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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  
8<sup>th</sup> Floor, World Trade Centre, Cuff Parade,  
Mumbai- 400 005

F. NO. 195/801/13-RA

Date of Issue: 12.12.2018

ORDER NO. 410/2018-CX (WZ) /ASRA/Mumbai DATED 30.11.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

- Applicant : M/s J.D. Overseas, D-2, Jyoti Park, S.V. Road, Kandivali (West) - Mumbai - 400 067.
- Respondent : Commissioner of Central Excise, Raigad.
- Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. BC/103/RGD(R)/2013-14 dated 17.06.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone - III.



**ORDER**

This revision application is filed by M/s J. D. Overseas, D-2, Jyoti Park, S.V. Road, Kandivali (West), Mumbai - 400 067 (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BC/103/RGD(R)/2013-14 dated 17.06.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone - III.

2. Brief facts of the case are that the applicant is a merchant exporter engaged in exporting various items. The applicant had exported two consignments of the excisable goods falling under Chapter 34 of Central Excise Tariff Act, 1985 under ARE-1 No. 04 & 05 dated 13.08.2012 and 27.08.2012, respectively. The goods were cleared directly from the factory of manufacturer M/s Dara Industries, Moradabad on payment of Central Excise Duty of Rs. 24,986/- (Rupees Twenty Four Thousand Nine Hundred Eighty Six Only). After the goods were exported, the applicant had claimed rebate of duty amounting to Rs.24,986/- paid on export of goods along with the documents evidencing payment of duty and export of the goods. The Rebate Sanctioning Authority pointed out the deficiency that 'Triplicate Copy' of ARE-1 was not submitted with the rebate claim. The rebate sanctioning authority rejected the rebate claim vide Order in Original No. 2989/12-13/DC(Rebate)/Raigad dated 21.02.2013 .

3. Being aggrieved, the applicant filed appeal before Commissioner (Appeals), Central Excise, Mumbai Zone-III. The Appellate Authority observed that the triplicate copy of ARE-1 is a mandatory requirement to sanction rebate claim. The applicant had failed to produce the same. In view of the above, the appellate authority rejected the appeal filed by the applicant vide Order in Appeal No. BC/103/RGD(R)/2013-14 dated 17.06.2013.

4. Being aggrieved and dissatisfied with the impugned order on appeal, the applicant has filed this Revision Application on the following grounds that :



- 4.1 the appellate authority had failed to appreciate the factual position that the 'Triplicate Copies' of the subject ARE-1 were already sent by the Jurisdictional Superintendent to the Dy. Commissioner (Rebate) and the applicants had also submitted the proof of the same.
- 4.2 the only ground for rejection of rebate claims and the appeal filed by the applicant is that the applicants had failed to submit Triplicate copies of ARE-1 with rebate claims. It is erroneously assumed that an exporter is responsible for submission of Triplicate Copies of ARE-1 alongwith rebate claim.
- 4.3 the goods in question were duty paid and were duly exported.
- 4.4 the applicant pleaded to set aside the order in appeal and order the payment of rebate amount alongwith interest under Section 11BB.

5. A Personal hearing was held in respect of RA No. 195/801/13-RA Shri Jitesh Popat, Proprietor appeared for hearing on behalf of the applicant and reiterated the submission filed through Instant RA.

6. 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.

7. Government observes that the instant rebate claim was prima facie rejected by the original authority for the reason that the applicant has not submitted the Triplicate Copies ARE-1 No. 04/dated 13.08.2012 and 05 dated 27.08.2012.

8. In this regard Government also finds that :

8.1 the applicant had submitted all the relevant documents alongwith rebate claim to the sanctioning authority.

8.2 the deficiency memo dated 01.02.2013 was issued by the rebate sanctioning authority stating that the triplicate copies of ARE-1 were not submitted with rebate claim.



8.3 in response to the above deficiency memo, the applicant vide his letter Ref : JDO/66 dated 19.02.2013 replied that respective factory range office at Budhi vihar, Moradabad, Meerut had dispatched Triplicate copy of ARE -1 No. 4 & 5 by speed post registration no. EU938442988IN dated 04.02.2013. The same was confirmed from Superintendent, Central Excise, Moradabad as stated by the applicant in his reply.

9. In this regard, the relevant provisions regarding distribution of copies of ARE-1 covered under Notification No. 19/2004-Central Excise (N.T.) 6th September, are as follows:-

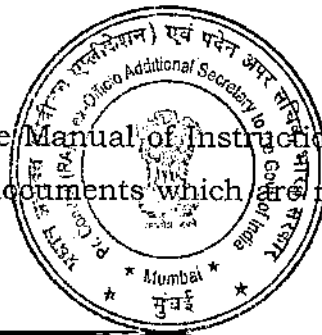
*“(xi) Where the exporter desires self-sealing and self-certification for removal of goods from the factory or warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit of the goods or the owner of warehouse or a person duly authorized by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify on all the copies of the application that the goods have been sealed in his presence, and shall send the original and duplicate copies of the application along with the goods at the place of export, and shall send the triplicate and quadruplicate copies of the application to the Superintendent or Inspector of Central Excise having jurisdiction over the factory or warehouse within twenty four hours of removal of the goods;*

