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GOVERNMENT OF INDIA
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Office of the Principal Commissioner RA and
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8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. NO. 195/761/12-RA /3203 Date of Issue: 31.07.2020 ~~02.2020~~

ORDER NO. 477 /2020-CX (WZ) /ASRA/MUMBAI DATED 24.04.2020 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 CENTRAL EXCISE ACT,1944.

Applicants : M/s Pidilite Industries Ltd., Daman.
Plot No. 1806, 3rd Phase, GIDC,
Vapi.

Respondents : Commissioner of Central Excise, Daman.

Subject : Revision Application filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal CS/25/DMN/Vapi-I/2012-13 dated 10.05.2012 passed by the Commissioner of Central Excise (Appeals), Vapi.

ORDER

This revision application is filed by M/s Pidilite Industries Ltd., Daman, against the Order-in-Appeal No. passed CS/25/DMN/ Vapi-I/2012-13 dated 10.05.2012, passed by the Commissioner of Central Excise (Appeals), Vapi with respect to Order-in -Original passed by the Deputy Commissioner of Central Excise & Customs, Vapi.

2. Brief facts of the case are that M/s Pidilite Industries Ltd., Plot No. 67, 68, 78 & 79, Bharat Industrial Estate, Bhimpore, Daman exported excisable goods under different ARE-Is on payment of leviable Central Excise duty. The assessee then filed various rebate claims before the Assistant Commissioner, Central Excise & Customs, Division North Daman as per the provisions prescribed under Rule 18 of the Central Excise Rules 2002 read with Section 11 B of the Central Excise Act, 1944 and Notification No.19/2004-CE (NT) dated 06.09.2004. The rebate claims were sanctioned by the original authority vide various Orders-in-Original.

3. Being aggrieved by these impugned Orders-in-Original, the department has filed appeals before Commissioner (Appeals) on the ground that :

3.1 In the impugned cases the goods have not been directly exported from the factory gate in terms of Notification No. 19/2004-CE (NT) dated 06.09.2004;

3.2 That the goods were cleared for export on payment of duty under Self Removal Procedure and instead of being sent directly to the port of Export had been dispatched to the godown in Bhiwandi.

3.3 The goods were stuffed into the container under the supervision of the Central Excise Officers of Range-I Division-Kalyan-I, Thane-I Commissionerate.

3.4 That the assessee has never disclosed in their claims that their godown is registered as warehouse. Therefore, the prime condition as laid down in para 2(a) of the Notification No.19/2004-CE (NT) for claiming Rebate has been violated by the assessee and thus the Rebate claims filed by the assessee in respect of exports affected from their Godown were liable for rejection.

4. The Commissioner (Appeals) vide impugned orders-in-appeal upheld the order in originals. The Appellate Authority while passing the Order in Appeal observed that :

4.1 The goods were cleared for export from the manufacturer's factory at Vapi but were transported to their godown at Bhiwandi and from there the goods were exported. Thus the goods were not exported from the factory gate.

4.2 The applicant have not produced any evidence confirming that they were otherwise permitted by the CBEC by a general or special order to export goods from their godown situated at Bhiwandi.

4.3 The fact of not exporting the goods directly from the factory gate has not been brought to the knowledge of the Jurisdictional Assistant Commissioner.

4.4 The procedure adopted by the applicant was totally different from the procedure mentioned at para 8.1 to 8.9 of Circular 294/10/97-CX dated 30.01.1997.

4.5 The condition of direct export from the factory or warehouse as prescribed in para 2(a) of the Notification No. 19/2004 CE (NT) dated 06.09.2004 is mandatory condition.

5. Being aggrieved by the impugned order-in-appeal, the applicant filed these revision applications under Section 35EE of the Central Excise Act, 1944 before Government on following grounds:

5.1 The Deputy Commissioner rightly granted rebate claims to Applicant after his finding that the Original copy of AREs-1 has been compared with particulars mentioned on the duplicate copy of ARE-1 duly endorsed by the Customs Authority and with the triplicate copy of AREs-1 received from the jurisdictional range office and are found to be tallying. The quantities, description of exported goods as shown in ARE-1 are also tallied with those appearing in other shipping documents. As such the claimant has fulfilled the statutory requirement as prescribed under Rule 18 of Central Excise Rules 2002 read with section 11 B of the Central Excise Act, 1944 also read with the Notification No. 19/2004 CE (NT) dated 06/09/2004 as mentioned.

5.2 While sanctioning the rebate under the impugned orders-in-original, the factum of export of goods against which the rebate was claimed, was duly acknowledged by the jurisdictional Assistant Commissioner. The said authority, after scrutiny of the various mandatory documents submitted by the applicant in relation to the export of the goods viz. Shipping Bills, Bill of Lading, Mate Receipt and corresponding Excise documents i.e. ARE-1, Invoice, copy of the RG23-II Entry has held that the impugned goods were duly exported and that the rebate claim was in consonance with the amount of duty paid through CENVAT, the amount of rebate mentioned in the said orders-in-original were sanctioned.

