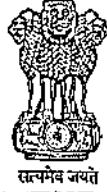


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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.198/85/2013-RA | 2443

Date of Issue: 17/01/2019

ORDER NO. 429 /2018-CX (WZ)/ASRA/MUMBAI DATED 04.12.2018
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.

Applicants : Commissioner, Central Excise, Mumbai-V

Respondent : M/s Pukhraj Engineering & Chemicals Pvt. Ltd.

Subject : Revision Application filed, under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
BR/31/MV/2013 dated 30.05.2013 passed by the
Commissioner(Appeals-I), Central Excise, Mumbai Zone-I.



ORDER

This Revision Application has been filed by the Commissioner, Central Excise, Mumbai-V (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BR/31/MV/2013 dated 30.05.2013 passed by the Commissioner(Appeals-I), Central Excise, Mumbai Zone-I wherein he upheld the Order-in-Original No. 90-R/132/DC/BVL/2012 dated 13.12.2012 and rejected the Revenue appeal.

2. The issue in brief is that the M/s Pukhraj Engineering & Chemicals Pvt. Ltd., Charkop, Kandivali, Mumbai 400 067, holding Central Excise Registration No. AAACP9161DXM001 had on 16.10.2012 filed rebate claims for Rs. 3,54,254/- under Rule 18 of Central Excise Rules, 2002 being duty paid by them on excisable goods viz Struck-N falling under CSH No. 38039900 exported to Srilanka. The Deputy Commissioner, Central Excise, Borivili Dn, Mumbai-V Commissioerate vide Order-in-Original No. 90-R/132/DC/BVL/2012 dated 13.12.2012 sanctioned the rebate claim of Rs. 3,54,254/- under Rule 18 of Central Excise Rules, 2002 read with Section 11B(2) of Central Excise Act, 1944. Aggrieved, the Department then filed appeal with Commissioner(Appeals), Central Excise, Mumbai Zone-I who vide No. BR/31/MV/2013 dated 30.05.2013 upheld the Order-in-Original No. 90-R/132/DC/BVL/2012 dated 13.12.2012.

3. Being aggrieved, the Department filed this Revision Application on the following grounds:

3.1 The classification of the goods cleared from the premises of the manufacturer as mention in the Excise Invoice were not tallying with the same mentioned on their corresponding Shipping bills, simply implies that the goods exported under the said Shipping Bills were different from the goods cleared for export by the



Respondent and in respect of which rebate claim was erroneously sanctioned by Original Authority.

- 3.2 The Commissioner(Appeals), while upholding the Order-in-Order dated 13.12.2012 had erred in holding the said discrepancy as a sort of technical irregularity.
- 3.3 In the case of Order-in-Appeal No. BR/36-39/MV/2013 dated 31.05.2013 in respect of another appeal filed by the department involving the identical issue, the Commissioner(Appeals) had allowed the appeal observing that the said discrepancies as glaring, alarming and did not appear to be merely technical in nature. Hence the Order-in-Appeal dated 30.5.2013 is not correct, legal and proper and therefore may be set aside.

4. The Respondent then filed cross objection on the following grounds :

- 4.1 The Order-in-Appeal dated 30.5.2013 passed by the Commissioner(Appeals-I), Central Excise, Mumbai Zone-I is correct in law and is not required to be upset on any of the grounds stated in the review application filed by the Department. Order-in-Appeal was a well reasoned and speaking order wherein the Commissioner(Appeals) had examined all the aspects in details and has passed the order based on facts, documentary evidences and various judicial pronouncements including judgments of Government of India
- 4.2 There is no finding either in the Order-in-Original or Order-in-Appeal that the goods cleared from the factory under the cover of various ARE-1s were not exported. There is also no allegation/ finding by the Department at any stage that the goods cleared for export were diverted to local market. The Deputy Commissioner has clearly recorded in this Order-in-Original that the original and duplicate copies of ARE-1s being the endorsement by the Customs



authorities were tallying with the triplicate copies of corresponding ARE-1s received from Range Superintendent. The Commissioner(Appeals) has also discussed this aspect in his Order-in-Appeals and has passed the order.

