

REGISTERED SPEED POST



**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, Cuff Parade,
Mumbai- 400 005

F. NO. 195/516/13-RA/4858

Date of Issue: 04.11.19

ORDER NO. 45/2019-CX (WZ) /ASRA/MUMBAI DATED 30.9.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Suparna Chemicals Limited,
54/A, Mittal Tower, 5th Floor,
A-Block, Nariman Point,
— —Mumbai-400 021.

Respondent : Deputy Commissioner (Rebate), Central Excise, Raigad.

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.US/920/RGD/2012 dated 20.12.2012 passed by the Commissioner of Central Excise, (Appeals-II), Mumbai.

ORDER

This revision application is filed by M/s. Suparna Chemicals Limited., Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/920/RGD/2012 dated 20.12.2012 passed by the Commissioner of Central Excise, (Appeals-II), Mumbai.

2. The brief facts of the case are that the applicant had filed a rebate claim of Rs.2,84,775/-(Rupees Two Lakh Eighty Four Thousand Seven Hundred Seventy Five only) with the Deputy Commissioner (Rebate) Central Excise, Raigad. The Deputy Commissioner, rejected the said Rebate claim vide Order No.999/11-12/DC (Rebate)/Raigad dated 21.06.2012, alleging that the applicant did not submit the original copy of relevant ARE-1 No.12 dated 23.12.2009 which is a mandatory document to be submitted alongwith the claim as per procedure laid down under Notification No.19/2004-CE (NT) dated 06.09.2004 as well as under para 8.3 of Chapter 8 of CBEC Manual of Supplementary Instructions.

3. Being aggrieved, the applicant filed an appeal before the Commissioner Central Excise (Appeals-II), Mumbai. The Commissioner (Appeals) rejected the appeal filed by the applicant vide Order-in-Appeal No. US/920/RGD/2012 dated 20.12.2012.

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

- 4.1 they have submitted photocopy of ARE-1 duly certified in original by Customs Authority and by the Range Superintendent and this should be treated as Original and rebate should be allowed to them. At the time of export, original copy of ARE-1 is present in file of central excise department as also customs department. They have got a photocopy of ARE-1 duly certified, in original, by the Central Excise department and Customs department. Once a copy is certified by the central excise department and customs department, the rebate sanctioning authority has no jurisdiction to say that original copy of ARE-1 has not been filed. It is not as if there is no original copy of ARE-1 on record. The applicants had submitted original yellow copy of ARE-1 duly endorsed by customs department. The applicants

had also submitted original pink triplicate copy of ARE-1, in sealed cover, duly endorsed by the jurisdictional Superintendent of Central Excise. There is no dispute on the above facts. Further, undisputedly, the certified copy also matched with the yellow and pink copies of the ARE-Is filed with the rebate claim. Under such circumstances, such photocopy of ARE-1 submitted by the applicants should be treated as Original copy of ARE-1 and accepted by the rebate sanctioning authority. Instead, the rebate sanctioning authority held to the contrary & hence the impugned Order-in-Appeal confirming the order passed by the rebate sanctioning authority is liable to be set aside on this ground;

- 4.2 the impugned Order-in-Original has been passed based on assumptions and presumptions. The Order-in-Original passed by the Deputy Commissioner has held that the non-filing of Original and Duplicate copy of ARE-1 may lead to possibility of claiming double benefit. There is no finding in the present case that the applicants have in fact claimed such double benefit. The impugned Order-in-Original is based on presumptions and without any evidence. There is no merchant-exporter involved in the present case. Hence, there is no chance of the rebate being claimed by merchant-exporter. Further, they had filed original yellow (endorsed by customs department) and original pink copy (endorsed by jurisdictional Superintendent of Central Excise, in sealed cover) alongwith the rebate claim. Under such circumstances, there is no way in which the ARE-1 could have been misused by anybody else;
- 4.3 the reliance placed in the Order in Appeal on the decisions of Government of India in case of Re: Bajaj Electricals - 2012 (281) ELT 146 (GOI is not applicable to their present case;
- 4.4 without prejudice to the above submissions, they are entitled for rebate of duty paid on goods exported in view of the fact that they have made the export is not at all in dispute. The fact that the appropriate rate of duty had been paid on the goods which was exported is also not in dispute. When the core fact of export is not disputed, the valuable right to rebate cannot be, destroyed due to technical or procedural breach.
- 4.5 the fact that the goods on which duty has been paid have actually been exported has not been disputed in the impugned Order-in- Appeal.
- 4.6 they place reliance on the following decisions which hold that

the rebate can not be denied once the core fact of export is not in dispute.