*(xii) In case of self-sealing, the said Superintendent or Inspector of Central Excise shall, after verifying the particulars of the duty paid or duty payable and endorsing the correctness or otherwise, of these particulars-*

*(a) send to the officer with whom rebate claim is to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records, or*

*(b) send to the Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration on Electronic Data Inter-change system of Customs; “*

10. Further, the Government notes that the Manual of Instructions that have been issued by the CBEC specifies the documents which are required



for filing a claim for rebate. Among them is the original/duplicate / triplicate copy of the ARE-1, the invoice and self-attested copy of shipping bill and bill of lading. Further paragraph 8.4 of the said Manual specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported as evident from the original and duplicate copies of the ARE-1 form duly certified by customs. The second is that the goods are of a duty paid character as certified on the triplicate copy of the ARE-1 form received from the jurisdictional Superintendent of Central Excise. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

11. The Government in the instant case observes that :

- (i) sufficient documentary evidence has been produced consisting of
  - (a) the bill of lading;
  - (b) shipping bill
  - (c) an endorsement of the customs authorities on the Original / duplicate copy of the ARE-1 form which would establish that the goods were exported;
- (ii) in order to qualify for the grant of a rebate under Rule 18, the mandatory conditions required to be fulfilled are that
  - (a) the goods have been exported; and
  - (b) duty had been paid on the goods.

Hence, the production of the ARE-1 form in triplicate is a matter of procedure and non-submission of it by the applicant should not result in the deprivation of the statutory right to claim a rebate subject to the satisfaction of the authority on the production of sufficient documentary material that would establish the identity of the goods exported and the duty paid character of the goods;

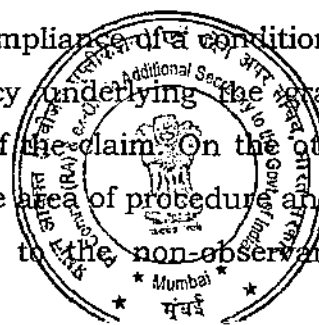
(iii) as a matter of fact, in several decisions of the Union Government in the revisional jurisdiction as well as in the decisions of the CESTAT,



the production of the relevant forms has been held to be a procedural requirement and hence as a result of which, the mere non- production of such a form would not result in an invalidation of a claim for rebate where the exporter is able to satisfy through the production of cogent documentary evidence that the relevant requirements for the grant of rebate have been fulfilled;

(iv) in the present case, no doubt has been expressed whatsoever that the goods were exported goods. Further, the applicant has furnished the details of dispatch of triplicate copy of the ARE-1 by Range office to rebate sanctioning authority as discussed in previous paras supra. Thus applicant has taken all precaution for submission of required documents alongwith rebate claim and penalizing the applicant by depriving his legitimate claim of rebate for no faults on his part would not meet the ends of justice. The Government finds that the rebate sanctioning authority had not taken any steps to trace the movement of triplicate copy from range office to his office. Also, assuming that the triplicate copy is lost in transit, at no fault of applicant, the rebate sanctioning authority could have verified the required details for his satisfaction by calling the same from range office under seal cover. However, no efforts were made in this direction while processing the rebate claim. Therefore, the Government finds that the rejection of the rebate claim without verifying the details from range office is not legal and proper.

12. The Government further observes that a distinction between those regulatory provisions which are of a substantive character and those which are merely procedural or technical has been made in a judgment of the Supreme Court in Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner<sup>1</sup>. The Supreme Court held that the mere fact that a provision is contained in a statutory instruction "does not matter one way or the other". The Supreme Court held that non-compliance of a condition which is substantive and fundamental to the policy underlying the grant of an exemption would result in an invalidation of the claim. On the other hand, other requirements may merely belong to the area of procedure and it would be erroneous to attach equal importance to the non-observance of all



conditions irrespective of the purposes which they were intended to serve. The Supreme Court held as follows :

*"The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some other may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."*

13. In view of the above, Government remands the matter back to the original authority for the limited purpose of verification of the claim with directions that he shall reconsider the claim for rebate on the basis of the documents submitted by the applicant after satisfying itself in regard to the authenticity of those documents. However, the rebate sanctioning authority shall not upon remand, reject the claim on the ground of the non-production of the Triplicate copy of the ARE-1 form, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

14. In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. BC/103/RGD(R)/2013-14 dated 17.06.2013 and remands the case to the original adjudicating authority as discussed supra.

15. The revision application is disposed off in terms of above.

16. So ordered.

*(Handwritten Signature)*  
20/11/18

(ASHOK KUMAR MEHTA)

Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. 410 /2018-CX (WZ) /ASRA/Mumbai DATED 30.11.2018.

To,

M/s J.D. Overseas,  
D-2, Jyoti Park, S.V. Road,  
Kandivali (West) - Mumbai - 400 067



Copy to:

1. The Commissioner of CGST & CX, Raigad, Plot No. 1, Sector- 17, Khandeshwar, Navi Mumbai - 410 206.
2. The Commissioner of GST & CX, (Appeals), Raigad, 5thFloor, C.G.O. Complex, C.B.D. Belapur, Navi Mumbai -400614.
3. The Deputy Commissioner (Rebate), CGST & CEX, Raigad, Plot No. 1, Sector- 17, Khandeshwar, Navi Mumbai - 410 206.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

