

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

195/231/13-RA / 3748

Date of Issue: 31.08.2020

ORDER NO. 513 /2020-CX (WZ)/ASRA/MUMBAI DATED 10.06.2020 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.

- Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.US/780/RGD/2012 dated 14.11.2012 passed by the Commissioner of Central Excise (Appeals)-II, Mumbai.
- Applicant : M/s Coromandel International Ltd., Andhra Pradesh.
- Respondent : The Commissioner, Central Excise, Raigad,



ORDER

This Revision application is filed by M/s Coromandel International Ltd., Andhra Pradesh (hereinafter referred to as 'applicant') against the Order in Appeal No. No.US/780/RGD/ 2012 dated 14.11.2012 passed by the Commissioner of Central Excise (Appeals)-II, Mumbai.

2. The brief facts of the case is that the applicant had filed rebate claims relating to 7 ARE-1s claiming rebate of duty paid on exports amounting to Rs. 15,32,925/- (Rupees Fifteen Lakh Thirty Two Thousand Nine Hundred Twenty Five only). After scrutiny of the claim filed, the department noticed certain deficiencies such as non-filing of triplicate copy of ARE-1 and duplicate copy of manufacturer's invoices. The Deputy Commissioner (Rebate) Raigad vide Order in Original No.432/11-12/DC(Rebate), Raigad dated 15.05.2012 rejected the rebate claim on the ground that the mandatory documents i.e. triplicate copy of ARE-1 and duplicate copy of manufacturer's invoices were not filed and therefore actual duty aspect could not be verified and claims could not be processed.

3. Being aggrieved with the rejection of the rebate claim, the applicant filed appeal before the Commissioner of Central Excise (Appeals)-II, Mumbai who vide Order No. US/780/RGD/2012 dated 14.11.2012 upheld Order in Original No.432/11-12/DC(Rebate), Raigad dated 15.05.2012 and rejected appeal of the applicant.

4. Being aggrieved, the applicant filed present revision application before the Government mainly on the following grounds:

4.1 The Deputy Commissioner (Rebate) has not disputed the actual export of the goods as bank statements regarding realization of sale process had been perused and he was satisfied with the actual exports and the claim for rebate has been rejected merely on the ground that certain documents were not filed at the time of filing the claim and the claim could not be processed because of documents to find out payment of duty at the time of clearance.

4.2 Commissioner of Central Excise (Appeals) in the impugned order while admitting that the triplicate copy of ARE-1 in respect of rebate claim No. 17785 dated 19.4.2010 was available, has rejected the claim on the ground that there was no invoice related to this claim. On the other hand, for the rest of the claim, the Commissioner (Appeals) rejected the claim on the ground that the quadruplicate



copies of manufacturer, invoices were produced only at the time of personal hearing and not at the time of filing the claim. The Commissioner (Appeals) has relied upon the decision of the Government of India in the case of Agarwal Marbles and Industries Pvt. Ltd. reported in 267 ELT 414. This decision of the Government may not be totally applicable to the facts of this case, as in that case, the claimant did not follow the procedure under Notification No. 19 of 2004-CE (NT) dated 6.9.2004 issued under Rule 18 of Central Excise Rules, 2002.

- 4.3 In this context only they relied upon the Government of India, Circulars No. 475/21/99-C.Ex dated 2.8.2000 and Circular No. 487/53/99- C.Ex dated 30.9.1999 wherein the Ministry/CBEC has clarified that any deviations of procedural matters should not be taken into account for rejecting the rebate claim so long as the goods were actually exported and duties therein were paid and that procedural deviations should be ignored, subject to the condition that the goods in question were actually exported and duty was paid.
- 4.4 The quadruplicate copies of manufacturers invoices though produced later cannot be rejected on the ground that it was submitted at the time of hearing. The Xerox copies of the invoices produced earlier and the triplicate copy of ARE-1 or the invoices would indicate clearance of the goods on payment of duty by following the rebate procedure. Scrutiny of records and documents, even otherwise, would prove payment of duties on exports.
- 4.5 In the decision of Tribunal in the case of Alpha Garments vs CCE 1996 (86) ELT 600 and in the case of Stericate Cutstrings vs CCE reported in (158) ELT 779 respectively wherein it was held that even if required procedure is not followed as long as export is proved by way of documents, substantial benefits could not be denied on the ground of nonconformance with technicalities.
- 4.6 They in each of the rejection of rebate claims, attached the following copies collectively towards payment of duty, export of goods and realization of export proceeds:

- a) Letter addressed to Range office intimating export under rebate with full details,
- b) Range Superintendent attested copy of A.R.E.-1,
- c) Triplicate copies of Central Excise Invoice,
- d) Commercial Invoice,
- e) Bill of lading,
- f) Bank Certificate of export and realization,
- g) Shipping Bill for export,



h) Extract of Cenvat register with detail of debit towards payment of duty for exports-attested by Range Supdt.

