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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.195/43/2014-RA / 3411
F.No.195/44/2014-RA

Date of Issue: 28.07.2010

ORDER NO. ⁵²⁰⁻⁵²¹ /2020-CX (67)/ASRA/MUMBAI DATED 23.06.2020 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.

Applicant : M/s Sud-Chemie India Pvt. Ltd., Cochin

Respondent : Commissioner, Central Excise, Customs & Service Tax, Cochin

Subject : Revision Application filed, under Section 35EE of the Central Excise
Act, 1944 against the Orders-in-Appeal No. 62/2013-C.E. and
63/2013 both dated 22.11.2013 passed by the Commissioner
(Appeals), Central Excise, Customs & Service Tax, Cochin.



ORDER

Two Revision Applications are filed by M/s Sud-Chemie India Pvt. Ltd., Edayar Indl. Development Aread, Binanipuram, Cochin-683 502 (hereinafter referred to as "the Applicant") against the Orders-in-Appeal No. 62/2013-C.E. and 63/2013 both dated 22.11.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Cochin.

2. The issue in brief is the Applicant are manufacturers and exporters of catalyst falling under Chapter Heading 3815 9000 of Central Excise Tariff Act, 1985.

F.No.195/43/2014-RA

2.1 The Applicant had filed a rebate claim of Rs. 2,02,684/- dated 28.03.2008 as detailed below

ARE-1 No & date	Qty exported	S/B No & date	Amount of duty paid (Rs)	Cenvat A/C E No & date
079/06-07 dt 29.03.2007	5249 Kg/10500 Ltr	1438690 dt 28.03.2007	2,02,684/-	E.No. 11 dt 29.03.2007

The claim was sent to the Range officer, Parur for verification. The Range Officer vide letter dated 04.04.2008 reported that the Applicant had exported a total quantity of 5249 kgs of goods after paying a total duty of Rs. 2,02,684/- vide Cenvat credit Entry No. 11 dated 29.03.2007 and also reported that the Applicant had furnished a document as proof of shipment issued by the Deputy Commissioner of Customs, Customs House, Cochin, in lieu of original and duplicate copies of ARE-1 No. 079/06-07 dated 29.03.2007. Since the Applicant had filed claim without the original copy of ARE-1 and instead of forwarding duplicate copy in sealed cover addressed to the Assistant Commissioner, Customs authorities they have enclosed a certificate of proof of shipment. However, the Assistant Commissioner, Ernakulam-1 Division vide Order-in-Original No. 38/2008 dated 24.06.2008 rejected the rebate claim as the Applicant failed to produce the original and duplicate copy of relevant ARE-1. Aggrieved, they filed appeal



with the Commissioner(Appeals) Central Excise, Customs & Service Tax, Cochin. The Commissioner(Appeals) vide Order-in-Appeal No. 62/2013-C.E. dated 22.11.2013 rejected their appeal.

F.No.195/44/2014-RA

2.2 The Applicant had filed a rebate claim of Rs. 12,78,575/- dated 12.03.2008 along with the documents as detailed below

ARE-1 No & date	Qty exported	S/B No & date	B/L No & date	Amount of duty paid (Rs)	Cenvat A/C E.No & date
074/06-07 dt 09.03.2007	25336 Kg/18000 Ltr	5074924 dt 12.03.2007	FCR dt 21.03.2007	12,78,575/-	E.No. 6 dt 09.03.2007

The claim was sent to the Range officer, Parur for verification. The Range Officer vide letter dated 31.03.2008 reported that the Applicant had exported a total quantity of 26336 kgs of goods after paying a total duty of Rs. 12,78,575/- vide Cenvat credit Entry No. 6 dated 09.03.2007 and also reported the date of shipment shown by the Customs Officer on the reverse side of the ARE-1 was 12.03.2007. However, no copy of Bills of Lading was seen to have been attached with the claim as this document would reveal the date of leaving of the vessel, which is the relevant date to consider the time limit for filing the claim. Hence to establish the relevant date/ actual date of the ship/vessel leaving India, the Applicant was issued Show Cause Notice dated 21.04.2008. On receipt of the show cause notice, the Applicant vide letter dated 05.05.2008 requested the original authority to hand them back the original and duplicate copies of the ARE-1 074/06-07 dated 09.03.2007 for getting endorsement from the Bombay Customs and the same was granted on 05.05.2008. But vide letter dated 09.06.2008, the Applicant in reply to the SCN stated that the original and duplicate copies of the said ARE-1 which was sent to Bombay Customs was misplaced in transit and could not be traced even after checking at various levels, and that they have got an endorsement dated 02.06.2008 in their copy from the Superintendent of Customs, Bombay that the vessel left on 21.03.2007. The



Assistant Commissioner of Central Excise & Customs, Ernakulam-I Division, Cochin rejected the rebate claim as time bared as the Applicant failed to produce the Bill of Lading. Aggrieved, they filed appeal with the Commissioner(Appeals) Central Excise, Customs & Service Tax, Cochin. The Commissioner(Appeals) vide Order-in-Appeal No. 63/2013-C.E. dated 22.11.2013 rejected their appeal as being hit by time bar.

