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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. 195/376/14-RA/6442 Date of Issue: ~~.10.2021~~ 20.11.2024

ORDER NO. 415/2021-CX (SZ) /ASRA/MUMBAI DATED 28.10.2021 OF THE 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 CENTRAL EXCISE ACT, 1944.

Applicant : M/s. M. M. Forgings Ltd.,
Erasanaickenpatti,
Viralimalai – 621 316

Respondent : The Commissioner of CGST & Central Tax, Tiruchirapalli.

Subject : Revision Applications filed under Section 35EE of Central Excise Act, 1944 against Order-in-Appeal No. 110/2014 dated 11.09.2014 passed by the Commissioner (Appeals), Central Excise, Tiruchirapalli.

ORDER

These Revision Applications have been filed by M/s M. M. Forgings Ltd., Erasanaickenpatti, Viralimalai – 621 316(hereinafter referred to as the 'applicants') against the Order-in-Appeal No. 110/2014 dated 11.09.2014 passed by the Commissioner (Appeals), Central Excise, Tiruchirapalli.

2. The applicants are manufacturers of Carbon Steel Forgings(rough) & Alloy Steel Forgings(rough) falling under Central Excise Tariff Heading No. 7326 1910 of Central Excise Tariff Act, 1985. The goods manufactured in their factory were removed for export by adopting self-sealing and self-certification procedure under various ARE-1's. The applicant had filed several rebate claim for the shipments effected under these ARE-1s. While deciding on the rebate claims the Assistant Commissioner has sanctioned rebate amounting to Rs. 46,81,325/- and appropriated this amount against arrears pending recovery from the applicant. He had also rejected rebate claim amounting to Rs. 3,26,827/- in respect of ARE-1 No. 126/21.05.2013, ARE-1 No. 149/28.05.2013 and ARE-1 No. 150/28.05.2013. The rebate sanctioning authority adjudicated the rebate claim in such manner vide his OIO No. 120/2013-R dated 02.12.2013 passed by the Assistant Commissioner, Division-II, Tiruchirapalli.

3. Aggrieved by the OIO No. 120/2013-R dated 02.12.2013, the applicant filed appeal before the Commissioner(Appeals). After following the principles of natural justice, the Commissioner(Appeals) took up the appeal for decision. The Commissioner(Appeals) vide OIA No. 110/2014 dated 11.09.2014 rejected the appeal and upheld the order of the original authority.

4.1 The applicant has filed revision application against the OIA No. 110/2014 dated 11.09.2014. The applicant submitted that the arrears amounting to Rs. 74,99,199/- which were covered under OIO No. 109-111/2003 dated 10.09.2003 had been stayed till the disposal of appeal by the CESTAT vide its Misc. Order No. 40280/2014 dated 28.01.2014. Therefore, the basis for sanctioning the rebate amounting to Rs. 46,81,325/- and thereafter appropriating the same against the arrears

arising out of OIO No. 109-111/2003 dated 10.09.2003 was not valid. Reliance was placed upon the judgments in the case of Kumar Cotton Mills[2002-TIOL-17-CESTAT-MUM], Commissioner vs. SIDBI Bank[2014-TIOL-1102-HC-AHM-CX] and Haldiram India (P) Ltd.[2014-TIOL-1965-CESTAT-DEL-LB].

4.2 With regard to the rebate claim in respect of ARE-1 No. 126/21.05.2013 which was rejected in view of the correction in shipping bill no., the applicant submitted that the quantity, vessel name, part no. case no., shipping bill no. and bill of lading tally with ARE-1. They averred that such mistakes occurred commonly while copying numbers. The BRC submitted by them also evidenced the fact that goods had actually been shipped and that sales proceeds had been realized.

4.3 In so far as the rebate claim in respect of ARE-1 No. 149/28.05.2013 and ARE-1 No. 150/28.05.2013 which had been rejected due to variance in the vessel name in ARE-1 and shipping bill is concerned, the applicant submitted that at the time of filing shipping bill the goods covered under the ARE-1's were supposed to be loaded and sent in the vessel named Santos Express. Therefore, the part B certification of the ARE-1's also reflect the same vessel name. However, due to unavoidable circumstances the goods could not be sent in that vessel and the goods were loaded in vessel CMA CGA Torquoise. They further stated that they could not change vessel name in the shipping bill or ARE-1 as the applicants were denied change of vessel name by the Customs on the ground that no amendment in vessel names was required when the correct rotation number for shipping bills was mentioned. They further submitted that all other particulars mentioned in the bill of lading perfectly tally with other documents like shipping bill no., part no.'s, export invoice no.'s, case no.'s, weight etc.

