F.No.195/24/WZ/2020-RA

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. 195/24/WZ/2020-RA/7166 Date of Issue: 05.10.23

ORDER NO. 363/2023-CX (WZ)/ASRA/MUMBAI DATED 28.9.23 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : - Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. Kch-Excus-000-App-059-2020 dated 30.07.2020 passed by the Commissioner (Appeals)Rajkot.

Applicant : M/s. Ashland India Pvt. Ltd.

Respondent: The Commissioner of CGST & CX, Kutch(Gandhidham)

ORDER

The Revision application is filed by M/s. Ashland India Pvt. Ltd. (hereinafter referred to as 'applicant') against the Order-in-Appeal No. Kch-Excus-000-App-059-2020 dated 30.07.2020 passed by the Commissioner (Appeals)Rajkot.

2. The brief facts of the case are that the Applicant, a merchant exporter filed a rebate claim on 26.06.2018, claiming refund of duty of Rs. 1,32,92,598/- in respect of goods cleared for export on payment of duty under various ARE-Is under Rule 18 of the Central Excise Rules, 2002 (hereinafter referred to as 'CER") read with Section 11 B of the Central Excise Act, 1944 (hereinafter referred to as the Act"). The refund sanctioning authority vide the impugned order sanctioned an amount of Rs. 1,26,92,156/-under Rule 18 of the CER and Section 11B of the Act and rejected the remaining amount of Rs. 3,00,442/-. Being aggrieved with the Order in Original, the Commissioner of CGST & CX, Kutch (hereinafter referred to as 'Respondent) preferred appeal before Commissioner (Appeals)Rajkot, who, vide impugned OIA allowed the Appeal and rejected the OIO. Appellate Authority observed the following while rejecting the OIO:

i. The claim was initially filed on 29.12.2017 but returned due to missing supporting documents. The claim was again filed on 26.06.2018 after 1 year from the date of export hence the same is barred by limitation in terms of Section 11B. Further, I find that the claim is set to be filed from the date the entire claim is submitted with all the documents which in this case has happened in 26.06.2018.

ii. The claim as returned back to them on jurisdictional issue. However, the jurisdictional issue as never the case since the applicant has filed several claims before the department. Hence the jurisdictional issue does not arise.

iii. the Original copy of ARE-1 and Excise invoices among other documents are essential documents for claiming rebate. Any non-submission of documents in the manner prescribed thus imparts a character of invalidity to the rebate claim. Also, in the absence of the Original copies of ARE-1 duly endorsed by the Customs, the export of the same duty paid goods which were cleared from the factory cannot be established which is a fundamental requirement for sanctioning the rebate under Rule 18 read with Notification 19/2004-C.E. (N.T.), dated 06.09.2004.

3. Being aggrieved by the impugned OIA, the applicant has filed the present revision application mainly on the following common grounds:

i. The Original documents (including the copies of ARE-1), along with the rebate claim application were submitted before original jurisdictional authorities vide letter dated 29 December 2017 and accordingly, the rebate claim is appropriately granted under SEZ Law read with Central Excise provisions.

ii. Based on the above and in compliance with the above, the claimant filed the rebate claim application along with the original copy of the ARE-1 vide letter dated 29 December 2017 duly acknowledged by divisional jurisdictional officer.

iii. the applicant filed the rebate claim application along with the original copy of the ARE-1 vide letter dated 29 December 2017 duly acknowledged by divisional jurisdictional officer. However, without providing any specific reason, the then jurisdictional authority sent the rebate claim back to the applicant along with the original documents by mentioning "the claim cannot be processed as you have failed to comply with the conditions and procedures as specified at para 3(b)(1) of Notification No 19/2004-Central Excise dated 06 September 2004".

iv. the letter issued by the jurisdictional authority to send back the rebate claim and mentioning the non-compliance of para 3(b)(1) of notification 19/2004 itself mentioned that the file is been sent back in original. This as is amply clear is sufficient to conclude that the original ARE-1 were initially been submitted by the applicant accepted by the jurisdictional authority and then sent back due to the departmental confusion in accepting the rebate claim owing to the jurisdictional issue.

