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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
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.198/109/13-RA / 6401

Date of Issue: 03.11.2021

ORDER NO. 44/2021-CX (WZ)/ASRA/MUMBAI DATED 28.10.2021 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.

Applicants : Commissioner, Central Excise, Customs & Service Tax, Vapi

Respondent: M/s Prakash Steelage Limited

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. VAP-EXCUS-000-APP-268-2013-14 dated 26.08.2014 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vapi.

ORDER

The Revision Application has been filed by Commissioner, Central Excise, Customs & Service Tax, Vapi (hereinafter referred to as "the Applicant") against the Order-in-Appeal VAP-EXCUS-000-APP-268-2013-14 dated 26.08.2014 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vapi.

2. The issue in brief is that M/s. Prakash Steelage Limited, Survey No. 131/1, Umbergaon-Sanjan Road, Umbergaon (herein after referred to as "the respondent"), are the manufacturers of excisable goods for which they are holding a Central Excise Registration and had filed two rebate claims totally amounting to Rs. 5,51,080/- for export on payment of Central Excise duty under ARE-1s No. UBR/11/R-137/09-10 & UBR/11/R-138/09-10 both dated 10.09.2010. The department rejected the rebate claims amounting to Rs.5,51,080/- vide OIO no.1078 to 1079/AC/Reb/Div-Vapi/2012-13 dated 06.12.2012., on the grounds that the Shipping Bill Number and Mate Receipt Number mentioned on the reverse of ARE-1s did not match with the relevant Shipping Bills and Mate Receipts, hence, actual export of the goods covered by the ARE-1s were not established. Aggrieved by the impugned Order in Original, the assessee filed appeal with Commissioner Appeals.

3. Commissioner Appeals vide his OIA No VAP-EXCUS-000-APP-268-2013-14 dated 26.08.2014 held that the proof of export has been endorsed by the customs on the reverse of the ARE-1(Part-B) though the reference of shipping bill and mate receipt have been mentioned wrongly, the export cannot be doubted when both the numbers relate to the goods of the assessee itself and he directed the assessee to submit clarification or rectification in the ARE-1 from the customs authority of the port of export within 15 days and the

adjudicating authority is directed to decide the rebate claims thereafter, after verifying the genuineness of the export from the jurisdictional customs authorities.

4. Being aggrieved with the Commissioner Appeal's Order, the Applicant filed this Revision Application on the following grounds:

4.1 In Para 09 of OIA, the Commissioner (Appeal) has held that "In view of the admitted fact that the proof of export has been endorsed by the Customs on the reverse of the ARE-1 (Part-B), though the reference of shipping bill and mate receipt have been mentioned wrongly, the export cannot be doubted when both the numbers relate to the goods of the appellant itself." The Commissioner (Appeal) has erred in arriving at the above conclusion as it is clearly observed that the claims were filed initially on 25.11.2010, which was returned to the respondent on 06.07.2011 in original, pointing out the said discrepancies. The respondent then re-submitted the rebate claims on 16.03.2012 without any rectification from Customs authority. Further, a reference was made to the port of export for verification of the genuineness of the shipping bills and proof of export vide letters dated 29.11.2010 and 20.12.2010 but no report was received from the Customs. The ARE-1 is one of the most important documents for sanction of rebate claim and the certificate portion at part-B of the same contain actual confirmation of the export of the goods by the customs officer. And the Shipping Bills number and mate receipt mentioned behind the both ARE- 1's were not matching with the Shipping Bills and mate receipt filed with Rebate claim in respect of ARE-1's No. UBR/II/R-137/09-10 & UBR/II/R 138/09-10 both dated 10.09.2010. Thus, the Adjudicating Authority could not establish actual export of the goods covered by the respective ARE-1's. In this condition the rebate claim could not be held admissible.

4.2. The respondent filed the rebate claim under the provisions 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. Accordingly, in this case the rebate claim is rightly rejected as due to non-matching of Shipping Bills and mate receipt numbers mentioned by customs authority, behind the ARE-1's number with the Shipping Bills and mate receipt filed with Rebate claim. It could not be possible for Adjudicating Authority to co-relate and establish the export of goods, which is the one of the basic requirement/conditions for sanctioning a rebate.

4.3. Para 8.3 and 8.4 of Ch. 8 of CBEC Excise Manual of supplementary Instructions prescribe original copy of the ARE-1 as a mandatory document for filing claim of rebate.

