



**REGISTERED
SPEED POST**

**F.No. 198/686/10-RA-Remand
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

14, HUDCO VISHALA BLDG., B WING
6 FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue: 17/11/14

Order No. 356/2014-CX dated 14-11-2014 of the Government of India, passed by Smt. Archana Pandey Tiwari, Joint Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against orders-in-appeal No. SKSS/189/Vapi/2010 dated 20.09.10 passed by Commissioner (Appeals) Central Excise, Customs & Service Tax, Vapi.

Applicant : Commissioner of Central Excise, Customs and Service Tax, Vapi

Respondent : M/s Aarti Industries Ltd., Silvassa

ORDER

This revision application has been filed by the applicant Commissioner of Central Excise, Customs and Service Tax, Vapi against the order-in-appeal No. SKSS/189/Vapi/2010 dated 20.09.10 passed by Commissioner of Central Excise, Customs and Service Tax (Appeals) Vapi with respect to orders-in-original No. 1450/DC/Rebate/2009-10/Silvasa-III dated 26.03.10 passed by Deputy Commissioner Central Excise and Customs, Division-III, Silvassa.

2. Brief facts of the case are that the respondent M/s Aarti Industries Ltd., (formerly known as M/s Surfactant Specialities Ltd.), Silvassa, had exported their goods without payment of duty after validity date of LUT. Later on they have paid the duty of Rs.1,34,415/- alongwith interest. Therefore, they have filed rebate claim on 24.11.09. They had not submitted the original and duplicate copy of ARE-1 for the goods exported by them. They stated that the same were lost in transit and submitted the FIR lodged at the Police Station, Khanvel. Therefore a show cause notice dated 18.02.10 was issued to them and after due process of law, the rebate claim was rejected by the Deputy Commissioner, vide order-in-original dated 26.03.10 for not submitting the original and duplicate copies of ARE-1 in terms of Rule 18 of Central Excise Rules, 2002 read with Section 11B of Central Excise Act, 1944 and Para 8.3 and 8.4 of Chapter 8 of CBEC Excise Manual of Supplementary Instruction.

3. Being aggrieved by the said order-in-original, the respondent filed appeal before Commissioner (Appeals) who set aside the order of the lower adjudicating authority and allowed the appeal.

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

4.1 The Commissioner (Appeals) has relied upon a CESTAT judgement in the case of M/s Model Buckets and Attachment Pvt. Ltd. vs. CCE Belgam as reported in 2007 (217) ELT 264 (Tri. Bang.) which is not accepted by the concerned Commissionerate and the Department has filed an appeal before the Hon'ble High Court of Karnataka and the same is pending for decision. The Supreme Court in the case of UOI vs. West Coast Paper Mill Ltd. (2004 (164) ELT 375 SC) has held that when a decision is challenged in appeal, correctness or otherwise of judgement of Tribunal is in jeopardy. The subject matter of the case unless determined by the Court cannot be said to have attained finality.

4.2 The respondent filed the rebate claim in pursuance of Rule 18 of Central Excise Rules, 2002 which clearly stipulates that the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedures, as may be specified in the notification. The Central Government for the operationalisation of the Rule 18 issued a Notification No. 19/2004-CE(NT) dated 6.09.04 as amended wherein conditions, limitations, procedure etc. are prescribed.

4.3 The Commissioner(Appeals) had erred in not considering the elaborated stages involved in respect of the exports in terms of notification No. 19/2004-CE(NT) dated 6.09.04. As discussed in the conditions of the cited Notification, the first stage examination of the excisable goods is carried out at the factory premises itself by the jurisdictional officer with reference to 5 copies of the ARE-1s and in token of its examination the officer sign on all copies of the ARE-1s.

4.3.1 In the second stage examination, the goods (condition No. 3(a)(xiii) and 3(a)(xiv) of the said notification) cleared from the factory after examination again presented to the Custom Officer alongwith original, duplicate and quadruplicate copies of ARE-1s at the port of export. The Customs officer again examine the goods w.r.t. the said ARE-1s and observe/inspect/examine that the goods are in original packaging original seal is intact, description/specification,

numbers / quantity etc. are matching so that the same goods be allowed for export and chances of replacement, short shipment, inferior quality goods etc. ruled out.

