

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, Cuffe Parade,
Mumbai- 400 005

F NO. 195/406/13-RA / 3902

Date of Issue: 10.08.2020

ORDER NO. 491 / 2020-CX (WZ) / ASRA / MUMBAI DATED 02.08. 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 THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s Sumitomo Chemical India Pvt. Ltd., Mumbai,
Respondent : Commissioner of Central Excise, Raigad.
Subject : Revision Application filed, under section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
US/895/RGD/2012 dated 13.12.2012 passed by the
Commissioner of Central Excise (Appeals-II) Mumbai.



ORDER

This revision application is filed by M/s. Sumitomo Chemical India Pvt. Ltd., Mumbai (hereinafter referred to as 'the applicant') against the Order-in-Appeal No. US/895/RGD/2012 dated 13.12.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II.

2. Brief facts of the case are that the applicant had filed following rebate claims totally amounting to Rs.23,56,040/- (Rupees Twenty Three Lakh Fifty Six Thousand and Forty only) with the Deputy Commissioner (Rebate), Central Excise, Raigad.

Sr.No.	Rebate Claim No. & Date	ARE-1 No. & Date	Name of the Manufacturer	Amount of Rebate claimed (Rs.)
1	24146 dated 10.02.2011	12 dated 28.10.2010	M/s Acelo Chem Pvt. Ltd. Pandesara, Surat	8,85,800/-
2.	24353 dated 25.01.2008	133 dated 23.07.2007	M/s Bilag Industries Pvt. Ltd. Vapi	11,58,680/-
3.	4806 dated 15.06.2011	115 dated 28.05.2010	M/s Bilag Industries Pvt. Ltd. Vapi	3,11,560/-
			TOTAL	23,56,040/-

The Deputy Commissioner (Rebate), Central Excise, Raigad vide Order in Original No. 510/11-12/DC(Rebate)/Raigad dated 18.05.2012 rejected these rebate claims on the ground that Chapter sub heading number of the Central Excise Tariff declared in the excise invoice and in the corresponding shipping bills did not tally; in respect of one claim the duty payment certificate from the jurisdictional authority had not been received; the rebate sanctioning authority mentioned on ARE-1 was other than Deputy Commissioner (Rebate), Central Excise, Raigad; the name of the authorized signatory on the ARE-1 was not mentioned; invoice / packing list furnished alongwith the claims did not have the endorsement of central excise authorities; the triplicate copy of the ARE-1 endorsed by central excise authorities was not submitted and one claim was time barred as the documents furnished by claimant provided only proof of posting and no document evidencing delivery of the said document was submitted and thus conditions for grant of rebate under Notification No. 19/2004-CE(NT) were not fulfilled.



4. Being aggrieved, the applicant filed appeal before the Commissioner (Appeals), who vide Order-in-Appeal No. US/895/RGD/2012 dated 13.12.2012 upheld the Order-in- Original No, 510/11-12/DC(Rebate)/Raigad dated 18.05.2012 and rejected the appeal filed by the applicant.

5. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application mainly on the following grounds:

5.1 Non-submission of Triplicate ARE-1 merely, which was misplaced, should not come in the way of granting the rebate which is a substantial benefit accruing to them on export of goods, Original and Duplicate ARE-1 can be considered alongwith other documentary evidences for sanctioning the rebate claim. Even if Original ARE-1 form is not produced, rebate is admissible on basis of other documentary evidencing such as Shipping Bill, Bill of Lading, Mate Receipt etc. They rely on the following judgments:-

- a. Shreeji Colour Chem. Industries v. Commissioner — 2009 (233) E.L.T. 367 (Tribunal),
- b. Hebenkraft — 2001 (136) E.L.T. 979 (G.O.I.),
- c. Barot Exports — 2006 (203) E.L.T. 321 (G.O.I.),
- d. Cotfab Exports — 2006 (205) E.L.T. 1027 (G.O.I.),
- e. Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner — 1991 (55) E.L.T. 437 (S.C.)