(a) The AC/DC of Central Excise compare the original, duplicate and triplicate copies of the ARE-1's and satisfy himself that the goods cleared for the export under the relevant ARE-1 were actually exported and there is no correction / amendment / overwriting etc. in the description, Qty., value etc. in all copies of the ARE-1's obtained through different authorities/ means /manner.

(b) The AC/DC of Central Excise make himself satisfied from the original and duplicate copies of the ARE-1's that the certificate given by the Customs officer about the exportation of the excisable goods tally with the photocopies of shipping bill, Mate receipt, etc. and the goods cleared were fully exported.

(c) In view of the above certificate/details given by the Customs officer behind ARE-1, is one of the most important documents in Rebate procedures and it should be tallied with shipping bill, Mate receipt, etc.

4.4. The Commissioner (A) has failed to appreciate the known departmental procedure for such situation that the respondent could have arranged for rectification in ARE-1's and obtain a certificate from the Customs officer at the port of the export in token of the facts that the goods cleared from the factory were fully exported and the details of said ARE-1 were fully tallied.

4.5. The Commissioner (Appeals) in para 10 of the O.I.A. remanded the case to the Original Authority for denovo adjudication. He set aside the impugned order and allowed the appeal of the appellant and directed the appellant to submit clarification or rectification in the ARE-1 from the customs authority of the port of export within 15 days and also directed to the adjudicating authority to decide the rebate claims after verifying the genuineness of the export from the jurisdictional customs authority.

4.6. The Commissioner (A) has not finalized the case, though legally he is bound for it, but he has remanded the matter for denovo consideration to lower Adjudicating authority by directing to the adjudicating authority to decide the rebate claims after verifying the genuineness of the export from the jurisdictional customs authority. CBEC Instructions issued under F.No. 275/34/2006-CX.8A dated 18.02.10, has held that the Commissioner (Appeals) has no powers to remand the case and he shall after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against. Therefore, the decision of Commissioner (Appeals) is not correct in law.

4.7. The Commissioner (A) is not vested with the power to remand back cases to the adjudicating authority consequent to the specific amendment in this regard carried out by the Finance Act, 2001 w.e.f. 11.5.2001. In other words, the power of remand, which was earlier conferred on the Commissioner (A) by the Finance Act, 1980, was specifically taken away by the Finance Act, 2001.

In the case of Commissioner of Central Excise, Vapi Vs M/s. Patel Stationers Pvt. Ltd., the Hon'ble CESTAT vide No. A/10804 & 10805/WZB/AHD/2013 dated 01.05.13, has held that:

"the provision of section 35(B) of the Central Excise ACT, 1944 has been amended, in terms, that the power of remanding the matter back by the Appellate Authority no more exists. In our considered view, if there is no power to remand matter back to the Adjudicating Authority, the First Appellate Authority has to decide the issue based on the records available with him. This is the view of the Hon'ble Apex Court in the case of Mill India Ltd. Vs CCE, Noida 2007 (210) ELT. 188 (SC))

Hon'ble Supreme Court of India In Civil Appeal No. 6988 of 2005, in the case of MIL India Ltd. Vs. Commissioner of Central Excise, Noida (2007(210)ELT.188(SC)) has observed that:

"in fact the power of remand by the Commissioner (A) has been taken away by amending Section 35A w.e.f. 11.5.2001 under the Finance Bill 2001. Under the notes to clause 122 of the said bill it is stated that clause 122 seeks to amend Section 35A so as to withdraw the power of Commissioner (A) to remand matters back to the adjudicating authority for fresh consideration".

4.8 In view of the above stated facts the OIA No. VAP-EXCUS-000-APP-268-13-14 DT 26.08.2014 passed by the Commissioner (A). Central Excise,

Customs and Service Tax, Vapi is not correct, legal, and proper and deserves to be set aside.

5. A personal hearing in the case was fixed on 28.08.2017, 9.10.2019, 3.12.2019, 9.02.2021 or 23.02.2021 and 18.03.2021 or 25.03.2021. No one appeared for the hearing on behalf of the applicant or the respondent.

6. Government has carefully gone through the relevant case records available in case files and perused the impugned Order-in-Original and Order-in-Appeal. The two issues for the Government to decide is whether (i) appellant is eligible for rebate of duty in respect of goods exported under two ARE-18 when the Shipping Bill Number and Mate Receipt Number mentioned on their reverse (Part-B) do not match with the number of relevant Shipping Bills and Mate Receipts, under which the goods were exported, & (ii) whether Commissioner Appeal can remand the case back to the original adjudicating authority.