4.4 The applicant averred that the rebate claims had been rejected because due importance had not been given to two basic facts; viz. duty paid nature of the export goods and the fact of their export. Instead, undue importance had been given to minor clerical mistakes committed by the steamer agent/container agent and the customs officer while filing these documents.

4.5 The applicant stated that the goods covered under ARE-1 No. 126/21.05.2013 had been shipped on vessel CMA CGA Torquoise as indicated in shipping bill no. 5528667 which had been clearly mentioned in Part B of ARE-1 making it clear that the goods had been exported. This had been authenticated by the proper officer of customs by affixing customs seal with signature. Similarly for ARE-1 No. 149/28.05.2013 and ARE-1 No. 150/28.05.2013, although the amendment of vessel name in ARE-1's and shipping bill had not been carried out, the container no., invoice no. and quantity of goods loaded tallies without any difference. The applicant averred that once it was confirmed that the goods had been exported, the discrepancy in the name of vessel should not matter.

4.6 It was pointed out that the lower authority had allowed discrepancies noted in shipping documents by considering other export documents including the BRC. It was argued that the same principle should have been adopted for discrepancy in respect of vessel name. The applicant submitted that the goods had actually been exported to the place it was destined earlier as mentioned in the shipping bill and the bill of lading and that the typing of wrong vessel name and shipping bill numbers in the ARE-1 was due to oversight/clerical mistake and hence ought to have been condoned.

4.7 The statutory provisions for grant of rebate under Rule 18 of the CER, 2002 stipulate that the Central Government may by notification grant rebate of duty subject to conditions and limitations and fulfillment of procedure as prescribed in a notification. The Notification No. 19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of the CER, 2002 prescribes the conditions, limitations and procedure to be followed towards that end. The applicant averred that once the conditions of the notification had been complied with rebate can be granted. The notification also made it clear that mere submission of Form ARE-1 would not constitute presentation of a claim for rebate unless the claim is filed with other relevant documents such as shipping bills, bill of lading etc. It was contended that if the stand of the Department was accepted, then the ARE-1 is the basic document which would constitute an application for rebate of central excise duty and such a

view would defeat the whole scheme enunciated under Section 11B and Section 11BB.

4.8 The applicant has also placed reliance upon the judgments/decisions In Re : Omsons Cookware Pvt. Ltd.[2011(268)ELT 111(GOI)], UOI vs. Sukhsha International and Nutron Gems & Others[1989(39)ELT 503(SC)], Mangalore Chemicals and Fertilizers Ltd. vs. DCCE[1991(55)ELT 437(SC)] to contend that procedural lapses of technical nature can be condoned so that substantive benefit is not denied, that it was trite law that procedural infractions of notifications/circulars should be condoned if exports have actually taken place and that the law was settled that substantive benefit cannot be denied for procedural lapses.

4.9 It was pointed out that as per para 8.3 of the CBEC Central Excise Manual an applicant for rebate is required to submit a request on his letterhead with claim for rebate, ARE-1 numbers, corresponding invoice numbers and amount of rebate, original copy of ARE-1, invoice issued under Rule 11, self-attested copy of shipping bills, self-attested copy of bills of lading and disclaimer certificate. The applicant contended that since they have filed all these documents, the Department cannot harp on clerical mistakes/procedural lapses which were beyond their control. Reliance was placed upon the decision In Re : Modern Process Printers[2006(204)ELT 632(GOI)].

5. The applicant was granted a personal hearing in the matter on 04.02.2021. Shri Murugappan, Advocate appeared on behalf of the applicant and reiterated his submissions. With regard to the facts of the present case, it was submitted that the rebate had been rejected because of change in name of vessel in shipping bill and bill of lading as compared to ARE-1. They explained that this had happened due to the fact that the earlier vessel had sailed without loading their cargo. Reliance was placed upon the decision of the revisionary authority in Order No. 195/272/13-RA 3709 dated 26.09.2018. He further stated that the rebate sanctioned had been appropriated against a demand which had been set aside by CESTAT.