v. Based on the above-mentioned grounds and explanations provided, the applicant would like to state that the original copy of the ARE-1 in compliance with the excise manual were submitted by the applicant at the time of original rebate claim which has been held as non-submitted by the Ld. Comm (A) without any substantiated proof. Hence such unsubstantiated OIA issued by the Ld. COMM (A) is untenable and absurd

vi. The time limit provided under section 11B of the Central Excise Act, 1944 shall be applicable from the date of original claim.

vii. Procedural lapses shall not be considered as a primary basis for rejection of the rebate claim which shall be considered as a contravention of the governments objective of granting the rebate.

viii. Applicant could in no way avail the benefit of claiming dual rebate claim by not submitting original ARE 1 since indemnity bond was provided

ix. Applicant has placed reliance on various case laws.

x. In view of the above, the applicant requested to set aside the impugned Order-in-Appeal.

4. Personal hearing in this case was fixed for 22.06.2023, Ms. Rinky Arora, Advocate appeared on behalf of the Applicant and submitted an additional written submission on the matter. She further submitted that report of authorised officer, APSEZ was not mentioned by Comm(A). They referred to para 10 of OIO which discusses this verification report. She further referred that Original filing of claim was within time and time limit is required to be counted from the same date. She requested to allow the Application.

5. Government has carefully gone through the relevant case records, written submissions and perused the impugned letters, Order in Original and Order-in-appeal.

6. Government observes that the issue to be decided in the present case are:

i. Whether the rebate claims filed are barred by limitation of time?

ii. Whether the rejection of rebate on merit is proper or otherwise.

7.1 As regards to the time barred issue, Government notes that Applicant has claimed that date of rebate claim filing to be taken as 29.12.2017, while Department objected to this date on account of their incomplete submissions and considers the date 26.06.2018 as the date of filing rebate claim. Considering the date of filing as 26.06.2018, rebate claim has become time barred. It is important to note that a claim is considered to be filed only when it is complete in all respects. The Applicant contends that their original claim was returned due to a jurisdictional dispute and not because of incomplete documents. However, the Government disagrees with this assertion. In this regard, the Government agrees with the observation made by the Appellate Authority in paragraph 12 of its order:

"12. I further observe that the respondent has contended that the claim was returned to them on the ground of jurisdictional dispute. In this regard, since the respondent has been regularly filing various rebate claims prior to filing of the subject rebate claim and they have also filed various rebate claims after filing of the subject rebate claim, therefore the department as well as the respondent were well aware

about the jurisdiction of the case. Therefore, I agree with the appellant-department that the jurisdiction dispute does not arise in the present case."

7.2 In this regard the procedure as laid down in Para 2.4 of Chapter 9 of CBEC's Excise Manual of Supplementary Instructions states as under:

"It may not be possible to scrutinise the claim without the accompanying documents and decide about its admissibility. If the claim is filed without requisite documents, it may lead to delay in sanction of the refund. Moreover, the claimant of refund is entitled for interest in case refund is not given within three months of the filing of claim. Incomplete claim will not be in the interest of the Department. Consequently, submission of refund claim without supporting documents will not be allowed. Even if post or similar mode files the same, the claim should be rejected or returned with Query Memo (depending upon the nature/importance of document not filed). The claim shall be taken as filed only when all relevant documents are available. In case of non-availability of any document due to reasons for which the Central Excise or Customs Department is solely accountable, the claim may be admitted that the claimant is not in disadvantageous position with respect to limitation period.".

It is thus clear that the application for a rebate claim must be submitted along with all required documents to the Assistant/Deputy Commissioner of Central Excise with jurisdiction over the manufacturing facility. Above para also states that "it may not be possible to scrutinise the claim without the accompanying documents, and decide about its admissibility." Thus, rebate claims filed with incomplete documents are liable for rejection and hence the department was right in returning the rebate claim filed on 29.12.2017.

