

REGISTERED
SPEED POST



F.NO. 198/142/09-RA-Denovo
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... (21/5/13)

ORDER NO. 396/2013-CX DATED 17/05/2013 OF THE GOVERNMENT
OF INDIA, PASSED BY SHRI D P SINGH, 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 the order-in-appeal
No. YDB/49 to 51/RGD/09 dated 4.09.09 passed by
the Commissioner (Appeals-II) Central Excise,
Mumbai Zone-II
- Respondent : Commissioner of Central Excise, Customs & Service
Tax, 4th Floor, Kendriya Utpad Shulk Bhavan, Plot No.
1, Sector No. 17, Khandeshwar, New Panvel(W)
410206.
- Respondent : M/s Shalina Laboratories Pvt. Ltd., 96, Maker
Chambers Vi, Nariman Point, Mumbai-400 021

ORDER

This revision application has been filed by the Commissioner, Central Excise, Customs & Service Tax, Raigad against the Order-in-Appeal No. YDB/49 to 51/RGD/09 dated 04.09.09 passed by the Commissioner (Appeals) Central Excise, Mumbai Zone-II.

2. Brief facts of the case are that the M/s Shalina Laboratories, a merchant exporter have exported the manufactured goods after procuring the same from various manufacturers. They filed rebate claim against 52 ARE-1s for total rebate amount of Rs.57,87,876/- under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.04.

2.1 On scrutiny it was noticed that instead of original / duplicate copies of ARE-1, endorsed by Customs Office had not been submitted with the rebate claims. Accordingly, deficiency memo/SCN was issued to the respondent by the department.

2.2 The Adjudicating Authority, being the rebate claim sanctioning authority rejected the rebate claims involving duty amount of Rs.57,87,876/- on the grounds that the original and duplicate copies of AREs-1 had not been produced by the respondent and hence the duty paid nature of the goods mentioned in the original copies of ARE-1 can neither be ascertained nor established and there is no provision for granting rebate on the basis of reconstructed copies of the ARE-Is.

3. Being aggrieved by the said order-in-original, the respondent preferred appeals with the Commissioner (Appeals) who set aside the impugned order and allowed the appeals with consequential relief.

4. Being aggrieved, the applicant Commissioner had filed this revision application on the following grounds:

4.1 The order of Commissioner (Appeals) is in appropriate and not justifiable in as much as it appears that the condition, limitation and procedure prescribed in Notification No.19/2004-CE(NT) dated 06.09.04 as amended issued under Rule 18 of Central Excise Rules, 2002, for grant of rebate of duty on export of goods have not been adhered to in the instant case. As per the provisions (3)(b)(1) of Notification No. 19/2004-CE(NT) dated 06.09.04 as amended, claim of the rebate of duty paid on all excisable goods shall be lodged along with original copy of the ARE-I to the Asstt. Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be the Maritime Commissioner. Thus in the absence of such statutory documents, duty paid nature of the goods cannot be ascertained nor established and therefore, the fundamental criteria as envisaged in para 8.4 part I Chapter 8 of CBEC'S Excise Manual of Supplementary Instructions for ascertaining the duty paid character/nature/identification of the goods exported, are not fulfilled in the instant case.

4.2 That the Commissioner (Appeals) has erred in not visualizing the probable loss of revenue by grant of rebate on the basis of reconstructed documents in place of the originals. If the claimant is granted rebate claim on the basis of the reconstructed copies of the required documents, it would open up possibility of the claimant filing claim both with the Jurisdictional commissionerate as well as with the Maritime Commissionerate. Further, accepting the proof of export, in case of loss of documents, in case of goods exported under Bond, Para 13.7 of chapter of the CBEC's Central excise Manual of Supplementary Instructions prescribed the procedure as under:

"13.7 In case of any loss of document, the Divisional Officer or the bond accepting authority may get the matter verified from the Customs Authorities at the place of export or may call for the collateral evidences such as remittance certificate, Mate's Receipt etc., to satisfy himself that the goods have actually been exported."

