DATED 11.12.2019 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 Eurotex Industries and Exports Limited, Kolhapur.

Subject : Revision Application filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. PUN-EXCUS-002-AFP-122-13-14 dated 22.11.2013 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-122-13-14 dated 22.11.2013 passed by The Commissioner (Appeals) Central Excise, Pune-II.

2. The brief facts of the case is that M/s Eurotex Industries and Exports Limited , Kolhapur (respondent) had cleared excisable goods for export on payment of central excise duty vide ARE-1 No. 113 dated 10.10.2012 and subsequently filed rebate claim of Rs.2,68,526/- (Rupees Two Lakh Sixty Eight Thousand Five Hundred and Twenty Six only). The said rebate claim was sanctioned by the Deputy Commissioner, Central Excise Kolhapur-II Division (original authority) vide Order in Original No. 93/ADJ/K-II/2012 dated 22.01.2013.

3. On scrutiny of rebate claims it was observed that in respect of ARE-1 No. 113 dated 10.10.2012, the respondent had submitted the said ARE-1 with the endorsement of the Customs Authorities on separate page and not on reverse of the ARE-1. In view of possibility of misuse of separate pages, law required that endorsement has to be on reverse of ARE-1. Therefore it appeared that proof of export is not submitted and the rebate was not admissible to the respondent. 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), while setting aside the said Appeal filed by the applicant vide Order in Appeal No. PUN-EXCUS-002-APP-122-13-14 dated 22.11.2013 observed that:

"When the export of goods has not been challenged, then there the irregularity in the ARE-1, if any, is purely procedural or technical in nature, thus condonable. There are number of judgments on the issue where it has been held that substantive benefits cannot be denied for procedural lapses. I therefore do not agree with the Appellents' plea that proof of export is not submitted".

5. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application mainly on the grounds that

5.1 there is a possibility of misuse if necessary endorsement are made on separate pages (of ARE-1); the law has required that the endorsement has to be on the reverse of the ARE-1;

5.2 the observation of the Commissioner (Appeals) that the provisions of Notification No. 19/ 2004-CE(NT) dated 06-09-2004, which lays out the procedure for filling rebate claims, nowhere mentions that the page number 2 of ARE-1 should necessarily be on the reverse of page number 1, is erroneous in as much as the format prescribed for ARE-1 under the notification has four parts - A,B,C and D - each for a specific purpose. While Part A, which is the 'Certification by Central Excise Officer' clearly mentions that the certification pertains to -

"..goods described overleaf," Part B, which is the 'Certification by the Officer of Customs' mentions that the certification pertains to -

"..the above mentioned consignment."

When read together, the format prescribed as per law, clearly stipulates that the Form ARE-1 has to be prepared in such a way that the details of goods to be exported appear on the face of the ARE-1 and the certifications by the various authorities in relation to the goods being exported, are to be obtained on the reverse of the same.

6. A Personal Hearing in this matter was held 01.10.2019, Shri Sanjay Makwana, Export Executive of the respondent appeared for the hearing. He re-iterated earlier submissions made and also filed additional written submissions on 01.10.2019. In their written submissions

7. In their written submissions dated 01.10.2019, the respondent mainly submitted as under :-

- ARE-1 forms normally are available in market which are printed back to back, hence, the details of vessel through which export took place, date of export, mate receipt number etc. appear on the back side / reverse side of ARE-1, while in their case, they prepared computerized ARE-1 and details were printed on separate papers instead of back-to-back. Thus, as against the said details on the reverse / back of the ARE-1 in case of pre-printed ARE-1, the said details were contained on a separate paper. It was not mandatory for an assessee to use pre-printed form ARE-1. In absence of any bar / requirement under the

provisions for claiming rebate, an assessee is free to prepare computerized form ARE-1 and print the same on separate papers instead of printing back to back.

- Commissioner, Central Excise (Appeals), Pune-II has considered all other collateral evidence like shipping bill, mate receipt, bill of lading; etc. and has found that all the information's mentioned in the said documents is tallying with the information mentioned in the ARE-1 which has been duly sealed and signed by the customs authorities and that no evidence has been adduced by the department that we have misused the export facility.
- Though in the impugned appeal, it is mentioned that the law requires that the details and particulars of export such as vessel through which the export took place, the date of export and mate receipt numbers are to be mentioned on the reverse side of the ARE-1, still nowhere in the impugned appeal any legal provisions compelling such requirement is cited.

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 01.10.2019.

8. In the instant case the respondent has used computerized ARE-1s which were printed on separate papers instead of back-to-back. It is the contention of the department that there is a possibility of misuse if necessary endorsements are made on separate pages (of ARE-1) as the law has required that the endorsement has to be on the reverse of the ARE-1.

9. From the ARE-1 form appended below the Notification No. 19/2004-Central Excise (N.T.) it is seen that PART A and PART C of the ARE-I Form do contain the word "overleaf", thereby indicating that PART A is required to be printed on the back side of ARE-1. However, this requirement may be condoned if the exported goods could be correlated with the goods cleared from the factory of manufacture or warehouse. In order to examine the issue of correlatability, Government finds that in Shipping Bill No. 2135914 dated 13.10.2012, there is cross reference at Part B of ARE-1 No.113/10-10-2012 and vice-versa. The above mentioned ARE-1 finds mention of relevant duty paying invoice No. 472, dated 10.10.2012 issued by the respondent. Further, description, weight and quantities exactly tally with regard to description mentioned in the said ARE-1 and other export documents including export invoices Shipping Bill and Bill of Lading. As such there is sufficient, corroboratory evidence that goods

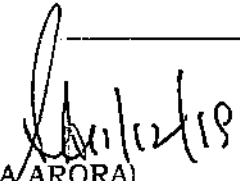
covered vide impugned excise documents have actually been exported vide impugned export documents. Further, endorsement of Customs Officers at the port of export, on part "B" of said ARE-1, though on a separate page, also conclusively supports the same observation. Therefore, no discrepancy has been noticed in any of the documents to justify the apprehension of the department that separate pages of ARE-1 could have been misused in this case. Therefore, in the present case the basic requirement of Export of duty paid goods can be taken to have been satisfied.

10. In fact, as regards rebate specifically, law is settled now that the procedural infraction of Notifications, circulars, etc., are to be condoned if exports have really taken place and substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned. This view of condoning procedural infractions in favour of actual export having been established has been taken by Tribunal/Govt. of India in a catena of orders.

11. In view of above discussions and findings, Government upholds the impugned Order-in-Appeal and Order-in-Original.

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

13. So ordered.


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

ORDER No. 345 /2019-CX (WZ)/ASRA/Mumbai 11/12/2019.

To,
M/s Eurotex Industries and Exports Limited,
Plot No. E-1 & E-23, MIDC, Gokul Shirgaon,
Dist. 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.