(i) Universal Enterprises Vs. GOL 1991 (55) ELT 137 (Gm)

(ii) Poullose Mathew Vs. CCE 1989 (43) ELT 424 (Tri.) Affirmed by SC 2000 (120) ELT A64 (SC)

(iii) Madras Process Printers 2006 (204) ELT 632 (GOI)

- 4.7 Core aspect in determination of rebate claim is the fact of manufacture and payment of duty thereon and its subsequent export. If this fundamental requirement is met, other attendant procedural requirements can be condoned. This is a mandatory condition. This is a trite law repeatedly pronounced in various orders of Tribunal/Govt. of India, including Upkar International - 2004 (169) E.L.T. 240 (Trib.); Birla VXL Ltd - 1998 (99) E.L.T. 387 (Trib.); T. I. Cycles - 1993 (66) E.L.T. 497 (Trib.); Creative Mobus - 2003 (58) RLT 111 (GOI); Ikea Trading -2003 (357) (sic) etc."

In the support of the above contention, please refer the following case decisions also:

a) CCE Vs. Binny Ltd. 1987 (31) ELT722 (T)

b) Krishna filaments Ltd. 2001 (131) ELT 726 (GOI)

c) Modern Process Printers 2006 (204) ELT 632 (GOI)

d) CCE, Bhopal 2006 (205) ELT 1093 (GOI)

e) Cotfab Exports 2006 (205) ELT 1027 (GOI)

f) Atma Tube Products Ltd. Vs. CCE 1998 (103) ELT 270 (T)

g) Synthetics and Chemicals Ltd. Vs. CCE 1997 (93) ELT 92 (T)

h) Apha Garments Vs. CCE 1996 (86) ELT 600 (T).

- 4.8 without prejudice to the above submissions, they submit that non filing of Original copy of ARE-1 is only a procedural error and not a failure to comply with the statutory conditions. In any case, the error is condonable. They would also like to rely on the decision of the Hon'ble Supreme Court in the case of Mangalore Chemicals & Fertilizers Ltd. -1991 (55) ELT 437 (SC). In the said judgment, the Supreme Court clarified the concept of mandatory conditions and procedural conditions. Further, the Hon'ble Supreme Court in the case of Formica India Division Vs. CCE - 1995 (77) ELT 511 (SC), has held that substantive benefit cannot be denied for procedural lapses.

- 4.9 Following the above decisions of the Hon'ble Supreme Court, the Bombay High Court in latest decision in the case of Madhav Steel Vs. UOI — 2010-TIOL-575-HC-MUM-CX has dealt with the

issue which is similar to the issue in the present case of the applicants. The issue involved in the decision of Bombay High Court is that the rebate claim have been rejected on the ground that procedure required under the Board's Circular, has not been followed by the exporter and the goods originally procured on which rebate have been claimed have not been exported. In the recent decision of Madras High Court in the case of Tablets India Limited Vs. Joint Secretary Ministry of Finance, Department of Revenue and CCE — 2010- TIOL-652-HC-MAD-CX = 2010 (259) ELT 191 (Mad.), it has held that when factum of export is not doubted, rebate cannot be denied even if all the conditions of the notification are not complied with.

4.10 in the present case, they have clearly demonstrated that they have complied with the substantial conditions of payment of duty on the goods and their export. The Government of India in the case of Barot Exports (supra) and other judgements cited supra have consistently held that the payment of duty on the goods and their export are the substantial conditions for granting rebate. The rest of the conditions are procedural and therefore, the breach thereof is condonable.

4.11 in the present case, the only grounds taken by the Commissioner (Appeal) for dismissing the rebate claim is non submissions of Original copy of ARE-1. The fact that they have claimed the rebate once and not twice, has not been disputed by the Department. Non filing of Original copy of ARE-1 is procedural lapse only was therefore clearly condonable.

In view of the above, the impugned Order-in-Appeal is liable to be set aside.

5. A Personal hearing was held in this case on 26.08.2019. Ms. Payal Nahar, Chartered Accountant, duly authorized by the applicant, appeared for hearing and submitted a compilation for references. It was interalia contended that though original copy of ARE-1 was not submitted, supplementary documents were submitted; that the export of goods was not disputed. She also stressed and relied on following citations from the compilation submitted on the date of hearing and also mentioned that Indemnity bond had also been submitted by them along with the rebate claim.

- M/s. U.M. Cables v. UOI. [2013 (293) E.L.T. 641 (Bom.)]
- In : Re United Phosporus Ltd.[2015(321)ELT 148(GOI)] and

- In : Re Tricon Enterprises Pvt. Ltd. [2015(320)ELT 667(GOI)].