5.3 The Commissioner (Appeals) erred in his finding that as per Circular No.294/10/94-Cx dated 30.1.97 the correlation has not been done with respect to the goods cleared from factory and goods exported. Applicant would like to submit that on receipt of the ARE-1 application and particulars, the particular of the package/goods lying stored were verified with the

particulars given in the application and the ARE-1 form, in such manner and according to such procedure as may be prescribed by the Commissioner. The Central Excise officer i.e. Range officer of Thane - I Commissionerate, deputed for verification of the goods for export were satisfied about the identity of the goods, its duty paid character and all other particulars given by the Applicant in their application and ARE-1, and the Central Excise Officers endorsed the aforesaid forms & permitted the export.

5.4 The Excise invoices were prepared in the name of foreign buyer clearly mentioning on the invoices that goods will be routed through their Bhiwandi Godown to the Port of Export. The corresponding invoice nos. were declared on the relevant ARE-1s. These Invoices were submitted to the department alongwith with claims. Further, Asst. Commissioner of Central Excise & Customs - North Daman in its finding has mentioned that duplicate copies of Central Excise Invoices were submitted. As it is admitted facts that the goods were stuffed & sealed by Range officers of Thane-I Commissionerate, the AREs-1 under which goods were exported were endorsed by these officers with their stamp & seals & these AREs-1 were submitted to the department alongwith respective Rebate claims which is confirmed by the original authority in his sanction order. The Commissioner (Appeals), while dealing with the cases, has never raised any suspicion or cited any inefficiency on the part of the Dy. Commissioner of Customs, for granting 'stuffing permission' or the jurisdictional Divisional Asst. Commissioner of Central Excise, for issuing NOC and deputing the officers for supervision of the export procedures or the Range officers who physically supervised the stuffing of the containers after ascertaining the genuineness of the export cargo and comparing the same with the duty paying documents that accompanied such export consignments.

5.5 The goods were not directly sent to port of export but were routed through the Bhiwandi godown, a fact which the applicant have never concealed from the Department. Neither the Department, while filing the appeal with the Commissioner (Appeals), nor the Commissioner (Appeals) himself, did

scrutinize the relied upon documents of the orders-in-original of the Assistant Commissioner, Daman by virtue of which, such rebate claims were sanctioned. As the details of the Bhiwandi godown was already mentioned in the relevant ARE-1s, their reference again in the impugned orders-in-original of the Assistant Commissioner, Daman North Division, was unwarranted. Moreover, such omission, if any, by no means can deny the fact that the goods were indeed exported.

5.6 While issuing the Circular No.294/10/97-CX dated 30.1.1997, intention of the Board was to ensure that in certain cases where the goods could not be exported directly from the place of the manufacturer (e.g. Merchant exporters), was to ensure that the goods exported should remain in original factory packed i.e. the goods should be clearly identifiable with the goods actually exported. The details of the goods mentioned in the application made as per this circular is required to match with that of the factory invoice and AR4 (presently ARE-1). When the jurisdictional Superintendent of Central Excise, before whom such application is made, is convinced about the identity of the goods, may allow export of the same. In the instant case, although such application was not made, but all the relevant provisions were strictly adhered to viz.

(1) obtaining NOC from jurisdictional Assistant Commissioner for Excise supervision of export consignment,

(2) obtaining 'stuffing permission' from the port of export,

(3) submission of the export invoice and ARE-1 issued by the factory.

And only when the jurisdictional Central Excise Officers were satisfied with the identity of the goods which were in original factory packed condition, did they allow stuffing of the export containers and sealed them in their supervision. In fact all the procedures laid down in the above circular have been carried out with the absolute knowledge and supervision of the concerned Central Excise as well as Customs Department. The fact of export of the goods against which the instant rebate claims were filed, has never been disputed.

Thus for all practical purposes, the procedures laid down in the said Circular, has been complied with by the applicant.

5.7 Notification No.19/2004-CE(NT) dated 6.9.2004, stipulates conditions and limitations in para (2) (a) to (f). Para (2) lays down the condition —

> *"that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order"*

Thus it illustrates that the exporter has been provided the option to export the goods either from the factory or warehouse and also from any other place albeit with the permission of the Board. When such flexibility is provided, the provisions of law though need to be followed but cannot be termed as 'substantive'. Such provision can be more appropriately clubbed under 'procedures'.