6.1 The Assistant Commissioner, GST & Central Excise-I Division, Tiruchirapalli submitted comments on the revision applications vide his letter C. No. IV/16/05/2021-Reb dated 17.02.2021. In respect of the issues arising out of OIA No. 110/2014 dated 11.09.2014, the Assistant Commissioner submitted that the customs authority had certified that the vessel had left the Indian port on 15.05.2012 whereas the bill of lading mentions that the goods have been shipped on board only on 21.05.2012. It was stated that the EP copy of the shipping bill was widely accepted by various authorities as one of the proof of export and that there is a laid down procedure for reconstructing the EP copy of shipping bill which the applicant should have followed. The exporter was required to apply with the customs authorities for permission to issue a duplicate copy of shipping bill. The necessary permission is then granted by the concerned officials if convinced and satisfied that such request is genuine and not fraudulent. After obtaining permission to reconstruct the shipping bill, the necessary reconstruction charges are to be paid to customs as per applicable tariff. If the export has been effected in a customs location where electronic filing was available, the copy of export shipping bill is taken out by referring shipping bill number and date of shipment. The customs official signs and puts his seal on the reconstructed copy of shipping bill taken out electronically. This reconstructed EP copy of shipping bill is acceptable in lieu of lost copy of EP copy of shipping bill at all government departments for any claim of export benefits. The Department averred that this process should have been followed by the exporter as they are a manufacturer exporter and working in this field for many years and hence should be aware of all customs formalities.

6.2 The rebate claims had also been rejected for the reason that there is a mismatch in description of goods between ARE-1, shipping bill and bill of lading. The required details in statutory forms/documents used for claiming rebate are to be filed with true and factual declaration. Any tampering and defacement by blackening the particulars imparts a character of invalidity. The flight number and date is missing in the

shipping bill and AWB and this was a fatal error as the flight number and date cannot be ascertained from these two main documents. The exporter had the option to amend the shipping bill as laid down under Section 149 of the CA, 1962 but failed to do so. It was observed by the Assistant Commissioner that most of the defects were curable and the exporter could have approached the customs authority/steamer agent for amendment on payment of the prescribed fees but have not done so. These defects could have been cured if the exporter had taken some effort. It was stated that since there is a defect in all the ARE-1's and there is no correlation to shipping bills in some cases, non-availability of EP copy of shipping bill and non-authentication of corrections in statutory documents which cannot be overlooked, the revision application filed by the applicant may be rejected and the impugned OIA's upheld.

6.3 The Department averred that the defects mentioned are all curable but no effort was made by the exporter to get the defects cured. It was further stated that repeatedly urging the Department to correlate details with supporting documents was not the proper solution as such defects were occurring frequently. Allowing the exporter the benefit of corroborative evidence using other documents would defeat the amendment procedure laid down by Customs. Such a practice would mean that the exporter would not have to obtain any amendments from Customs/Steamer Agents. It was submitted that the applicant is a manufacturer exporter and was fully aware while preparing the ARE-1 itself that the goods are to be exported and that the export documents like shipping bill and bill of lading are to be properly filed at the time of export and the same would be relied upon for sanction of rebate. In these circumstances, the mismatch of description between excise documents and export documents cannot be justified. The Department averred that the applicant as a beneficiary of export scheme was expected to exercise due diligence while preparing the documentation which they failed to do and under the circumstances the rebate claim filed by them should rightly be held to be inadmissible and the revision application filed by them should be rejected.

7. Government has carefully gone through the relevant case records, perused the impugned Order-in-Appeal and the Order-in-Original. The Department has raised several issues while filing the parawise comments against the revision application filed by the applicant. Some of these grounds had been raised by the original authority in respect of other export consignments. In this regard, the Government observes that the Commissioner(Appeals) has rejected the appeal filed by the applicant before him on certain specific grounds. The Department has not challenged the order of the Commissioner(Appeals) and therefore cannot revive such grounds or raise new grounds which have not been relied upon by the Commissioner(Appeals) while rejecting the appeals before him. Government therefore takes up the revision application for decision on merits in terms of the grounds for revision vis-à-vis the grounds for rejection of their appeal by the Commissioner(Appeals).