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions / compilations and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that rebate claim was rejected by the original authority for the reason of non-submission of original copy of ARE-1 by the applicant. Commissioner (Appeals) vide Order in Appeal No. US/920/RGD/2012 dated 20.12.2012 while rejecting the appeal filed by the applicant held that submission of original copy of ARE-1 being mandatory, the rebate claim is not to be sanctioned in the absence of original and duplicate ARE-1s and therefore upheld Order in Original No.999/11-12/DC (Rebate)/Raigad dated 21.06.2012 passed by the Deputy Commissioner (Rebate), Raigad.

8. Government observes that the main issue in the instant case is whether the applicant's rebate claim was rightly rejected on the ground of non-submission of Original copy of ARE-1 by them along with the rebate claim. In this regard, Government notes that the admissibility of rebate claim in the event of non-submission of original/duplicate copy of ARE1 along with rebate application has been discussed in detail by Hon'ble High Court of Bombay in its judgment dated 24.4.2013 in the case of M/s. U.M. Cables v. UOI (WP No. 3102/2013 & 3103/2013) reported in 2013 (293) E.L.T. 641 (Bom.) at para 16 and 17 of its Order in following manner :-

16. *However, it is evident from the record that the second claim dated 20 March, 2009 in the amount of Rs. 2.45 lacs which forms the subject matter of the first writ petition and the three claims dated 20 March, 2009 in the total amount of Rs. 42.97 lacs which form the subject matter of the second writ petition were rejected only on the ground that the Petitioner had not produced the original and the duplicate copy of the ARE-1 form. For the reasons that we have indicated earlier, we hold that the mere non-production of the ARE-1 form would not ipso facto result in the invalidation of the rebate claim. In such a case, it is open to the exporter to demonstrate by the production of cogent evidence to the satisfaction of the rebate sanctioning authority that the requirements of Rule 18 of the Central Excise Rules, 2002 read together with the notification dated 6 September, 2004 have been*

fulfilled. As we have noted, the primary requirements which have to be established by the exporter are that the claim for rebate relates to goods which were exported and that the goods which were exported were of a duty paid character. We may also note at this stage that the attention of the Court has been drawn to an order dated 23 December, 2010 passed by the revisional authority in the case of the Petitioner itself by which the non-production of the ARE-1 form was not regarded as invalidating the rebate claim and the proceedings were remitted back to the adjudicating authority to decide the case afresh after allowing to the Petitioner an opportunity to produce documents to prove the export of duty paid goods in accordance with the provisions of Rule 18 read with notification dated 6 September, 2004 [Order No. 1754/2010-CX, dated 20 December, 2010 of D.P. Singh, Joint Secretary, Government of India under Section 35EE of the Central Excise Act, 1944]. Counsel appearing on behalf of the Petitioner has also placed on the record other orders passed by the revisional authority of the Government of India taking a similar view [Garg Tex-O-Fab Pvt. Ltd. - 2011 (271) E.L.T. 449] and Hebenkraft - 2001 (136) E.L.T. 979. The CESTAT has also taken the same view in its decisions in Shreeji Colour Chem Industries v. Commissioner of Central Excise - 2009 (233) E.L.T. 367, Model Buckets & Attachments (P) Ltd. v. Commissioner of Central Excise - 2007 (217) E.L.T. 264 and Commissioner of Central Excise v. TISCO - 2003 (156) E.L.T. 777.

17. *We may only note that in the present case the Petitioner has inter alia relied upon the bills of lading, banker's certificate in regard to the inward remittance of export proceeds and the certification by the customs authorities on the triplicate copy of the ARE-1 form. We direct that the rebate sanctioning authority shall reconsider the claim for rebate on the basis of the documents which have been submitted by the Petitioner. We clarify that we have not dealt with the authenticity or the sufficiency of the documents on the basis of which the claim for rebate has been filed and the adjudicating authority shall reconsider the claim on the basis of those documents 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 original and the duplicate copies of the ARE-1 forms, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled. For the aforesaid reasons, we allow the Petitions by quashing and setting aside the impugned order of the revisional authority dated 22 May, 2012 and remand the proceedings back to the adjudicating authority for a fresh*

consideration. The rejection of the rebate claim dated 8 April, 2009 in the first writ petition is, however, for the reasons indicated earlier confirmed. Rule is made absolute in the aforesaid terms.