5.2 There is no dispute with regard to duty paid nature and export of goods. The genuineness of duty paying nature of export goods is duly certified by the respective Range officers in respect of following ARE-1 as detailed below:

(1) In respect of ARE-1 No.133 dated 23.07.2007 for Rs.11,58,680/- vide F.No.VAPI-I/R-I/Bilag Ind./Export/2012-13/244 dated 28.05.2012;

(2) In respect of ARE-1 No.115 dated 28.05.2010 for Rs.3,11,560/- vide F.No.VAPI-I/R-I/Bilag/Export/2011-12/1011dated 19.03.2012;

(3) In respect of ARE-1 No.12 dated 28.10.2010 for Rs.8,85,800/- vide F.No.R.III/Acetochem-U.T.-Bond/2009-10 dated 14.03.2011.

The above genuineness verification report is issued only against the letter issued in want of genuineness of duty verification report by the office of the Maritime Commissioner of Central Excise (Rebate), Raigad which can be evidenced in the aforesaid verification report:



5.3 To allow the rebate claim the primary condition is that the excisable goods have been exported. In the present case there is no dispute on the facts that the goods have been exported after payment of excise duty. Once the excisable goods have been exported the right to get the rebate of duty arises to the exporter. The provision stated under Section 11B of the Central Excise Act, 1944 are only provisional in nature. They rely on the following judgments:

- a. Birla VXL Ltd. v. Commissioner - 1998 (99) E.L.T. 387 (Tribunal),
- b. Indo Euro Textiles Pvt. Ltd. -1998 (97) E.L.T. 550 (G.O.I),
- c. Collector v. Binny Ltd. -1987 (31) E.L.T. 722.

5.4 In respect of Rebate claim No.4806, which is rejected on the ground that the same was received by speed post on 15.06.2011 and hence time barred, it is submitted that rebate claims through Indian Post vide Speed Post Receipt No.EM787251468IN dated 27.05.2011 which was received in the office of the Maritime Commissioner of Central Excise (Rebate), Raigad on 30.05.2011 itself only. However, the franking numbering was done on rebate claims by the office of Maritime Commissioner of Central Excise (Rebate) Raigad on 15.06.2011. They are under process of obtaining the postal delivery report from Postal Department.

5.5 They had exported the goods on payment of duty and subsequently foreign currency is also received (BRC Enclosed). Hence rebate should not be denied. The corroboration of the goods which has been cleared from the factory has actually been exported can also be evidenced from the following documents:-

- i. ARE-1
- ii. Excise Invoice
- iii. Shipping Bill
- iv. Bill of Lading
- v. Mate Receipt etc.

The copies of the aforesaid excise as well as export documents contain the details regarding batch No. of the goods, description of goods, weight of the goods, details of the export invoice no. which is correlating with other export documents.

5.6 The goods cleared under excise invoice and ARE-1 are correlating in all the export documents such as shipping bills, bill of lading, mate receipt, custom invoice and packing list. ARE-1 shows shipping bill numbers which contains details like description and weight of the goods, port of loading and port of destination respectively. It further contains the Batch No., Lot no. and drum no. and endorsement of



the Superintendent of Customs on the shipping bills and ARE-1s. The said details are also reflected on packing list.

- 5.7 Further, in case of Cotfab Exports 2006(205) ELT 1027 (GOI) has held that description of goods is mainly tallying with the vital documents namely invoices/ARE-1s and shipping bills and substantially tallying with other collateral evidences. Goods have been exported under Customs supervision certifying that the goods exported are covered by the respective ARE-1. As the correlation can clearly established from the substantial documents and goods are exported as well as duty has been paid and therefore rebate should be allowed.
- 5.8 Without prejudice to the above, the procedural infraction of Notification / Circulars etc. Are to be condoned if exports have really taken place, and the law is settled that substantive benefit cannot be denied for procedural lapses. They rely on the following case laws in this context :-

- Cotfab Exports 2006(205) ELT 1027 (GOI),
- Atma Tube Products Ltd. 1998 (103) ELT 270 (T),
- Modern Process Printers 2006 (204) ELT 632 (GOI),

From the aforementioned judgments it can be seen that the fundamental requirement for rebate is manufacture of goods and subsequent export. Once, the substantive condition of export has been compiled, the rebate claim should not be denied merely on the ground of technical lapses

6. Personal hearing in this case was scheduled on 09.12.2019 which was attended by Shri Karan Awtani on behalf of the applicant who reiterated the submission filed through Revision Application and also submitted compendium of case laws relied upon during the said personal hearing. He pleaded that the Revision Application may be allowed and the Order-in-Appeal be set aside.