Additionally, Government emphasises that once a claim is returned, it no longer remains filed and this date becomes non-est. Therefore, the date 26.06.2018, on which the claim was resubmitted, is the correct date to be considered. Therefore, this renders the rebate claim time-barred. The claim of the Applicant that the date of submission of rebate claim filed earlier on 29.12.2017, therefore, cannot be accepted.

7.3 Applicant has mentioned a few case laws where Hon'ble Courts have allowed initial date of filing rebate/refund claim even when claim was incomplete initially and complete documents were submitted later after the time limit for filing the claim was over. There is a clear distinction in the facts of those cases and of the case where rebate claim was returned to applicant. It was not a case where

deficiency of documents was communicated and the same was complied with. Once claim has been returned back to the Applicant, it no longer exists with the department. Its existence in the records of the concerned department would come only when it is again filed.Therefore, claim is time barred.

7.4 Government finds that Hon'ble Supreme court in case of SANSERA ENGINEERING LTD. Versus DEPUTY COMMISSIONER, LARGE TAX PAYER UNIT, BENGALURU dated 29.11.2022 has held as under:

"9. On a fair reading of Section 11B of the Act, it can safely be said that Section 11B of the Act shall be applicable with respect to claim for rebate of duty also. As per Explanation (A) to Section 11B, "refund" includes "rebate of duty" of excise. As per Section 11B(1) of the Act, any person claiming refund of any duty of excise (including the rebate of duty as defined in Explanation (A) to Section 11B of the Act) has to make an application for refund of such duty to the appropriate authority before the expiry of one year from the relevant date and only in the form and manner as may be prescribed. The "relevant date" is defined under Explanation (B) to Section 11B of the Act, which means in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of goods..... Thus, the "relevant date" is relatable to the goods exported. Therefore, the application for rebate of duty shall be governed by Section 11B of the Act and therefore shall have to be made before the expiry of one year from the "relevant date" and in such form and manner as may be prescribed. The form and manner are prescribed in the notification dated 6.9.2004. Merely because in Rule 18 of the 2002 Rules, which is an enabling provision for grant of rebate of duty, there is no reference to Section 11B of the Act and/or in the notification dated 6.9.2004 issued in exercise of powers conferred by Rule 18, there is no reference to the applicability of Section 11B of the Act, it cannot be said that the provision contained in the parent statute, namely, Section 11B of the Act shall not be applicable, which otherwise as observed hereinabove shall be applicable in respect of the claim of rebate of duty.

10. At this stage, it is to be noted that Section 11B of the Act is a substantive provision in the parent statute and Rule 18 of the 2002 Rules and notification dated 6.9.2004 can be said to be a subordinate legislation. The subordinate legislation cannot override the parent statute. Subordinate legislation can always be in aid of the parent statute. At the cost of repetition, it is observed that subordinate legislation cannot override the parent statute. Subordinate legislation

which is in aid of the parent statute has to be read in harmony with the parent statute. Subordinate legislation cannot be interpreted in such a manner that parent statute may become otiose or nugatory. If the submission on behalf of the appellant that as there is no mention/reference to Section 11B of the Act either in Rule 18 or in the notification dated 6.9.2004 and therefore the period of limitation prescribed under Section 11B of the Act shall not be applicable with respect to claim for rebate of duty is accepted, in that case, the substantive provision – Section 11B of the Act would become otiose, redundant and/or nugatory. If the submission on behalf of the appellant is accepted, in that case, there shall not be any period of limitation for making an application for rebate of duty. Even the submission on behalf of the appellant that in such a case the claim has to be made within a reasonable time cannot be accepted. When the statute specifically prescribes the period of limitation, it has to be adhered to."

8.1 With regard to the second point that the Applicant failed to submit the original and duplicate copies of the ARE-1, Government notes that Appellate Authority has discussed this issue at length in para 7 to para 9 of the OIA. Government concurs with the observations of the Appellate Authority on this aspect. The relevant paras of the OIA are reproduced as:

7. I find that the respondent, à merchant exporter filed a rebate claim, claiming refund of Service Tax of Rs. 1,32,92598/- in respect of goods cleared for export on payment of duty under various ARE-1s under rule 18 of the Central Excise Rules, 2002 read with Section 11 of the Central Excise Act, 1944. The refund sanctioning authority vide the impugned order sanctioned an amount of Rs. 1,29,92,150/- and rejected an amount of Rs. 3,00,442/-. On examination of the impugned order, the appellant department was of the view that it is not proper and legally correct.

