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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, Cuffe Parade,
Mumbai- 400 005

F.No.195/420/2013-RA/6000

Date of Issue: 13.12.19

ORDER NO. 351/2019-CX (WZ)/ASRA/MUMBAI DATED 13.12.2019 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 THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Koprana Ltd.

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

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. US/854/RGD/2012 dated 30.11.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

ORDER

This Revision Application is filed by the M/s Koprán Ltd., Vill-Savroli, Tal-Khalapur, Dist.-Raigad-410 202 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. US/854/RGD/2012 dated 30.11.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

2. The issue in brief is that the Applicant, a merchant exporter, had filed a rebate claim RC No. 23560 dated 29.01.2007 amounting to 3,00,428/-. They then vide their lawyer's letter dated 19.01.2012 revised their rebate claim for Rs. 3,46,637/-. The Applicant was issued deficiency memo cum Show Cause Notice dated 21.02.2012 on the following grounds:

- (i) Assessable value given in the ARE-1 is 21,24,000/- whereas the FOB value given in the Shipping Bill was Rs. 2,29,005/- only;
- (ii) The revised claim of Rs. 3,46,637/- filed on 19.01.2012 is barred by limitation as stipulated under Section 11B of the Central Excise Act, 1944.

The Deputy Commissioner, Central Excise (Rebate) Raigad vide Order-in-Original No 2636/11-12/DC (Rebate)/Raigad dated 31.03.2012 held that the revised claim of Rs. 3,46,637/- was time barred, however, the rebate claim of Rs. 3,00,428 filed on 29.01.2007 was within time limit and sanctioned Rs. 3,00,428/- (Rupees Three Lakhs Four Hundred and Twenty ~~Eight Only~~) under the provisions of Section-11B-of-Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules,2002. Aggrieved the Department then filed an appeal with the Commissioner of Central Excise (Appeals-II), Central Excise Mumbai on the grounds

- (i) That while filing the original rebate claim on 29.01.2007, the Applicant had mentioned only one Shipping Bill No. 4022906 dated 28.01.2006 and the self attested copy of this Shipping Bill was also submitted along with the rebate claim. This S/B

- covered only one product namely Transic Injection (Tradamol) on which duty of Rs. 38,189/- only was paid.
- (ii) That on 19.01.2012, a revised claim was filed again mentioning only one S/B, but the rebate amount was enhanced from Rs. 3,08,448/- to Rs. 3,46,637/-.
 - (iii) In response to the deficiency memo-cum-SCN, the Applicant vide letter dated 13.03.2012 submitted that due to typographical error, they did not mention the details of the second Shipping Bill No. 4022913 dated 28.01.2006 in the rebate claim and hence the quantum of rebate is enhanced from Rs.3,08,448/- to Rs. 3,46,637/-.
 - (iv) That second S/B was not part of the original or revised claim but came on record for the first time only on 13.03.2012 much after the initial filing of the claim on 29.01.2007 and it cannot be called as typographical error but it is clear cut addition to the earlier claim dated 29.01.2007.
 - (v) That the Adjudicating authority has erred in granting rebate on documents which were not figuring in the original rebate claim, but were mentioned only in letter dated 13.03.2012 which is after more than 5 years of date of filing the claim resulting in sanction of erroneous rebate to the extent of Rs. 2,70,259/- (i.e. Rs. 3,09,428/- less Rs. 38,189/-).

The Commissioner (Appeals-II), Central Excise Mumbai vide Order-in-Appeal No. US/754/RGD/2012 dated 31.10.2012 set-aside the Order-in-Original dated 30.03.2012 to the extent of Rs. 2,70,259/- and the departmental appeal was allowed.

3. Being aggrieved, the Applicant then filed the current Revision Application on the following grounds :

- 3.1 That the Department appear to be under the misconception that the Applicant had added a new claim, being claim of the amount

of duty mentioned in the Shipping Bill No 4022913 dated 28.01.2006, when in fact it was the amount in respect of this Shipping Bill itself which was mentioned in the Original claim/ covering letter dated 05.10.2006.

3.2 That the Applicant had exported the goods under form ARE-1, which clearly mentions the details of two shipment viz

- (i) 25000 units (47 boxes) of Trasic injection valued at Rs. 2,34,000/-, cleared on payment of duty of Rs. 38,189/- exported under Shipping Bill No. 4022906 dated 28.01.2006.
- (ii) 20,000 units (200 Boxes) of Felexin valued at Rs. 18,90,000/- cleared on payment of duty of Rs. 3,08,448/- exported under Shipping Bill No. 4022913 dated 28.01.2006.