7. Government has carefully gone through the relevant case records available in case files and perused the impugned Order-in-Original and Order-in-Appeal.

8. Government observes that the Order in Original No. 510/11-12/DC (Rebate)/Raigad dated 18.05.2012 was upheld by the Commissioner (Appeals) on the grounds that the duty payment certificate from the jurisdictional



concerned Range Officers in respect of all the three ARE-1s including ARE-1 No.133 dated 23.07.2007 (in respect of which applicant failed to produce Triplicate copy of ARE-1) to the office of Maritime Commissioner (Raigad). Further there is no dispute that such duty paid goods have not actually been exported. Under such circumstances, when substantial condition of export of duty paid goods stands established, the rebate claims can't be held inadmissible considering a situation that Triplicate copy of ARE-1 is not submitted in terms of ratio of judgment of Hon'ble Bombay High Court.

11. As regards Rebate claim No.4806 the same was rejected as time barred as it was received on 15.06.2011 whereas the consignment was exported on 07.06.2010 (M.R. Date). Government observes that the applicant furnished copy of Speed Post receipt No.EM787251468IN dated 27.05.2011 before Commissioner (Appeals) but could not produce any evidence to substantiate the claim that the same was received in the office of the Maritime Commissioner (Rebate) Raigad on 30.05,2011. The movement particulars (Speed Post Tracking) now produced by the applicant clearly indicate that the Article was delivered at Panvel HPO on 30.05.2011(Monday). As the Office of the Maritime Commissioner (Rebate) Raigad at Panvel and Head Post Office, Panvel are situated within same Pin code No. 410206, it is difficult to believe that the Speed Post article which was received by Head Post Office, Panvel on Monday i.e. 30.05.2011 could not be received/delivered in the office of the Maritime Commissioner (Rebate) Raigad either on 30.05.2011 or on any other working day of the same week. In the circumstances, the claim of the original authority that 15.06.2011 (i.e. the date when franking numbering was done on rebate claims by the office of Maritime Commissioner of Central Excise (Rebate) Raigad) is the date of filing the rebate claim by the applicant cannot be accepted and the applicant ought to be given the benefit of doubt. Therefore, the Rebate claim No.4806 has to be treated as filed in time and is required to be processed accordingly.

12. Government also notes that non mentioning of name of the authorized signatory on the ARE-I documents is a procedural lapse and there are catena of judgements that the substantial exports benefits should not be denied on mere procedural infractions until and unless there is some evidence to point out a major violation to defraud the Government revenue.

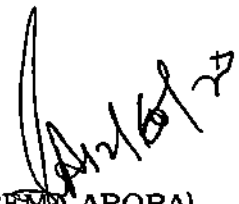


13. Moreover, the applicant has received the foreign remittances in respect of these exports also and produced BRC. As such, the rebate claims cannot be denied to the applicant under Rule 18 of Central Excise Rules, 2002, read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

14. In view of discussion and findings above Government sets aside the Order-in-Appeal No. US/895/RGD/2012 dated 13.12.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II and the matter is remanded back to original authority to sanction the rebate claim after verifying the duty deposit particulars as stated in ARE-I forms/verification letters. The original authority will pass orders, after giving due opportunity of personal hearing also to the applicant in accordance with law, as expeditiously as possible.

15. The revision application is disposed of in the above terms.

16. So, ordered.



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

ORDER No. 491 /2020-CX (WZ) /ASRA/Mumbai, DATED 02.06.2020.

To,

ATTESTED

M/s Sumitomo Chemical India Pvt. Ltd.,
7th Floor, 195, J. Tata Road, Churchgate,
Mumbai.-400 020.

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

Copy to :-

1. The Commissioner of CGST, Belapur CGO Complex, Sector 10, C.B.D. Belapur, Navi Mumbai -400 614.
2. The Commissioner (Appeals) of Central Goods & Service Tax, Raigad, 5th Floor, CGO Complex, Belapur, Navi Mumbai -400 614.
3. The Deputy / Assistant Commissioner (Rebate), Belapur, CGO Complex, Sector 10, C.B.D. Belapur, Navi Mumbai -400 614
4. Sr. P.S. to AS (RA), Mumbai

5. Guard file,
6. Spare Copy.