- 4.3 The difference in classification of the products manufactured and cleared from the factory on the basis of Central Excise Invoices and accompanied by the ARE-1s and exported out of country on the basis of the shipping bills was due to a clerical error on the part of the clerk of the C & F Agent appointed to facilitate the export consignment and the error was purely human in nature and was unintentional, innocent and had occurred inadvertently. The goods were exported without availing any export benefit. Further, the rate of Central Excise duty applicable for both the chapter heading was same. They had not benefited in any way by declaring different classification on documents. The discrepancy occurred purely due to clerical error and therefore rightly held as technical irregularity by Commissioner(Appeals). The goods were exported Under Free Shipping bills.
- 4.4 The goods in question were removed directly from factory under the cover of ARE-1s. The said ARE-1s were duly countersigned by the Range Superintendent. Further, the Customs Authorities have also endorsed/ certified the subject ARE-1s confirming that goods cover under said ARE-1s have been exported outside India under respective Shipping Bills.
- 4.5 Commissioner(Appeals) considered judgments relied upon and correctly held that technical irregularity cannot be allowed to result in denial of the rebate claim.
- 4.6 The discrepancy in description shown in ARE and Shipping bill is a mere procedural irregularity and is a curable defect. Substantive



benefit of rebate cannot be denied due to such defect. It has been repeatedly held by various judicial forum that rebate cannot be denied due to minor procedural infractions. In this they relied on few case laws.

4.7 They have in fact exported the same goods which were removed from the factory on payment of appropriate duty of excise and have received remittance in foreign currency from their overseas buyer. There is no dispute about export of goods as such rebate has been rightly granted to them and the order passed by Commissioner(Appeals) is proper, legal and do not require any interference.

4.8 They prayed that the Order-in-Appeals be upheld as correct in law and therefore the review application filed by the Department be dismissed.

5. A personal hearing in the case was held which was attended by Shri R.M. Desai, Partner on behalf of the Respondent. None was present from the side of the Department. The Respondent reiterated the order of the Commissioner(Appeals) and submitted few case laws. In view of the same the Order-in-Appeal be upheld and Revision Application be dismissed.

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. On perusal of records, Government observes that the Respondent had on 16.10.2012 filed rebate claims for Rs. 3,54,254/- under Rule 18 of Central Excise Rules, 2002 being duty paid by them on excisable goods viz Struck-N falling under CSH No. 38039900 exported to Srilanka. The Deputy Commissioner, Central Excise, Borivili Dn, Mumbai-V Commissioerate vide Order-in-Original No. 90-R/132/DC/BVL/2012 dated 13.12.2012 sanctioned



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the rebate claim of Rs. Rs. 3,54,254/- under Rule 18 of Central Excise Rules, 2002 read with Section 11B(2) of Central Excise Act, 1944. The Department then filed appeal with Commissioner(Appeals) only on the grounds that the classification of the goods cleared from the premises of the manufacturer as mention in the Excise Invoice were not tallying with the same mentioned on their corresponding Shipping bills which simply implies that the goods exported under the said Shipping Bills were different from the goods cleared for export by the Respondent and in respect of which rebate claim was erroneously sanctioned by Original Authority.

8. At this juncture, the observation made by Commissioner(Appeals) in Para 05 of the Order-in-Appeal dated 30.5.2013 is noteworthy :