5. Personal hearing in the matter held on 04.12.2019 was attended by S/Shri M.H Patil and Kiran Chavan, Advocates on behalf of the applicant. They reiterated grounds made in Revision Application and also filed written submissions and compilation of provisions, notifications / CBEC Instructions / Judgments on the date of personal hearing. In their written submissions filed on 04.12.2019, the applicant submitted that it is not the case that they have not submitted any documents but it is a case that the documents (listed at 'a' to 'h' of para 4.6 above) were submitted; that fact of export and duty payment character is not in dispute; that the Ministry /CBEC in the Circulars (mentioned at para 4.3 above) has clarified that any deviations of procedural matters should not be taken into account for rejecting the rebate claim so long as the goods were actually exported and duties therein were paid; that the following judgments relied upon in the impugned Order are no more good law and rebate for such procedural lapses is not deniable:-

1. UM Cables Ltd. 2013(293)ELT 641 (Bom)
2. Zandu Chemicals Ltd. 2015(315) ELT 520 (Bom)
3. Aarti Industries Ltd. 2014 (305) ELT 196 (Bom)
4. Raj Petro Specialities 2017 (345) ELT 496 (Guj)
5. Kaizen Plasto mould Pvt. Ltd. 2015(330) ELT 40 (Bom)
6. United Phosphorous Ltd. 2015 (321) ELT 148 (GOI)
7. Garg Tex-O-Fab Ovt. Ltd. 2011(271) ELT 449 (GOI).

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. Government observes that in the instant case the rebate claims totally amounting to Rs. 15,32,925/- filed by the applicant were rejected by the Deputy Commissioner (Rebate) Raigad vide Order in Original No.432/11-12/DC(Rebate), Raigad dated 15.05.2012 on the grounds that the triplicate copy of ARE-1s and duplicate copy of manufacturer's invoice were not submitted and therefore, actual duty aspect could not be verified and claim could not be processed. Commissioner

(Appeals) while upholding the aforesaid Order in Original, in his impugned Order interalia observed that:



"the appellants have submitted quadruplicate copies of manufacturer's invoice at the time of personal hearing held on 10.1.2012; that para 8.3 of Part I, chapter 8 of CBEC's Central Excise Manual specifies the documents that shall be required for filing claim of rebate and at (iii) of the said para it is mentioned 'invoice issued under rule 11; that now Rule 11(3) stipulated that the invoice shall be prepared in triplicate; that therefore, the requirement of filing the claim of rebate alongwith invoice issued under Rule 11 will be met only when anyone of the three copies of the invoice submitted; that by submitting the quadruplicate copy of and that too, not with the rebate claim, subsequently at the time of hearing, it cannot be construed that the appellants have fulfilled obligation of submitting documents cast upon them. Further quadruplicate copy cannot be accepted as an invoice issued under Rule 11 and therefore, the lower authority has correctly rejected the rebate claims on this ground and the rebate claims cannot be sanctioned for want of the invoice".

8. Para 8.3 of part I of Chapter 8 of C.B.E. & C. Excise Manual of Supplementary Instructions stipulates as under :-

8.3 The following documents shall be required for filing claim of rebate :

- (i) *A request on the letterhead of the exporter containing claim of rebate, A.R.E. 1 numbers and dates, corresponding invoice numbers and dates amount of rebate on each A.R.E. 1 and its calculations,*
- (ii) *Original copy of the A.R.E. 1,*
- (iii) *Invoice issued under rule 11,*
- (iv) *Self attested copy of shipping bill, and*
- (v) *Self attested copy of Bill of Lading.*
- (vi) *Disclaimer Certificate [in case where claimant is other than exporter]*

Perusal of para 8.3 above reveals that it does not specify that only duplicate copy of invoice is to be produced along with the rebate claim.

9. Government in this regard refers and rely on GOI Order No. 1254/2013-CX, dated 13-9-2013 in RE- Cipla Ltd. [2014(311)E.L.T.852(GOI)] GOI while setting aside Order in Appeal which upheld the Order in Original rejecting the rebate claim therein as the applicant could not produce duplicate copy of excise invoices observed as under:-

On perusal of records, Government observes that rebate claim of duty paid on exported goods pertaining to two Central Excise Invoice Nos. 242 and 244 both dated 18-8-2009 was disallowed since applicant failed to submit duplicate copy of the invoice. Government notes that the export of duty paid goods is not disputed by the



department in this case. As per Para 8.3 of Part I of Chapter 8 of C.B.E. & C. Excise Manual of Supplementary Instruction, one of the documents required to be enclosed with rebate claim is invoice issued under Rule 11 of Central Excise Rules, 2002. It does not specify that only duplicate copy of invoice is to be produced as notified in the Mumbai-III Committee Trade Notice No. 2/2006, dated 22-3-2006. In this case, applicant has submitted original invoice since duplicate copy is misplaced. This is only a procedural lapse which can be condoned. The substantial benefit of rebate claim cannot be denied for mere minor procedural lapses as held in catena of judgments. The rebate claim can be considered for sanction on the basis of original invoice if the claim is otherwise in order.