9. Government also observes that Hon'ble High Court, Gujarat in Raj Petro Specialities Vs Union of India [2017(345) ELT 496 (Guj)] also while deciding the identical issue, relying on aforesaid order of Hon'ble High Court of Bombay, vide its order dated 12.06.2013 observed that :

Export rebate - Denial of - Export of goods cleared from factory on payment of duty - Non-submission of original/duplicate copy of ARE1 along with rebate application - Exporter submitting other documents like triplicate copy of ARE1, mate receipt, shipping bills, bills of lading, etc. - HELD : Revisional Authority materially erred in rejecting rebate claim of respective exporters - As per requirement of law, submission/production of original and duplicate copies of ARE1 along with rebate claim, not the only requirement - Since exporter producing other documents supporting and establishing export of excisable goods on payment of duty from factory/warehouses and all other conditions and limitations mentioned in Clause 2 of Notification issued under Rule 18 of Central Excise Rules, 2002 satisfied, exporter to be entitled to rebate of duty - Also, assessee's entitlement to rebate under Rule 18 ibid on fulfillment of conditions and limitations mentioned in Clause 2, undisputed - Submission of documents along with rebate claim falls under head "procedure" therefore, production of original and duplicate copies of ARE1 along with rebate claim, merely, procedural one - Production of impugned documents as per procedure required to be held directory and -----not mandatory - Merely on the ground of non-submission of said documents, rebate claim ought not to be rejected-

10. Also, while setting aside GOI order No. 1034/2011-CX, dated 12-8-2011 holding that non-submission of statutory document of ARE-1 and not following the basic procedure of export goods, cannot be treated as just a minor/technical procedural lapse for the purpose of granting rebate of duty, Hon'ble Bombay High Court in its Order dated 24-9-2014 in Writ Petition No. 9269 of 2013, in the case of M/s Zandu Chemicals India Vs Union of India [2015 (315) E.L.T. 520 (Bom.)] held that

Condition of submission of original as well as duplicate copies of ARE1 was only directory/procedural, and not mandatory - Rebate claim could not be rejected for their non-submission, as there was proof of

exports of goods in other documents like shipping bill on which ARE1 was mentioned - Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.). [paras 9, 10]

11. Government finds that rationale of the aforesaid Hon'ble High Court orders which are incidentally relied upon by the applicant, are squarely applicable to this case. Government, by placing its reliance on the afore stated High Court Orders holds that the non submission of Original copy of ARE-1 is condonable if exported goods co-relatable with goods cleared from factory of manufacture or warehouse and sufficient corroborative evidence found to correlate exported goods with goods cleared under Excise documents and the Rebate claim is admissible to the applicant subject to verification of duty paid on exported goods.

12. As claimed by the applicant in Revision Application and also from the copy of Order in Original No.999/11-12/DC (Rebate)/Raigad dated 21.06.2012 passed by the Deputy Commissioner (Rebate), Raigad, Government observes that the applicant had submitted the following documents to the rebate sanctioning authority along with his claim :

- (i) Yellow (Duplicate) copy of ARE-1 duly endorsed by the officer of Customs.
- (ii) Triplicate copy of ARE-1 (received in sealed envelope) duly endorsed by Superintendent in-charge of the manufacturing unit;
- (iii) Central Excise invoice under which the goods were removed from the factory of manufacturer;
- (iv) Self attested copy of Shipping Bill (EP) copy; Bill of Lading; and Mate's Receipt;
- (v) Declaration/undertaking regarding refund of rebate amount in case of excess or erroneous sanction of the same.
- (vi) Proforma invoice;
- (vii) Bank Realization Certificate.

Moreover, the applicant has also claimed to have submitted copy of Indemnity Bond, furnished by their Authorised Signatory indemnifying the Government in respect of any future liability, to the original authority alongwith rebate claim.

13. From the aforementioned documents Government observes that the bonafides of export can be established and therefore the rebate claim should not be denied for non-production of original copy of ARE-1.

14. In view of the above, Government remands the matter back to the original authority for the limited purpose of verification of the claim keeping in mind the above observations and with directions that he shall reconsider the claim for rebate on the basis of the aforesaid documents submitted by the applicant after satisfying itself in regard to the authenticity of those documents. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

15. In view of above, Government sets aside the impugned Order-in-Appeal No. US/920/ RGD/2012 dated 20.12.2012.

16. The revision application is allowed in terms of above.

17. So ordered.


(SEEMA ARORA)

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

ORDER NO. 45/2019-CX (WZ) /ASRA/Mumbai 30.09.2019

To,

M/s. Suparna Chemicals Limited,
54/A, Mittal Tower, 5th Floor,
A-Block, Nariman Point,
Mumbai-400 021.

Copy to:

1. The Commissioner of CGST & CX, Belapur, CGO Complex, CBD Belapur, Navi Mumbai - 400 614
2. The Commissioner of CGST & CX (Appeals) Raigad, CGO Complex, CBD Belapur, Navi Mumbai - 400 614
3. The Deputy / Assistant Commissioner (Rebate), CGST & CX Belapur, CGO Complex, CBD Belapur, Navi Mumbai - 400 614.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.