However, no parallel provisions has been provided for claim of rebate in case of loss of documents when goods are exported under claim of rebate, and in the absence of such a procedure, the Commissioner (Appeal) erred in holding the condition of submission original/duplicate copy of ARE-1, in original as procedural.

4.3 The issue in dispute in the present case is covered in the following cases holding that the basis of photo copies of documents have no evidence and liable to be misused as any number of copies can be made from one document.

1. J Yashodha Vs. Shobha Rani – 2007 (212) ELT 458 (SC)
2. CCE Surat-II Vs. Mercury Plast – 2005 (191) ELT 595 (Trib.Mum)
3. CCE Chandigarh Vs. Vision Electronics – 2004 (175) ELT 653 (Trib.-Delhi)
4. L&T Vs. CCE Mumbai – 2003 (161) ELT 795 (Trib-Delhi)

4.4 The Hon'ble Supreme Court in the case of J Yashoda Vs. Shobha Rani has discussed Section 63, 64 & 65 of Evidence Act, 1872 and therein upheld the High Court view and held that the photo copies cannot be received as secondary evidence in terms of Section 63 of the Act and they ought not to have been received since the documents in question were admittedly photocopies, there was no possibility of the documents being compared with the originals.

4.5 The Commissioner (Appeals) has erred in relying on following judgements as the facts and circumstances of those cases are entirely different from that of the instant case.

5. Government notes that impugned revision application was earlier decided vide GOI Order No.246/2011-Cx dated 17.3.2011, wherein order of Commissioner (Appeals) was set aside and revision application filed by the department was allowed.

6. The respondent, Shalina Laboratories Pvt. Ltd. filed writ petition No.9673 of 2011 against said GOI order dated 17.3.2011 before Hon'ble Bombay High Court. The Hon'ble Bombay High Court vide order dated 22.8.2012 has set aside the said GOI order dated 17.3.2011 and remanded the case back to Revisionary Authority to decide the same afresh by observing as under:

"This writ petition is filed to challenge the order passed by the Joint Secretary to Government of India in Revision dated 21st March, 2011 whereby the Revision Application filed by the Revenue has been allowed and the order in appeal passed by the Commissioner (Appeal) has been set aside and held that the petitioner is not entitled to rebate claim in respect of the exports effected by the petitioner. On perusal of the order of the Joint Secretary to Government of India, it is seen that in the present case all the original ARE-1 being lost, the petitioner was required to reconstruct ARE-1 duly certified by the Authorities under the Customs Act/Central Excise Act. Since these requirements as specified in the letter of the Board dated 23rd May, 1955 were not complied with, the rebate claim of the petitioner was rejected. During the pendency of this petition, the petitioner has obtained the requisite certificates from the Excise Authorities to establish that the goods exported by the petitioner were duty paid and cleared under proper invoice/ARE-1. Since these documents were not available at the time when the Joint Secretary to Government of India considered the Revision Application filed by the Revenue, the impugned order of the Joint Secretary to Government of India dated 21st March, 2011 is quashed and set aside and the matter is restored to file of the Joint Secretary to Government of India for fresh consideration in accordance with law. The Petitioners are at liberty to place on record the newly obtained documents from the Excise Authorities and the Joint

Secretary to Government of India shall pass fresh order on merits after considering the said documents and after hearing the petitioners.”

7. Government observes that respondents, in their written submission dated 30.11.2012, have submitted that on instruction of Hon'ble Bombay High Court they obtained certificates from all the Central Excise officers in-charge to the effect that goods were purchased by them and said goods were exported on payment of duty. Accordingly, the Hon'ble High Court, considering the reconstructed original and duplicate copies of the ARE-1 forms duly signed by the custom authorities and subsequent certificates produced from the excise authorities as per direction of Hon'ble Court, the Hon'ble High Court vide its order dated 30.11.2012 quashed the GOI order dated 17.3.2011 and remanded the case back to this authority for consideration. They have requested to accept the said reconstructed copies of ARE-1 duly endorsed by Customs and Central Excise authorities, and allow the substantial benefit of rebate claims.