8.1 The first issue in the revision application is that the original authority has appropriated the refund of rebate sanctioned amounting to Rs. 46,81,325/- against arrears amounting to Rs. 74,99,199/- which had been confirmed by the Commissioner(Appeals) and the appeal filed by the applicant was pending before the CESTAT at that point in time. The recovery of these arrears had earlier been stayed by the CESTAT but that stay order had been rendered ineffective by the amendment effected vide Section 98 of the FA, 2013 by inserting the third proviso to Section 35C(2A) of the CEA, 1944. The application for extension of stay filed by the applicant was pending before the CESTAT when the Assistant Commissioner had appropriated the refund of rebate against the aforementioned arrears. Thereafter, the CESTAT vide its Misc. Order No. 40280/2014 dated 28.01.2014 had granted extension of stay until the final disposal of appeal.

8.2 In this regard, Government finds that recovery of arrears where appeals were pending decision was initiated in terms of the instructions contained in Circular No. 967/1/2013-CX. dated 01.01.2013 which dealt with the subject of recovery of confirmed demands during the pendency of stay applications. This circular had caused a furore resulting in it being

rescinded vide Circular No. 1035/23/2016-CX. dated 04.07.2016. The relevant text of para 4.1 & 4.2 of the Circular dated 04.07.2016 which clarified on the issue and instructed the field formations on the view to be taken is reproduced below.

> "4.1 In the light of the above judgments, the Circular No. 967/1/2013-CX, dated 1-1-2013 is hereby rescinded and following fresh instructions are given on the above subject. It is also clarified that seven circulars which had been rescinded vide Circular No. 967/1/2013-CX, dated 1-1-2013 shall continue to remain rescinded.
>
> 4.2 *In cases where stay application is pending before Commissioner(Appeals) or CESTAT for periods prior to 6-8-2014, no recovery shall be made during the pendency of the stay application.*"

In the light of the rescinding of the Circular No. 967/1/2013-CX. dated 01.01.2013 and the judgments cited in Circular No. 1035/23/2016-CX. dated 04.07.2016, the appropriation of the amount of rebate sanctioned by the original authority in these proceedings is indefensible. Therefore, the rebate amounting to Rs. 46,81,325/- which was sanctioned to the applicant is to be paid to the applicant in cash.

9. The rebate claim in respect of ARE-1 No. 126/21.05.2013 has been rejected by the lower authorities on the ground that the shipping bill mentioned in Part B certification on the ARE-1 has been corrected. No other discrepancies have been noticed in respect of the rebate claimed in respect of this consignment. In this regard, it is observed that there is overwriting on the second last digit of the shipping bill number handwritten on the ARE-1. On going through the corresponding shipping bill no. 5528667/21.05.2013, it is seen that the ARE-1 No. 126/21.05.2013 has correctly been mentioned on it. As such the vessel name is the same in the ARE-1, shipping bill and the bill of lading. Since no other discrepancies have been noticed by the lower authorities in the export documents submitted by the applicant while filing rebate claim, there is no room for doubt about the export of the goods. Government therefore holds that the overwriting of the

shipping bill number on the ARE-1 is a clerical mistake and must be condoned.

10.1 The rebate claims in respect of ARE-1 No. 149/28.05.2013 and ARE-1 No. 150/28.05.2013 had been rejected due to difference in vessel names in the corresponding shipping bills. The applicant has explained that when they filed shipping bill no. 5661886/29.05.2013, the goods were to be shipped on board the vessel "Santos Express" but due to unavoidable circumstances could not be loaded on that vessel. The goods were therefore shipped in vessel "CMA CGA Torquoise". The applicant has further alleged that they were denied change of vessel name in shipping bill and ARE-1 by Customs on the ground that no amendment was required if correct rotation number of shipping bills was mentioned. On going through the relevant ARE-1, shipping bill and bill of lading, it is observed that the ARE-1 and the bill of lading mention the name of vessel as "Santos Express" whereas it is only the shipping bill which mentions the vessels name as "CMA CGM Torquoise".