4.3.2 After the examination the Customs Officer ensures the loading of the examined goods on the ship and after sailing of the ship the officer make a remarks/certify name of the ship, voyage number, date of sailing of the said ship, shipping bill number and date, mate receipt number and date on the original, duplicate and quadruplicate copies of the ARE-1s.

4.3.3 After the above endorsement / certification on the said ARE-1s the officer returned the original and quadruplicate copies of ARE-1s to the exporter. The duplicate copy is forward to Assistant / Deputy Commissioner of the jurisdiction where the assessee is required to file rebate. On request of the exporter the duplicate copy can be handed over to them in tamper proof sealed cover for the purpose of delivery to the concerned Assistant / Deputy Commissioner.

4.3.4 As per the condition No. 3(a) (xvi) the exporter has to use the quadruplicate copy for the purposes of claiming any other export incentive. The respondent is not discussing any thing about the optional copy which is also certified by the Customs officer.

4.4 At the time of presentation of claim for rebate to Central Excise the respondent is required to follow condition No. 3(b)(i) of the Notification, according to which the claim of the rebate of duty paid on excisable goods is to be lodged along with original copy of the ARE-1.

4.4.1 As per the condition 3(b)(ii) the Assistant / Deputy Commissioner of Central Excise shall compare the duplicate copy of ARE-1 received from the officer of the Customs with the original copy of ARE-1 received from the exporters and with the triplicate copy of the ARE-1 received from Range

Superintendent and if satisfied that the claim is in order, he shall sanction the rebate accordingly. In the situation of lost of vital document it is not possible to the Assistant / Deputy Commissioner to compare the certificate copies of ARE-1s with the triplicate copy available with him and thus chances of misuse / fraudulent claim can't be ruled out.

4.5 Para 8.3 and 8.4 of Chapter 8 of CBEC Excise Manual of Supplementary Instructions prescribe original copy of the ARE-1 as a mandatory documents for filing claim of rebate.

4.6 The Commissioner (Appeals) has failed to appreciate that the original and duplicate ARE-1 are vital document which link the clearance of excisable goods from the factory to port of export in original packagings which is required to be examined further by the Customs officer. Thereafter, the same is loaded under the direct supervision of the office to the ship and remain under Customs supervision till the said ship sailed from the port of export. All this procedure is certify on the original and duplicate copy of the ARE-1. Thus, said document is only acceptable document on the basis of which export could be proved. Therefore, in absence of vital documents the rebate was legally rejected by the adjudicating authority. Commissioner (Appeals) has erred in considering facts in para 4.2 in as much as that he considered documents produced by the respondent viz. ARE-1s, Mate Receipt, Shipping Bill and Bill of Lading. As discussed above, the respondent had lost the original and duplicate copy of ARE-1s. Therefore, question of consideration of ARE-1 does not arises. The other documents i.e. mate receipt, bill of lading and shipping bill have to be read with reference to the ARE-1 which is certified by the Customs Officer because the possibility of short shipment, replacement of goods, replacement of goods by inferior quality, change in the value etc. could not be ruled out.

4.7 The Commissioner (Appeals) had erred in applying a ratio of judgement in the case of M/s Model Buckets and attachments Pvt. Ltd. vs. CCE, Belagaum and CCE vs. Kanwal Engg. As reported in 1996 (87) ELT 141 (Tri.) in as much as that these citation as related with clearance of excisable goods without payment of duty in terms of Rule 19 of Central Excise Rules, 2002 whereas the instant case is related with the export of excisable goods with payment of duty and claiming rebate under Rule 18 of Central Excise Rules, 2002. The Commissioner (Appeals) has relied upon supporting documents like shipping bill, mate receipt, bill of lading as proof of export but the department considered original, duplicate and quadruplicate copies of ARE-1s duly certified by the Customs Officer, as it linked the chain from the factory upto the sailing of the vessel from the port of the export. Therefore none of the above supporting documents can be relied upon as proof of export. The Commissioner (Appeals) has erred in not considering that the conditions, limitation, procedure prescribed under the Notification No. 19/2004-CE(NT) dated 6.09.04 are mandatory in nature and therefore the same cannot be relaxed.