8. Government notes that they have submitted reconstructed copies of ARE-1 signed by the custom authorities and also submitted certificate from concerned range officers of excise to the effect that duty have been paid in respect of goods cleared for export under impugned AREs-1. These certificates were not submitted before this authority during first round of revisionary proceedings, which have now been obtained by the respondent on direction of Hon'ble Bombay High Court. The certificates issued by Central Excise range officers clearly mention relevant ARE-1 No., Excise Invoice No., amount of duty paid etc. From perusal of sample copies of the endorsement of custom authority on reconstructed copy, it is found that there is clear mention of ARE-1 No. and their relevant shipping bill Nos. In this case, Hon'ble High Court has directed to consider the reconstructed copies of ARE-1.

9. It is observed that Government has been taking a view on this issue that in absence of original and duplicate AREs-1, rebate claim cannot be held

admissible. However, facts of this case are distinctly different from fact of those cases where rebate claims were held inadmissible by this authority in absence of original and duplicate AREs-1. In this case the applicant duly submitted reconstructed copies of ARE-1 duly certified by the Customs and Central Excise Authorities and Hon'ble High Court has directed to consider the same. As such, the said reconstructed documents duly certified by Customs as well as Central Excise authorities cannot be brushed aside and hence required to be considered. The sample copies of said document reveals that Custom has certified ARE-1 and S.B.No. along with other particulars on the said ARE-1 copy. However, each of such reconstructed documents needs to be verified by the original authority to determine their authenticity and veracity and accordingly, rebate is to be sanctioned, if otherwise found in order.

10. In view of above circumstances, Government direct the original authority to verify the authenticity and veracity of reconstructed copies of ARE-1 and sanction the rebate claim in accordance with law if the said documents and the rebate claims are found in order. The respondents are directed to submit all the said documents before adjudicating authority.

11. Revision application is disposed off in above terms.

12. So, ordered.



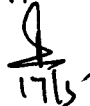
(D P SINGH)

JOINT SECRETARY (REVISION APPLICATION)

Maritime Commissioner of Central Excise & Customs,
Raigad, Gr. Floor, Kendriya Utpad Shulk Bhavan,
Sector-17, Plot No. 1, Khandeshwar,
Navi Mumbai-410 206.

Copy to:

Attested.



(भगवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)

Order No-396/13-14 dt-17/5/13

F.No.198/142/09-RA-Denovo

1. Maritime Commissioner of Central Excise & Customs, Raigad, Gr. Floor, Kendriya Utpad Shulk Bhavan, Sector-17, Plot No. 1, Khandeshwar, Navi Mumbai-410 206.
2. M/s Shalina Laboratories Pvt. Ltd., 96, Maker Chambers, VI Nariman Point, Mumbai-400 071
3. The Asstt. Commissioner (Rebate) Central Excise, Raigad Division, Gr. Floor, Kendriya Utpad Shulk Bhavan, Sector-17, Plot No. 1, Khandeshwar, Navi Mumbai-410 206.
4. Commissioner of Central Excise (Appeals), Mumbai Zone-II, 3rd Floor, Utpad shulk Bhavan, Plot No. C-24, Sector-E, Bandra Kurla Complex, Bandra (E), Mumbai-400 051.
5. Shri Ganesh Bapu TR, Advocate, C/o M/s Shalina Laboratories Pvt. Ltd., 96, Maker Chambers, VI Nariman Point, Mumbai-400 071
- ✓ 6. PS to JS(RA)
7. Guard File.
8. Spare Copy

ATTESTED



(BHAGWAT P SHARMA)
OSD (REVISION APPLICATION)