7.1 In this regard 1 first proceed to examine the statutory position with regard to the documents required for sanction of a rebate claim.

7.2 I note that Rule 18 of CER, 2002 provides that Central Government may by notification grant rebate of duty on goods exported subject to conditions and limitations if any and subject to fulfilment of procedure as specified. Notification 19/2004-C.E. (N.T.), dated 06.09.2004 as amended issued under Rule 18 provides that the rebate sanctioning authority will compare the original copy of ARE-1 submitted by exporter with the duplicate copy received from Customs authorities and triplicate from the Excise authorities.

7.3 I also note that the provisions specified in Chapters 8 (8.3) & (8.4) of CBEC Basic Excise Manual of Supplementary Instructions are applicable in this case, which reads as under: -

"8. Sanction of claim for rebate by Central Excise

8.3 The following documents shall be required for filing claim of rebate :-

(i) A request on the letterhead of the exporter containing claim of rebate, ARE-1 nos. dates, corresponding invoice numbers and dates amount of rebate on each ARE-1 and its calculations.

(ii) Original copy of ARE-1

(iii) invoice issued under Rule 11.

(iv) self-attested copy of shipping bill and

(v) self-attested copy of Bill of Lading

(vi) Disclaimer Certificate in case where claimant is other than exporter

8.4. After satisfying himself that the goods cleared for export under the relevant ARE-1 application mentioned in the claim were actually exported, as evident by the Original and duplicate copies of ARE-1duly certified by Customs, and that the goods are of duty paid character as certified on the triplicate copy of ARE-1 received from the jurisdictional Superintendent of Central Excise (Range Office) the rebate sanctioning authority will sanction the rebate, in part or full. In case of any reduction or rejection of the claim an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued."

7.4 From the above, I note that the Original copy of ARE-1 and Excise invoices among other documents are essential documents for claiming rebate. Any non-submission of documents in the manner prescribed thus imparts a character of invalidity to the rebate claim. Also in the absence of the Original copies of ARE-1 duly endorsed by the Customs, the export of the same duty paid goods which were cleared from the factory cannot be established which is a fundamental requirement for sanctioning the rebate under Rule 18 read with Notification 19/2004-C.E. (N.T.), dated 06.09.2004.

7.5 I find that in the absence of main document ARE-1, original and duplicate containing certification of the Central Excise as well as Customs authorities, it cannot be established that the same goods which were cleared from the factory were actually exported. Also, I note that Para 2.4 of Chapter 9 of CBEC's Excise Manual stipulates that the claim without supporting documents shall not be allowed.

Further, I observe that in case of export of goods under bond in terms of Rule 19 of CEA, there is a provision under Chapter 7 of CBEC Excise Manual on Supplementary Instructions for accepting proof of export on the basis of collateral evidence if original/duplicate ARE-1 is missing. In case of exports on payment of duty under rebate claim in terms of Rule 18 of CEA, 2002, there is no such provision under the relevant Chapter 8 of CBEC Excise Manual on Supplementary Instructions. Therefore, I find that the claim was not in order as required in terms of conditions contained at Para 300) of Notification no. 19/20004-(NT)..

8. Further, I note that it is a settled issue that benefit under a conditional Notification cannot be extended in case of non-fulfilment of conditions and/or non-compliance of procedure, prescribed therein as held by the Apex Court in the case of Government of India Vs Indian Tobacco Association -2005/187) ELT. 162 (S.C. Union of India Vs. Dharmendra Textile Processors - 2008(231) ELLT. 3 (S.C.). Also it is settled that a Notification has to be treated as a part of the statute and it should be read along with the Act as held by in the case of Collector of Central Excise v Parle Exports (P) Ltd.- 1988(38) ELT. 741 (S.C.) and Orient Weaving Mills Put. Ltd. v. Union of India- 1978 (2) ELT. J311 (SC) (Constitution Bench).