7. Government observes that the applicant had filed two rebate claims having consequent numbers viz. UBR/II/R-137/09-10 and UBR/II/R-138/09-10 dated 10.09.2010, claiming rebate of Central Excise duty amounting to Rs.258320/- and Rs.292760/- cleared as such for export, in terms of Rule 18 of Central Excise Rules, 2002. Subsequently, the said rebate claims were returned by the department informing the discrepancy noticed in respect of the mismatching of the Shipping Bill number and the Mate receipt no in the reverse of the ARE-1s. The respondent resubmitted the claim without getting the correction done but informed that the above mentioned discrepancy had occurred as the Customs officer has interchanged the Shipping bill and the Mate receipt number, while endorsing the certificate portion of the ARE-1.

8. The observation made in Para 06 of the Commissioner Appeals order is as follows:

"6. The appellant has submitted Xerox copies of relevant ARE-Is, Shipping bills, Mate receipts, Bills of lading and tax invoices in respect of said rebate claims. On scrutiny of aforesaid documents, find that on the reverse of ARE-1 No. 137, the shipping bill No. 8842886 dated 10.09.10 and mate receipt No. 379446 dated 21.09.10 have been indicated. Similarly, on the reverse of ARE-1 No. 138, the shipping bill No. 8842884 dated 10.09.10 and mate receipt No. 379445 dated 21.09.10 have been indicated. The appellant has submitted copy of shipping Bill No. 8842884 & 8842886 both dated 10.09.2010 and mate receipt No. 379445 & 379446 both dated 21.09.2010 along with other relevant documents. It is evident from the details of the goods contained in the export documents that the goods cleared under ARE No. 137 dated 10.09.2010 loaded in container No. TOLU 49847510] under physical supervision of the CE officers, was exported under shipping bill No. 8842884 and mate receipt No. 379445 dated 21.09.2010 as corroborated by container number and ARE-1 number in the shipping bill and the mate receipt. Similarly, the goods cleared under ARE-1 No. 138 dated 10.09.2010 loaded in the same container number TOLU 498475[0] was exported under shipping bill No. 8842886 dated 10.09.2010 and mate receipt no. 379446 dated 21.09.2010 as corroborated by the mention of ARE-1 Number, container number, description and quantity of goods in the respective shipping bill and mate receipt. Hence, the goods cleared under both the ARE-is stand exported and the payment of duty also has not been found in dispute. Thus, I am of the view that only for mention of wrong shipping bill number and mate receipt numbers in ARE-1 (interchanged between each other), that too the same appears to be a clerical mistake, the benefit of rebate cannot be denied. The finding of the adjudicating authority that the Shipping Bill Number and Mate Receipt Number mentioned by the Customs officer in the certificate portion at Part B on the reverse of both the ARE-Is do not match with the number of relevant Shipping Bills and Mate Receipts, appears factually correct. However, the contention of the appellant that the same has occurred only due to clerical mistake on the part of the customs officer in mentioning the shipping bill no. and mate receipt no, also cannot be brushed aside. In my opinion, this mistake is rectifiable as also the number of shipping bill and mate receipt mentioned on both the ARE-Is are relating to the consignments of the appellant itself. It is settled law that substantive benefit like rebate of duty cannot be denied on technical/procedural grounds. Reliance is placed on the case of Suksha International 1989 (39) ELT 503 (SC), A V Narashimhalu 1983 (13) ELT1534 (SC), Formica Indica 1995 (77) ELT 511 (SC), Ford India P Ltd 2011(272) ELT 353 (Mad), Nilkamal Ltd 2011 (271) ELT 476 (GOI) and Sanket Industries 2011 (268) E.L.T. 125 (G.O.1)."

9. Government notes that Commissioner (Appeals) has passed the said Order-in-Appeal based on facts and documentary evidences like copy of the Shipping bill, Mate receipt etc and has then come to the conclusion that the export of duty paid goods is not in dispute. The Government notes that the endorsement on the shipping bill is done by the Customs Officials and as such neither the respondents were responsible for the error / mistake occurred while mentioning the shipping bills and the Mate receipt nor they had any control over it. Further, it is found that the discrepancies noticed by the department are errors, more or less clerical in nature, occurred on the part of Customs Officials while endorsing the relevant documents and can be sorted out by following up the reference which was made to the port of export for verification of the genuineness of the shipping bills and proof of export vide Vapi Division's letter dated 29.11.2010 and 20.12.2010

10. Further, Government observes that the second ground of appeal of the department is against the Commissioner Appeal's order of remanding the case to the original adjudicating authority, since the Commissioner (A) is not vested with the power to remand back cases to the adjudicating authority consequent to the specific amendment in this regard carried out by the Finance Act, 2001 w.e.f. 11.5.2001. In this case Government notes that the Commissioner Appeal has directed the respondent to submit clarification or rectification in the ARE-1 from the customs authority of the port of export within 15 days to the adjudicating authority and the adjudicating authority is directed to decide the rebate claims thereafter after verifying the genuineness of the export from the jurisdictional customs authority.