10.2 It is observed that both the ARE-1's are dated 28.05.2013 and the shipping bill has been filed on 29.05.2013. The name of the vessel on which the goods have been shipped as per the ARE-1 and as per the shipping bill are at variance. However, the vessel name mentioned in the bill of lading and the ARE-1 are the same. Both the ARE-1 and bill of lading indicate that the date when the goods were shipped on board the vessel named Santos Express is 10.06.2013. In the normal course, the sequence of documentation for export of goods in the port would commence with the filing of shipping bill and would end with the issue of bill of lading signifying that the goods have been shipped on board the vessel. Therefore, the bill of lading should be the most authentic source about the shipping of the goods for export on the foreign going vessel. In the present case, the name of the vessel as per the ARE-1 and the bill of lading are the same; viz. Santos Express and the vessel name as per the shipping bill is CMA CGM Torquoise. The applicant has submitted that they were unable to load the goods on Santos Express and that they could not correct the mistake in the

ARE-1. The explanation put forth by the applicant clearly does not stand to reason. If the bill of lading is authentic, the goods have actually been loaded on Santos Express itself and not on CMA CGM Torquoise. The reasoning given by the applicant in the revision application with regard to the difference in vessel name in ARE-1 No. 149/28.05.2013 and ARE-1 No. 150/28.05.2013 and the corresponding shipping bill cannot be given any credence. Therefore, the documents submitted by the applicant for grant of rebate are not in order.

11. Even if it is assumed for a while that the inconsistencies noticed are genuine mistakes, it is apparent from the orders of the original authority that there were several technical/procedural infirmities in the rebate claims which have been condoned. These facts clearly reflect that the applicant has been negligent in its approach towards central excise and customs procedures. The applicant is a manufacturer exporter who would be conversant with Central Excise law and procedures. Since they are also exporting regularly, they would be conversant with the Customs procedures as well. They would be aware of the importance of proper documentation. Be that as it may, the applicant also had the option to seek amendment of their export documents in terms of Section 149 of the Customs Act, 1962. However, the applicant has failed to take any corrective steps.

12. The applicant has made out arguments to contend that substantial benefit cannot be denied for procedural mistakes. They have also relied upon certain case laws to lend strength to these submissions. The applicant cannot seek parity with exporters who have substantially complied with the requirements. The applicant in this case has not been diligent. Inspite of repeated errors the applicant has failed to take corrective measures. As held by the Hon'ble Gujarat High Court in its judgment in Nice Construction vs. UOI[2017(5) GSTL 361(Guj.)], *the law does not come to the aid of the indolent, tardy, lethargic litigant.* Although several errors have been condoned by the original authority, the errors noticed in these ARE-1's are such that they cannot be overlooked as they go to the very root of the matter and cast doubts upon the factum of export itself. Moreover, even if these

were genuine mistakes, the remedy available to the applicant was to approach the Customs authorities for amendment of the export documents in terms of the provisions of Section 149 of the Customs Act, 1962 which they have failed to avail of. In the result, the revision applications filed by the applicant exporter in respect of the rebate claims pertaining to ARE-1 No. 149/28.05.2013 and ARE-1 No. 150/28.05.2013 cannot succeed.

13. Government therefore modifies the OIA No. 110/2014 dated 11.09.2014 passed by the Commissioner(Appeals), Tiruchirapalli by holding that the amount of Rs. 46,81,325/- sanctioned as rebate vide OIO No. 120/2013-R dated 02.12.2013 be refunded in cash to the applicant and the rebate claims in respect of ARE-1 No. 126/21.05.2013 are admissible and should be sanctioned forthwith. The impugned OIA is upheld to the extent that it rejects the rebate claimed in respect of ARE-1 No. 149/28.05.2013 and ARE-1 No. 150/28.05.2013.

28/10/21

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

To

M/s. M. M. Forgings Ltd.,
Erasanaickenpatti,
Viralimalai – 621 316

ORDER NO. 415/2021-CX (SZ) /ASRA/MUMBAI DATED 28.10.2021

Copy to :

1. The Commissioner of CGST & Central Excise, Headquarters Office, 'A' Wing, No. 1, Williams Road, Cantonment, Tiruchirapalli – 620 001.
2. The Commissioner(Appeals), GST & CX, Coimbatore, 6/7, A.T.D. Street, Race Course Road, Coimbatore – 641 018.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.