"(05). I have carefully gone through the entire records of the case and have considered the averments made by the appellants in the appeal memorandum as well as the arguments raised by the respondents in their cross-objection vide letter dated 10.04.2013 and also the points taken by them in their oral submissions made by them at the time of personal hearing in the light of the relevant provisions of law as are applicable to the issue involved in the present case. The issue involved in the instant case is whether the OIO, passed by the jurisdictional Deputy Commissioner of Central Excise, Borivali Division, Mumbai V Commissionerate, sanctioning the rebate claim of Rs. 3,54,254/- is legal and correct or otherwise. On perusal of the findings of the jurisdictional Deputy Commissioner of Central Excise, Borivali Division, Mumbai V Commissionerate as recorded in the impugned OIO, it is observed that the claimant, on 16.10.2012, had filed in all 9 rebate claims amounting to Rs. 3,54,254/- and covered by totally 9 ARE-Is issued during the period 09.04.2012 to 14.05.2012 together with all the requisite relevant documents corresponding to the said 9 rebate claims, which were examined by the jurisdictional Deputy Commissioner and after confirming and satisfying himself that the description and other relevant particulars were as mentioned in the AREIs and the other documents submitted by the claimant along with claim were tallying. It was also evident from the endorsements recorded by the Customs authorities on the duplicate copies of the



ARE Is in respect of the goods contained in all the corresponding export consignments, which were manufactured and cleared from the factory of production of the respondents had reached to the Customs area and they were shipped for export out of India, only after all the export consignments were duly examined by the Customs authorities. Further, the Deputy Commissioner of C. Excise, Borivali Division has also recorded in the findings that the Original and duplicate copies of the ARE-Is bearing the endorsement by the Customs authorities were tallying with the triplicate copies of the corresponding ARE-Is received from the Range Superintendent. The respondents, while responding to the grounds of appeal, contended that the allegation of the department, regarding difference in classification of the products manufactured and cleared from the factory on the basis of C. Ex. Invoices and accompanied by the ARE-Is and exported out of country on the basis of their Shipping Bills was due to a clerical error on the part of the clerk of the C & F Agent appointed by the respondents to facilitate the export consignments and the error was purely human in nature and was unintentional, innocent and had occurred inadvertently and the same had not resulted in any loss of revenue to the department or there was no excess claim of rebate. Therefore, the same was purely such technical infractions should not be allowed to lead to rejection of the rebate claim. In support of their contentions, the respondents have relied upon numerous decisions which go to indicate that since there was neither an charge nor any evidence to suggest that the goods exported were other than the goods which were actually cleared from the factory of manufacture as all the documents except one was suggesting that the nomenclature of the goods were one and the same. Therefore, the lapse can be viewed as a sort of technical irregularity, which cannot be allowed to result in denial of the rebate claim in the instant case. It is also observed that the appellants have not alleged divergence of the consignment meant for export to the local market. The technical infractions as pointed out in this case deserved to be overlooked."

Thus Government notes that Commissioner(Appeals) has passed the said Order-in-Appeal based on facts and documentary evidences. Further, in this case, the export of duty paid goods is not in dispute. Hence the clerical error is



condonable. Therefore, Government holds that the rebate claims was correctly sanctioned by the Deputy Commissioner.

9. In view of the above, Government finds no infirmity in the impugned Order-in-Appeal No. BR/31/MV/2013 dated 30.05.2013 passed by the Commissioner(Appeals-I), Central Excise, Mumbai Zone-I and therefore upholds the same and also upholds the Order-in-Original No. 90-R/132/DC/BVL/2012 dated 13.12.2012 . The Revision Application filed by the Department is dismissed being devoid of merit.

10. So, ordered.

(Signature)
04.12.18

(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 429/2018-CX (WZ)/ASRA/Mumbai DATED 04.12.2018.

To,

1. The Commissioner of Central Excise, Thane

Navprabhat Chambers
5th Floor, Kanade Road
Dadar, Mumbai
400028

2. M/s Pukhraj Engg. & Chemical Pvt. Ltd,
122 AB, Government Industrial Estate,
Charkop, Kandivali(West),
Mumbai 400 067.

ATTESTED

(Signature)
17.1.19
S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

- Thane*
1. The Commissioner(Appeals-^A Central Excise, Mumbai- .
 2. Sr. P.S. to AS (RA), Mumbai
 3. Guard file
 4. Spare Copy.