5.8 The applicant has also relied upon various case laws in favour of their contention.

6. Personal hearing was scheduled in this case on 12.12.2019. Personal hearing was attended by Shri Shekhar A. Sawantdesai, Section Head (Indirect Taxes) on behalf of the applicants who reiterated the grounds of revision application. Nobody attended hearing on behalf of the department. The applicants in their written reply submitted during the course of hearings, apart from reiterating ground of revision application, relied upon GOI Orders passed in identical issues in their case.

7. Government has carefully gone through the relevant case records and perused the impugned orders-in-original and orders-in-appeal.

8. On perusal of case records, Government observes that in the impugned orders-in-appeal it has been held that rebate claims were not admissible as the goods were not exported direct from factory or warehouse as laid down in condition 2(a) of Notification No.19/04-CE(NT) dated 6.9.04 and the relaxed procedure laid down in CBEC Circular No.294/10/97-Cx dated 30.1.97 relaxing the above said condition is not applicable to the said goods as the original authority failed to discuss the aspect of correlatibility. The applicant has filed these revision applications on grounds mentioned in para (3) above.

9. The department has contended that the applicant has not exported the goods directly from factory or warehouse and as such, violated the condition 2(a) of the Notification No.19/2004-CE(NT). The applicant has stated that the goods can be exported from factory or warehouse or any other place permitted by the CBEC by a general or special order. The CBEC vide Circular No.294/10/97-Cx dated 30.1.97 has prescribed the procedure for export of goods from place other than factory or warehouse. Applicants have stated that they have complied with requirement of the said circular dated 30.1.97

10. Government notes that the admissibility of these rebate claims mainly depends on the compliance of provisions and procedure laid down in CBEC Circular dated 30.01.97. The relevant paras of said Circular are as under:

> *"8.1 An exporter; (including a manufacturer-exporter) desiring to export duty paid excisable goods (capable of being clearly identified) which are in original factory packed condition/not processed in any manner after being cleared from the factory stored outside the place of manufacturer should make an application in writing to the Superintendent of Central Excise in-charge of the Range under whose jurisdiction such goods are stored. This application should be accompanied with form AR4 duly completed in sixtuplicate, the invoice on which they have purchased the goods from the manufacturer or his dealer and furnish the following information:*

(a) Name of Exporter

(b) Full description of excisable goods alongwith marks and/or numbers

(c) Name of manufacturer of excisable goods

(d) Number and date of the duty paying document prescribed under Rule 52A under which the excisable goods are cleared from the factory and the quantity cleared.

(e) The rate of duty and the amount of duty paid on excisable goods.

8.2 The AR4 form should have a progressive number commencing with 51 No.1 for each financial year in respect of each exporter with a distinguishing mark. Separate form should be made use of for export of packages/consignments cleared from the same factory/warehouse under different invoices or from the different factories/warehouses. On each such form it should be indicated prominently that the goods are for export under claim of rebate of duty.

8.3 On receipt of the above application and particulars, the particulars of the packages/goods lying stored should be verified with the particulars given in the application and the AR-4 form, in such manner and according to such procedure as may be prescribed by the Commissioner.

8.4 If the Central Excise Officer deputed for verification of the goods for export is satisfied about the identity of the goods, its duty paid character and all other particulars given by the exporter in his application and AR-4, he will endorse such forms and permit the export.

8.5 The exporter will have to pay the supervision charges at the prescribed rates for the services of the Central Excise Officer deputed for the purpose.

8.6 The disposal of different copies of AR4 forms should be in the following manner:

(i) the original and duplicate copies are to be returned to the exporter for being presented by him alongwith his shipping bill, other documents and export consignment at the point of export.

(ii) triplicate and quadruplicate copies to be sent to the Superintendent Incharge of the Range in whose jurisdiction the factory from which the excisable goods had been originally cleared on payment of duty is situated. That Superintendent will requisition the relevant invoice duty paying document which the manufacturer shall handover to the Superintendent promptly under proper receipt and the Superintendent will carry out necessary verification, and certify the correctness of duty payment on both triplicate & quadruplicate copies of AR4. He will also endorse on the reverse of manufacturers' invoice "GOODS EXPORTED - AR-4 VERIHED; (and return it to the manufacturer under proper receipt). He will forward the triplicate copy to the Maritime Commissioner of the Port from where the goods were/are exported. The quadruplicate copy will be forwarded to his Chief Accounts Officer. The Range Superintendent will also maintain a register indicating name of the exporter. Rangel Division/Commissionerate indicating name of the exporter's godown/warehouse etc.' are located end where AR-4 is prepared, AR-4 No. and date, description of item corresponding invoice No. 'of the manufacturer; remarks regarding verification, date of dispatch of triplicate & quadruplicate copy.

(iii) the quintuplicate copy is to be retained by the superintendent Incharge of the Range from where the goods have been exported for his record.