3.3 That there was no specific form/ application in which the application for rebate is required to be filed, however as a matter of practice, the rebate claims are being filed under Form 'C'. As per Para 2.3 of Chapter 8 of the CBEC's Excise Manual of Supplementary Instructions, 2005-

"2.3 For filing rebate claim: There is no specified for filing claim of rebate. The same may be done by the exporter on their letter head and filed with the requisite documents."

Accordingly, the Applicant filed its rebate claim under the cover of the letter dated 05.10.2006 setting out the details of the ARE-1 No, the Central Excise invoice nos and the rebate claim amount and enclosing all the relevant documents. However, while filing its rebate claim, certain typographical errors crept into the covering letter viz

- (i) Failed to mention the details of the second Shipping Bill viz Shipping Bill No 4022913; and
- (ii) Inadvertently mentioned the rebate claim amount as Rs. 3,08,448/- instead of Rs. 3,46,637/-.

The Applicant rectified the same vide their letter dated 19.01.2012, however since the department did not arise any deficiency memo and / or did not point the error in respect of non-mentioning of the Shipping Bill No. 4022913, the Applicant did not rectify the same. Further, even the deficiency memo-cum-scn- call for personal hearing dated 21.02.2012 did not raise any objection/ deficiency regarding non mention of the Shipping Bill number.

- 3.4 That a perusal of the Order-in-Original would show that all the relevant documents in respect of the rebate claim of Rs. 3,08,448/- pertaining to goods exported under Shipping Bill No. 4022913 dated 28.01.2006 were submitted within the prescribed period of limitation of one year along with the original claim made vide letter dated 05.10.2006
- 3.5 That it is a settled position in law that so long as the original claim is filed within the prescribed period of limitation, mere fact that the same is amended/ revised on account of typographical errors/ mistakes apparent on the fact of the record would not make the revised claim time barred.
- 3.6 That non-mention of the Shipping Bill No. 4022913 was a mere procedural lapse and it is settled law that substantial benefit of rebate ought not to be denied on account of procedural/ technical infraction.
- 3.7 They prayed that the Order-in-Appeal be set aside.

4. A personal hearing in the case was held on 22.08.2019 which was attended by Ms Sparsh Prasad, Advocate on behalf of the Applicant.

5. 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.

6. In the instant case, the Applicant vide their letter dated 05.10.2006 had filed a rebate claim, the details are given below:

Sl.No.	RC No. & date	ARE-1 No & Date	Invoice No & date	S/B No & Date	B/L No & date	Amt of rebate (Rs)
1	23560 dt 29.1.07	700592 /2005-06 dt 30.1.06	700592 dt 30.1.06	4022906 dt 28.1.06	MUM 020600031 dt 30.1.06	308448

The Applicant then vide their letter dated 19.01.2012 informed the rebate authority that through oversight, their earlier letter 05.10.2006 dated mentioned an amount of Rs. 3,08,448/- instead of Rs. 3,46,637/-and that the amount of Rs. 3,45,637 be considered for the purpose of sanctioning its rebate claim which is the amount of duty as appearing in the ARE-1 Form. The Applicant was issued deficiency memo dated 21.02.2012 and in reply the Applicant vide letter dated 13.03.2012, clarified that the amount of Rs. 21,24,000/- mentioned in S/B No. 4022906 dated 28.01.2006 was the FOB value of the goods mentioned therein while the amount of Rs. 18,40,860/- mentioned in S/B No. 4022913 dated 28.01.2006 was the FOB value of the goods mentioned therein. And that due to typographical error the S/B No. 4022913 dated 28.01.2006 was not mentioned in the original covering letter dated 05.10.2006 and that the same may be condoned. And accordingly, the total FOB value in respect of the subject goods mentioned in the ARE-1 comes to Rs. 20,69,865/- and rebate claims may be sanctioned on the basis of FOB value. The adjudicating authority then vide Order-in-Original dated 31.03.2012 held that the revised claim of Rs. 3,46,637/- was time barred, however, the rebate claim of Rs. 3,00,428 filed on 29.01.2007 was within time limit and sanctioned Rs. 3,00,428/-.

7. It is observed that the ARE-1 No. 700592 /2005-06 dated 30.01.2006 shows :

- (i) 25000 units (47 boxes) of Trasic injection valued at Rs. 2,34,000/-, cleared on payment of duty of Rs. 38,189/-.