5. A show cause notice was issued to the respondent under Section 35EE of Central Excise Act, 1944 to file their counter reply. They filed their written reply dated 27.06.12 and submitted that –

5.1 There is no dispute that the goods were exported under ARE-1 No. 298/2008-09 dated 9.01.09.

5.2 As per para 13.7 of Chapter 7 of Central Excise Manual of Supplementary Instruction provides that if the original documents are lost, the export may be ascertained from other collateral evidences such as Remittance Certificate, Mate Receipt etc. Though said para pertains to export under Bond but the same criteria can be adopted in respect of exports under claim of rebate. It is submitted that ARE-1 No. 298/08-09 dated 09.01.09 that the goods were stuffed in the factory of the applicant by Central Excise Officers in the container No.

CRXU 342399(8) by Central Excise Seal No. 002199 and Shipping Seal No. PAN Asia 056518. The same container No. and Shipping Bill Seal No. are mentioned in corresponding Mate Receipt, Bill of Lading and Shipping Bill. The certificate of M/s Pan Asia Logistics India Pvt. Ltd. dated 01.09.10 further reveals that the goods exported in container No.CRXU 342399 (8) were shipped on board on vessel OEL INTEGRITY which sailed from Nhava Sheva on 13.01.09 and landed Muscat on 16.01.09. The bank Realization Certificate of Axis Bank Ltd. further reveals that the export proceeds of US\$27,000.00 against shipping bill No. 6983522 were realized on 13.04.09.

5.3 Procedural requirement can be condoned if substantial conditions have been complied with-

- (a) The goods have been exported directly from the factory
- (b) The goods have been exported within 6 months from the date on which they were cleared from the factory
- (c) The market price of the goods is not less than the amount of rebate claim.
- (d) The amount of rebate is not less than Rs.500/-.

5.4 Appeal to the Hon'ble High Court against the relied upon order of Commissioner (Appeals) cannot be a ground for not following the ratio of the judgement.

Case laws cited by the respondent are:

- GSL India Ltd. – 2012 (276) ELT 116
- Garg Texto-Fab Pvt. Ltd. – 2012 (271) ELT 449
- Shreeji Colour Chem Industries 2009 (233) ELT 367
- GTC Industries Ltd. vs. CCE Bombay-II 2000 (123) ELT 765(Tri.)
- In RE : Cotfab Exports – 2006 (205) ELT 1027 (GOI)

6. Government of India decided the case vide Revision Order No.1132/2012-Cx dated 7.9.2012 and allowed the revision application filed by the applicant. The applicant filed Writ Petition No.582 of 2013 against the aforesaid revision

order dated 7.9.12. The Hon'ble High Court vide order dated 17.2.14 remanded this case back to original authority to decide the same in context of GOI decision in case of Garg Tex Fab Pvt. Ltd. reported as 271 ELT449(GOI).

7. In compliance of Hon'ble High Court order, the case was fixed for hearing on 11.9.14. Hearing was attended by Shri Archit Agarwal, C.A. who relied upon various case laws in favour of their contention including Hon'ble Bombay High Court's judgement in case of U.M.Cables Ltd. reported as 2013 (293)ELT641(Bom).

8. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

9. On perusal of records, Government observes that the rebate claim in question was rejected by the original adjudicating authority as the claimant has failed to submit the original and duplicate copy of ARE-1 being a mandatory document in terms of para 8.3 and 8.4 of Chapter 8 of CBEC's Excise Manual of Supplementary Instructions read with provision of notification No.19/2004-CE(NT) dated 6.9.04 as amended, issued under Rule 18 of Central Excise Rules, 2002. The Commissioner (Appeals) decided the appeal in favour of respondent. Department filed revision application before JS (RA) against impugned order-in-appeal. Government of India decided the case vide Revision Order No.1132/2012-Cx dated 7.9.2012 and allowed the revision application filed by the applicant department. The respondent party filed Writ Petition No.582 of 2013 against the aforesaid revision order dated 7.9.12. The Hon'ble High Court vide order dated 17.2.14 remanded this case back to original authority to decide the same in context of GOI decision in case of Garg Tex Fab Pvt. Ltd. reported as 271 ELT449(GOI).

