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F.No. 195/192/12-RA-CX
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue... 22/11/14

Order No. 358/14-CX dated 26-11-2014 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 Applications filed under section 35 EE of the
Central Excise, against the Orders-in-Appeal No.
US/64/RGD/2011 dated 24.01.2012 passed by the
Commissioner of Central Excise, (Appeals-II), Mumbai

Applicant : United Phosphorus Ltd., Mumbai

Respondent : CCE Raigad

Order

The revision application has been filed by the applicant M/s. United Phosphorus Ltd., Warli, Mumbai, a manufacturer exporter with respect to order-in-appeal No.US/64/RGD/2011 dated 24.01.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai with respect to order-in-original passed by Deputy/Assistant Commissioner (Rebate), Central Excise, Raigad.

2. In this case, the applicant filed rebate claim of duty paid on exported goods under Rule 18 of Central Excise Rules, 2002 read with Notification No.19/2004-Cx(NT) dated 06.09.2004. The rebate claim was rejected by the Original authority on the ground of non-submission of original and duplicate copies of ARE-1. Commissioner (Appeal) upheld the impugned order-in-original.

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

3.1 It is submitted that the sole basis on which impugned order is passed by the Commissioner (Appeals) is that the applicant did not produce the Original and duplicate of the ARE-1 No.59/07-08 dated 08-05-2007. The impugned order of the Commissioner of Central Excise (Appeals) is inconsistent with the orders of the Hon'ble Joint Secretary in the case of Garg Tax-O-Fab Private Limited-2011 (271) E.L.T.449 (G.O.I)

3.2 It is submitted that once the applicant produced the photo copy of the ARE-1, the authorities below ought not to have rejected the same as inadmissible but ought to have verified with the Range Records and ascertained the correctness thereof. It is submitted that without verifying the correctness of the photo copy of the documents produced by the applicant, the authorities below committed serious error of law in holding that the applicant is not eligible for availing the rebate as the original and duplicate copy of ARE-1 is not submitted and also the duty payment confirmation is not furnished.

4. Personal hearing scheduled in this case on 16.9.2014 was attended by Shri Mihir Mehta, Chartered Accountant on behalf of applicant and he reiterated

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. Government observes that the rebate claim was rejected for the reasons of non-submission of original/duplicate copies of AREs-1. Commissioner (Appeals) decided the case in favour of department. Now, the applicant has filed this revision application on grounds mentioned in para (3) above.

7. Government observes that rebate claim was rejected for the reasons of non-submission of original/duplicate copies of ARE-1. In this regard, 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. In the light of above, Government proceeds to examine the aspect of proof of export on the basis of collateral evidences available on records or submitted by the applicants.

7.1 On perusal of documents submitted by the applicant, Government finds that there is cross reference of impugned ARE-1 No.59/07-08 dated 8th May 2007 in impugned shipping bill No.5235228 dated 8.5.2007 and vice-versa. Further, the quantity/weight, description of AREs-1 tallies with quantity/weight and description mentioned in the export invoice/shipping bill. There is endorsement on ARE-1 of custom officer to the effect that the goods covered vide impugned

shipping bill have actually been exported. On the basis of collateral evidences, the correlation stands established between export documents and excise documents and hence, export of duty paid goods may be treated as completed. Hence, the applicants are eligible for rebate claims in this case.

8. In view of above discussion, Government sets aside impugned order-in-appeal and allows revision application.

9. Revision application thus succeeds in above term.

10. So, ordered.

Archana Pandey Tiwan
26/11/14
(Archana Pandey Tiwan)
Joint Secretary (Revision Application)

M/s United Phosphorus Ltd.
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167, Dr.A.B.Road, Worli
Mumbai-400018

Attested
(Signature of Sharma)
Joint Assistant Commissioner
C. & S. D. (Revision Application)
Ministry of Finance (Dept. of Rev.)
New Delhi

ORDER NO. 358/2014-CX DATED 26-11-2014

Copy to:

1. Commissioner of Central Excise, Customs & Service Tax, Raigad Commissionerate, Plot No. 1, Kendriya Utpad Shulk Bhavan, Sector-17, Khandeshwar, Navi Mumbai-410614.
2. Commissioner of Central Excise (Appeals-II), Mumbai, 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, Bandra-Kurla Complex, Bandra(E), Mumbai-400 051.
3. The Deputy Commissioner of Central Excise (Rebate), Raigad Commissionerate, Ground Floor, Kendriya Utpad Shulk Bhavan, Plot No. 1, Sector-17, Khandeshwar, Navi Mumbai-410206.
- ✓ 4. PA to JS(RA)
5. Guard File
6. Spare Copy.

ATTESTED



(B.P. Sharma)

OSD (Revision Application)