- (ii) 20,000 units (200 Boxes) of Felexin (Cephalexin) valued at Rs. 18,90,000/- cleared on payment of duty of Rs. 3,08,448/-

and in Part B of ARE-1, the Customs Officer has certified that Shipping Bills No. "4022906 dated 28.01.2006 ,4022913 dated 28.01.2006", "MOL Ambition", M/R No.33551 dt 6/2/06" and "Sailed on 6/02/06". Further, it is observed that in the Mate Receipt No. 33551 dated 06.02.2006 the goods Cephalexin was exported through S/B No 4022913 dated 28.01.2006 and Container No. HLXU2256992, whereas in Mate Receipt No. 33550 dated 06.02.2006 the goods Transic Inj was exported through S/B No. 4022906 dated 28.01.2006 and Container No. HLXU2256992.

8. Government finds that Applicant had submitted sufficient documentary evidence to substantiate the fact that the goods in question are excise duty paid and the same have been exported through ARE-1. 700592 /2005-06 dated 30.01.2006. The Original claim for Rs. 3,08,448/- was filed on 29.01.2007 and within time limit and after considering the Applicant's error, their subsequent letters and reply to the memo, adjudicating authority has correctly restricted the rebate amount to Rs.3,08,448/- i.e. the original amount claimed.

9. Government observes that there are catena of judgments wherein it has been held that time-limit to be computed from the date on which refund/rebate claim was originally filed. High Court Tribunal and GOI, have held in following cases that—original—refund/rebate claim filed within—prescribed time-limit laid down in Section 11B of Central Excise Act, 1944 and the claim resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held time-barred as the time limit should be computed from the date on which rebate claim was initially filed. Government places reliance on the case of Apar Industries (Polymer Division) Vs Union of India [Special Civil Application No. 7815 of 2014 {2016 (333) E.L.T. 246 (Guj.)}] and while

disposing the petition, the Hon'ble High Court of Gujarat in its Order dated 17.12.2015, observed that

Thus, making of the declarations by the petitioner in format of Annexure-19 was purely oversight. In any case, neither Rule 18 nor notification of Government of India prescribe any procedure for claiming rebate and provide for any specific format for making such rebate applications. The Department, therefore, should have treated the original applications/declarations of the petitioner as rebate claims. Whatever defect, could have been asked to be cured. When the petitioner represented such rebate applications in correct form, backed by necessary documents, the same should have been seen as a continuous attempt on part of the petitioner to seek rebate. Thus seen, it would relate back to the original filing of the rebate applications, though in wrong format. These rebate applications were thus made within period of one year, even applying the limitation envisaged under Section 27 of the Customs Act. Under the circumstances, without going into the question whether such limitation would apply to rebate claims at all or not, the Department is directed to examine the rebate claims of the petitioner on merits. For such purpose, revisional order and all the orders confirmed by the revisional order are set aside. The Department shall process and decide rebate claims in accordance with Rules.

Government also observes that the aforesaid decision of High Court of Gujarat has been accepted by the department as communicated vide Board Circular No.1063/2/2018-CX dated 16.02.2018.

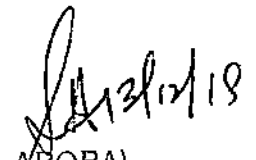
10. Applying the ratio of the afore stated judgement, Government holds that rebate claims filed by the respondent are made within period of one year from the date of export. In the instant case the original date of filing of these claims shall be taken as the date of submission of the original claims and subsequent applications are in continuation of the original claims and therefore are not barred by limitation under Section 11B of the Central Excise Act, 1944.

11. In view of foregoing discussions, Government holds that, since the original rebate claim was filed within stipulated time limit i.e. on 29.1.2007, the same are to be treated as filed in time.

12. In view of above, Government finds no infirmity in the Order-in-Original No. 1332/11-12/DC(Rebate)/Raigad dated 30.11.2011 and the same is upheld and Order-in-Appeal No. US/854/RGD/2012 dated 30.11.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai is sets aside.

13. Revision application is allowed in terms of above.

14. So, ordered.


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

ORDER No. 351/2019-CX (WZ)/ASRA/Mumbai DATED 13.12.2019.

To,
M/s Koprani Ltd.,
Vill-Savroli,
Tal-Khalapur,
Dist.-Raigad-410 202

Copy to:

1. The Commissioner of GST & Central Excise, Belapur Commissionerte.
2. The Deputy / Assistant Commissioner(Rebate), GST & CX , Belapur Commissionerte
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.