(iv) the sixtuplicate copy will be given to the exporter for his own record.

8.7 The goods, other than ship-stores, should be exported within a period of six month from the date on which the goods were first cleared from the producing factory or the warehouse or within such extended period (not exceeding two years after the date of removal from the producing factory) as the Commissioner may in any particular case allow, and the claim for rebate, together with the proof of due exportation is filed with the Assistant Commissioner of Central Excise before the expiry of period specified in Section 11B of the Central Excise Act, 1944 (1 of 1944).

8.8 The rebate will be sanctioned, if admissible otherwise after following the usual procedure."

11. Government observes that in this case the applicants cleared the goods from factory to their godown at Bhiwandi, which was admittedly not a registered warehouse. However, the above said circular dated 30.1.1997 provides for permission for the export of goods from a place other than factory or registered warehouse subject to compliance of procedure laid down therein. Hence, rebate claims cannot be rejected merely on the grounds that the goods have not been exported directly from the factory or warehouse. The whole case is required to be seen in context of compliance of the said circular dated 30.1.1997. The department has not brought out any violation of circular dated 30.1.1997 by the applicant. Moreover, the applicant kept the department informed that they are routing their goods through Bhiwandi godown. The applicant got their goods stuffed in presence of excise authority. As such, the applicant cannot be alleged to have violated the provisions contained in the above said circular.

11.1 Government observes that the Original Authority in impugned Orders-in-Original has given the findings that the details regarding quantity, net weight, gross weight, description etc. are exactly tallying impugned AREs-1 and shipping bills; that the Part-II on reverse of ARE-1 contains the Customs

Certification about export of goods vide relevant Shipping Bills; that Customs has certified that goods mentioned on ARE-1 have been exported vide relevant Shipping Bill; that at the same time Part-I on reverse side of ARE-1 has the endorsement of Central Excise Officers, which denotes that identity of goods and its duty paid character is established. The Central Excise Officers are required to verify the particulars of packages/goods lying/stored with the particulars given in ARE-1 Form and if the Central Excise Officer is satisfied about identity of goods, its duty paid character and all the particulars given by the exporter in his application, he will endorse the ARE-1 Form and permit export. In this case no contrary observation is made by Central Excise Officers and therefore they have made endorsement in ARE-1 after doing the requisite verification and allowed exports. In view of, this position, Government finds no force in the contention of department that Central Excise Officers have not made verification as required under CBEC Circular dated 30.01.97. The certification by Central Excise Officers in ARE-1 is certainly required to be done after verifying that goods are in original packing. The Central Excise Officers have nowhere pointed out that goods were not in original packing. So the contention of department regarding correlability is not sustainable. The cross reference of AREs-1 and Shipping Bills is available on AREs-1 and shipping bills. The AREs-1 duly certified by Central Excise Officers and Customs Officers leave no doubt that duty paid goods cleared from factory have been exported as there is no reason to doubt the endorsement of Customs Officers on the ARE-I Form.

12. It is also seen that the applicant has kept the jurisdictional Central Excise office well informed and has invariably taken signatures of Central Excise authorities as well as written permission from Customs authorities for the purpose of impugned exports in a manner as above. Government observes that substantial compliance of provisions of above said Circular dated 30.01.97 has been done by the applicant as discussed above. Government also notes that although there are a catena of judgments that the substantial exports

benefits should not be denied on mere procedural infractions until and unless there is some evidence to point out major violation to defraud the Government revenue. Further, Government has decided identical issues in the case of same applicant party vide Revision Order Nos.934- 937/2013-Cx dated 15.10.2013, 1332-1335/2013-Cx dated 23.10.2013 and 310- 315/2014-Cx dated 19.08.2014. Ratio of the above said judgments is squarely applicable to this case also. In view of above position, Government holds that rebate claims are admissible to the applicants.

13. In view of above discussions, Government sets aside the impugned Order-in-Appeal and allows revision application.

14. Revision application thus succeeds in above terms.

15 So, ordered.

(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No 477/2020-CX (WZ) /ASRA/Mumbai DATED 24.04.2020

To,
M/s Pidilite Industries Ltd.,
Plot No. 67,68,78 & 79,
Bharat Industrial Estate,
Bhimpore, Daman.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

Copy to:

1. The Commissioner of GST & Central Excise, Daman, 2nd floor, Hani's Landmark, Vapi-Daman Road, Chala, Vapi- 396191.
2. The Commissioner of Customs, CGST & Central Excise (Appeals), Central Excise Building, 1st floor Annexe, Race Couse Circle, Vadodara- 390 007.
3. The Deputy Commissioner of CGST & Central Excise, Daman-I Division, 2nd floor, Hani's Landmark, Vapi-Daman Road, Chala, Vapi- 396191.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.