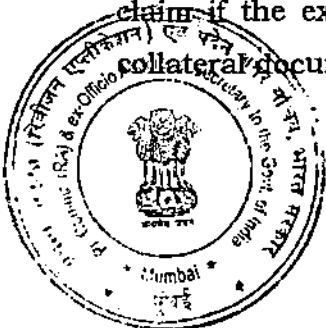
10. In RE: Tricon Enterprises Pvt. Ltd. [2015(320)E.L.T. 667(G.O.I.)] GOI while allowing the Revision application filed by M/s Tricon Enterprises Pvt. Ltd. vide its Order No. 357/2014-CX, dated 14-11-2014 observed as under:

Government proceeds to examine a situation assuming without admitting that the applicant failed to submit original Central Excise invoices. Government notes that Hon'ble Bombay High Court's judgment in case of U.M. Cables Ltd. reported as 2013 (293) E.L.T. 641(Bom.).

Hon'ble High Court of Bombay in its judgment dated 24-4-13 in the case of M/s. U.M. Cables v. UOI (WP No. 3102/13 & 3103/13) reported as TIOL-386-HC-MUM-CX, has held that rebate sanctioning authority shall not reject the rebate claim on the ground of non-submission of original and duplicate copies of ARE-1 forms if it is otherwise satisfied that conditions for grant of rebate have been fulfilled.

Applying the ratio of aforesaid judgment Government finds that even if copy of Excise invoices are not submitted, the export of duty paid goods may be ascertained on the basis of other collateral documents. In this case there is no dispute of payment of duty per se, which is also evident from copies of impugned AREs-1 where in such duty particulars are clearly given. 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 Excise invoices are not submitted in terms of ratio of judgment of Hon'ble Bombay High Court.

11. Relying on the aforesaid GOI orders Government holds that non submission of duplicate /transporter's copy of invoice cannot be ground for rejection of rebate claim if the export of duty paid goods can be ascertained on the basis of other collateral documents.



12. As regards non submission of triplicate copy of ARE-1 Government in this regard also relies on GOI Order Nos. 612-666/2011-CX., dated 31-5-2011 in In Re: Vinergy International Pvt. Ltd., wherein GOI observed as under :

9.9The triplicate copy of ARE-I was required to be certified by Range Superintendent regarding duty payment and forwarded to Asstt. Commissioner Central Excise. The factual position has not been brought on record regarding certification by Central Excise Range Superintendent.

10. In this regard, Govt. further observes that rebate/drawback etc. are export-oriented schemes and unduly restricted and technical interpretation of procedure etc. is to be avoided in order not to defeat the very purpose of such schemes which serve as export incentive to boost export and earn foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical breaches. In *Suksha International v. UOI - 1989 (39) E.L.T. 503 (S.C.)*, the Hon'ble Supreme Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In the *Union of India v. A.V. Narasimhatu - 1983 (13) E.L.T. 1534 (S.C.)*, the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. Similar observation was made by the Apex Court in the *Formica India v. Collector of Central Excise - 1995 (77) E.L.T. 511 (S.C.)* in observing that once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so, had elapsed. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in *Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner - 1991 (55) E.L.T. 437 (S.C.)*. In fact, as regards rebate specifically, it is now a title law that the procedural infraction of Notification, circular, etc. are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned.....

13. Applying the rationale of the aforesaid GOI Orders and also in view of the fact that the applicant has produced xerox copies of triplicate copies of ARE-1s (also submitted original Triplicate copy of claim No. 17785) and quadruplicate copy of invoice, as well as Bank Certificate of export and realization, Government sets



aside Order in Appeal No. No.US/780/RGD/ 2012 dated 14.11.2012 passed by the Commissioner of Central Excise (Appeals)-II, Mumbai and remands the case back to the original adjudicating authority to decide the case afresh after giving proper opportunity to the applicant who shall submit all requisite collateral evidences/documents to prove the export of duty paid goods as per provisions of Notification No. 19/2004-C.E. (N.T.), dated 06.09.2004 read with Rule 18 of Central Excise Rules, 2002. However, the sanction of rebate will be subject to verification of the duty paid nature of the goods as evidenced by collateral documents.

14. The Revision Application is disposed off in the above terms.

15. So, ordered.

(SEEMA ARORA)

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

ORDER No. 513 /2020-CX (WZ) /ASRA/Mumbai DATED, 10.06.2020 .

To,
M/s Coromandel International Ltd.
Coromandel House,1-2-10,
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ATTESTED

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.