10. In this case, the benefit was sought to be rejected for the reasons of non-submission of original/duplicate copies of AREs-1. In this regard, Government

observes that Hon'ble High court of Bombay in its judgement dated 24.4.13 in the case of M/s U.M.Cables Vs. UOI (WP No.3102/13 & 3103/13) reported as TIOL 386 HC MUM CX. has held that rebate sanctioning authority shall not reject the rebate claim on the ground of non-submission of original and duplicate copies of ARE-1 forms if it is otherwise satisfied that conditions for grant of rebate have been fulfilled. Government, therefore, applying the ratio of above said judgement of Hon'ble High Court of Bombay in the said case, is of the view that the proof of export may be examined on the basis of collateral evidences where original and duplicate ARE-1 form is not submitted. Government finds that the appellate authority in para 4.2 of impugned order-in-appeal has discussed in details and held that on the basis of collateral evidences, it is established that duty paid goods have been exported. This detailed factual verification by the appellate authority has not been controverted by department on the basis of any substantial documentary evidences. Under such circumstances, Government is of considered opinion that the benefit cannot be denied to the respondents for the reason of non-submission of original/duplicate copies of ARE-1s.

11. Government finds that the applicant department vide their letter dated 10.9.2014 has also contended that the goods were not cleared under valid LUT1. Government notes that the department has not contended this issue in the impugned revision application. Hence, the issue which has not been contended in original revision application, cannot be entertained at this stage.

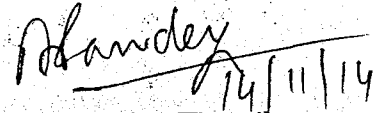
12. In this regard, Govt. further observes that rebate/drawback etc. are export-oriented schemes. A merely technical interpretation of procedures etc. is to be best avoided if the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical lapse. In *Suksha International Vs. UOI 1993 (39) ELT 503 (SC)*, the Hon'ble Supreme Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand

what the policy gives with the other. In the Union of India Vs. A V Narasimhalu 1983 ELT 1534 (SC), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. Similar observation was made by the Apex Court in the Formica India Vs. Collector of Central Excise 1995 (77) ELT 51(SC) in observing that once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so, had elapsed. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in Mangalore Chemicals and Fertilizers Ltd. Vs. Dy. Commissioner 1991 (51) ELT 437 (SC). In fact, as regards rebate specifically, it is now an established law that the procedural infraction of Notifications, circulars, etc. are to be condoned if exports have really taken place, and the law is settled now that 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 the fact of 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 has been taken by tribunal/Govt. of India in a catena of orders, including Birla VXL Ltd. 1998(99) ELT 387 (Trib), Alfa Garments 1996(86) ELT 600(Tri, T.I. Cycles 1993(6)ELT 497(Trib), Atma Tube Products 1998(103) ELT 270(Trib), Creative Mobus 2003(58) RLT 111(GOI, Ikea Trading India Ltd. 2003 (157) ELT 359(GOI) and a host of other decisions on this issue.

13. In view of above discussions, Government does not find any infirmity in order of Commissioner (Appeals) and upholds the same.

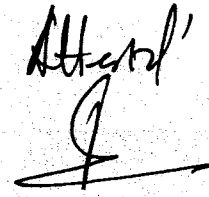
14. Revision application is rejected being devoid of merits.

15. So, ordered.



(Archana Pandey Tiwari)
Joint Secretary (Revision Application)

Commissioner of Central Excise, Customs & Service Tax,
Old Town Police Station, Vapi-Daman Road, Vapi
Distt. - Valsad (Guj.)-396 191



(Shagwet Shama)
Commissioner
C.E.C.S.D. (Revision Application)
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Ministry of Finance (Dept. of Rev.)
भारत सरकार (Govt. of India)
नई दिल्ली / New Delhi

GOI Order No. 356/14-CX dated 14-11-2014

Copy to:

1. M/s Aarti Industries Ltd. (formerly known as M/s Surfactant Specialities Ltd.), Sy. No. 193, Khanvel Udhwa Road, Kherdi, Silvassa.
2. Commissioner of Customs & Central Excise, Customs & Service Tax(Appeals), 4th Floor, Adarshdham Building, Vapi Daman Road, Vapi, Distt. – Valsad(Guj.)
3. The Assistant / Deputy Commissioner of Central Excise & Customs, Division-III, Silvassa, JP House, HDFC Bank, Silvassa – Vapi Road, Silvassa (UT of D&NH)
4. Guard File.
5. PS to JS (RA)
6. Spare Copy

ATTESTED



(B.P.Sharma)
OSD (Revision Application)