11. Government finds that the Commissioner Appeal has come to the conclusion that the mismatch of the Shipping Bill and mate receipt is only due to clerical mistake and which can be rectified by the respondents from the customs authorities, however, he observed that while the ARE-1 is one of the

most important document for sanction of rebate claim and the certificate portion as at part B of the same containing actual confirmation of the export of the goods by the customs officer is of immense significance, yet in the facts and circumstances of the case, it is prudent to verify the genuineness of the export from the customs authority of the port of export and to decide the rebate claim accordingly and he has therefore directed the respondent to do the needful. Government refers to Cestat South Zonal Bench, Bangalore's judgement vide Order No 788-791/2011 dated 30-11-2011 in the case of Commissioner of service Tax Vs KBACE Technologies Pvt. Ltd. (2012 (26) S.T.R. 589 (Tri. - Bang.)) wherein it is held that

" The present appeal of the department is mainly on the ground that the impugned orders were passed without jurisdiction inasmuch as the Commissioner (Appeals) did not have the power of remand. In this connection, the appellant has relied on the Hon'ble Supreme Court's judgment in the case of MIL India Ltd. v. C.C.E., Noida - 2007 (210) E.L.T. 188 (S.C). Learned SDR has also cited the Tribunal's decision in the case of C.C.E., Noida v. Orient Crafts Ltd. - 2011 (21) S.T.R. 302 (Tri.-Del.). It is submitted that, in the case of MIL India Ltd. (supra), the Apex Court held that the Commissioner (Appeals) did not have the power of remand from 11-5-2001 by virtue of amendment to Section 35A of the Central Excise Act under the Finance Act, 2001. In the case of C.C.E., Noida v. Orient Crafts Ltd. (supra), it was held that the Commissioner of Service Tax (Appeals) also did not have the power of remand under Section 85(5) of the Finance Act, 1994. In view of these decisions, according to learned SDR, the present appeals of the department are liable to be allowed.

3. The learned consultant for the respondent submits that the impugned orders are, indeed, not remand orders inasmuch as a clear view was taken by the appellate authority on the specific issue relating to nexus between input services and output services and only the re-quantification of refunds in terms of the Board's circular was left to be done by the lower authority. It is further submitted that the respondent has since obtained the refunds on the basis of orders passed by the original authority pursuant to the order of the Commissioner (Appeals).

*4. After considering the submissions, we find that these appeals are only liable to be dismissed. As rightly submitted by the learned consultant for the respondent, the impugned orders cannot be considered as remand orders. Learned Commissioner (Appeals) found nexus between the input services and the output services and only required the lower authority to re-quantify the amount for refund on the basis of the Board's circular dated 19-1-2010 *ibid*. The appellate authority rightly noted that, when the original orders were passed by the adjudicating authority, the Board's circular was not in force. It also noted that the procedure prescribed by the Board required to be followed in the matter of examining refund claims of the above kind. Obviously, in*

such circumstances, the appellate authority rightly required the original authority to re-quantify the amounts for refund on the basis of Chartered Accountant's certificate to be produced by the party in terms of the Board's circular. Such orders cannot be held to be 'remand orders' attracting the case law cited by the learned SDR. No other ground is seen raised. The appeals are rejected.

12. In view of the above Government endorses the observations of Commissioner Appeal in the impugned Order and upholds the Commissioner Appeals order.

13. The Revision Application filed by the Applicant/Department is rejected.

Shrawan
28/10/21
(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 414 /2021-CX (WZ)/ASRA/Mumbai dated 28.10.2021.

To,
The Commissioner of CGST & C.EX,
4th Floor, Adarshdham Building,
Vapi-Daman Road,
Vapi, Gujarat-396191

Copy to:

1. M/s Prakash Steelage Ltd., Survey No. 132/1, Umergaon, Sajan Road, Valsad-396171
2. The Dy / Asstt Commissioner, CGST & CX, Vapi Dn, 2nd floor, Adarsh Dham Building, Opp Town Police station, Vapi-Daman Road, Vapi, Gujarat-396191
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file