9. I also find that the nature of the above requirement is a statutory condition. The submission of application for removal of export goods in ARE-1 form is must because such leniencies lead to possible fraud of claiming an alternatively available benefit which may lead to additional/double benefits. For example a rebate claim can be filed by the manufacturer or merchant exporter with the Maritime Commissioner or jurisdictional Assistant Commissioner, Central Excise, so there can be a ponsibility of duplicate filing of rebate claim, if the claim is accepted without original and duplicate ARE-1. This has never been the policy of the Government and it is in the spirit of this background that Hon'ble Supreme Court in case of Sharif-ud-Din. Abdul Gani AIR 1980 S.C. 303 and 2003(156) ELT. 168 (Bom.) has observed that distinction between required forms and other declarations of compulsory nature and/or simple technical nature is to be judiciously done. When non-compliance of said requirement leads to any specific/odd consequences then it would be difficult to hold that requirement as non-mandatory. As such there is no force in the plea of the respondent that this lapse should be considered on a procedural lapse of technical nature which is condonable in term of case laws cited by the respondent. I therefore hold that non-submission of statutory document of ARE-1 and not following the basic procedure of export goods as discussed above, cannot be treated as just a minor/technical procedural lapse for the purpose of granting rebate of duty. I note that the above view has also been followed by the Hon'ble High Court of Chattisgarh in a recent judgment in the case of

M/s Tiruputi Steel Traders Vs. Assistant Commissioner of C.Ex., Nagpur decided on 25.07.2018 as reported in 2019 (365) E.LT 497. Further the Government has already decided the said issue vide GOI Orders Nos. 246/2011-CX., dated 17-3-2011, 216/2011-CX., dated 7-3-2011, 835/2011-CX., dated 17-3-2011 and 736/2011-CX., dated 13-6-2011 holding the above said views."

8.2 Government notes that absence of the original copy of ARE-1 and Excise invoices, among other required documents, is crucial for a rebate claim. Failing to submit these documents as prescribed renders the rebate claims invalid. Moreover, without the original copies of ARE-1 duly endorsed by both Central Excise and Customs authorities, it becomes impossible to establish that the same duty-paid goods cleared from the factory were actually exported. This requirement is fundamental for granting a rebate under Rule 18 in conjunction with Notification 19/2004-C.E. (N.T.), dated 06.09.2004. Para 2.4 of Chapter 9 of CBEC's Excise Manual stipulates that the claim without supporting documents shall not be allowed. Further, it was observed by the Appellate Authority that in case of export of goods under bond in terms of Rule 19 of CEA, there is a provision under Chapter 7 of CBEC Excise Manual on Supplementary Instructions for accepting proof of export on the basis of collateral evidence if original/duplicate ARE-1 is missing. In case of exports on payment of duty under rebate claim in terms of Rule 18 of CEA, 2002, there is no such provision under the relevant Chapter 8 of CBEC Excise Manual on Supplementary Instructions. Therefore, claim was not in order as required under Notification no. 19/20004-(NT).

9. In view of above position, Government finds no infirmity with the Order-in-Appeal No. Kch-Excus-000-App-059-2020 dated 30.07.2020 passed by the Commissioner (Appeals)Rajkot and upholds the same.

10. Revision application is rejected on the above terms.

Shrawan 28/9/23

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

ORDER No. 363/2023-CX (WZ) /ASRA/Mumbai Dated 28.9.23

To,

1. M/s. Ashland India Private Limited, 9th Floor, R city offices, Above R city Malls, LBS Marg, Mumbai-400092.
2. The Commissioner of CGST & Cx, Kutch (Gandhidham), GST Bhavan, Plot No. 82, sector-8, Kutch (Gandhidham), Gujrat-370201.

Copy to:

1. The Commissioner of GST & Central Excise (Appeals), 2nd Floor, GST Bhavan, Race Course Ring Road, Rajkot-360001.
2. M/s. Ashland India Private Limited, Plot No. 17-18, Sector 30-A, Vashi, Navi Mumbai-400705.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.