3. Being aggrieved, the Applicant filed the two Revision Application on the following grounds:

3.1 **F.No.195/43/2014-RA**

- The Applicant had provided more than sufficient proof to show that the goods in question have been exported. None of the authorities doubt the claim as regard eligibility for rebate as claimed. What remains is only a technicality of the ARE-1 which was not produced and the same should not be permitted to come in the way of otherwise doing justice by allowing legally valid claim.
- The Applicant had complied with Section 11B of Central Excise Act, 1944 as well as Rule 18 of Central Excise Rules, 2002. The rejection of the claim is solely on account of non-compliance of Notification No. 19/2004-CE(NT). Notification No. 19/2004-CE(NT) is issued under Rule 18 of Central Excise Rules, 2002. It is not permissible for a delegated legislation to further delegate the power to legislate unless it is specifically provided under the Parent Act. As the Central Excise Act, 1944 does not permit further delegation of legislative power under the Rules, the Notification No. 19/2004-CE(NT) is wrong in law and, has no power, and is non-est and is unenforceable against the Applicant. Unless the Rules itself provide for conditions making ARE-1 mandatory it cannot be enforced on the Applicant too. Hence, the Commissioner(Appeals) erred in relying on technicalities while rejecting the claim. In this they relied in the case of Home care (i) Pvt Ltd Vs CCE [2006 (197) ELT 110 (Tri Delhi)].



3.2

F.No.195/44/2014-RA

- It is factually incorrect to state that ARE-1 was not presented along with the claim. The facts would show and has been held by the Assistant Commissioner in his order dated 18.06.2008 that the ARE-1 was originally presented along with the claim. However, the same was returned to Applicant for getting necessary corrections in the documents by the Mumbai Customs. The ARE-1's was subsequently lost in transit. The Applicant had produced the office copy of ARE-1 from Mumbai customs. In the absence of any evidence to the contrary the applicant is entitled to claim presumption under section 36A of the Central Excise Act, 1944. The date of 21.3.2007 ought to have been accepted by the adjudicating authority while allowing the claim for rebate. Hence its factually wrong that the claim is barred by limitation.
- The reasons stated for rejecting the various evidences submitted to prove that the vessel sailed on 21.3.2007 are incorrect.
- In the copy of the ARE-1 No. 074/06-Part B for Certification by the customs officer made on 02.06.2008 clearly mentioned that "*Consignment was shipped under my supervision under shipping Bill No. 5074924 dated 12.3.2007 by SS/ Flight No.Iran Hesabi which left on the 21.03.07*". According to the Assistant Commissioner this endorsement is seen corrected by whitener and overwriting. In fact, the date 21.03.2007 is mentioned twice in the certification. As such there is no reason to suspect the certification.
- The shipping Bill date is 12.03.2007 which also confirms that the vessel has left only after 12.3.2007. This shipping Bill and date is referred in the certification by Customs in ARE-1 No. 074/06-07, Part B and also Bank's Certificate of Export and Realisation issued by State Bank of India. It is submitted that the Forwarder's Certificate of Receipt is also dated 21.3.2007 also corroborates the fact that vessel did not leave on 9.3.2007 as concluded by the Assessing Officer.



- The Applicant prayed that the impugned orders be set-aside and their rebate claims be allowed with interest thereof.

4. A personal hearing in the case was held on 03.10.2019. Shri Rajmon K.K. , Sr. Manager, Finance and Shri Jose Jacob, Advocate appeared on behalf of the Applicant and submitted written submissions.

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

F.No.195/43/2014-RA

6. The Commissioner(Appeals) had rejected the Applicant's rebate claim for non-furnishing of Original and Duplicate copies of ARE-1. The Applicant submitted that despite their request, the Customs authorities did not provide them with the Original copy of the ARE-1. Accordingly, the Customs authorities issued proof of shipment dated 25.03.2008 for use as a substitute for ARE-1 and then they filed the rebate claim on 28.03.2008. Their goods had been cleared on payment of duty and goods had been exported, hence non furnishing of original and duplicate ARE-1 is only a procedural lapse and that the same cannot result in denial of substantive benefit. There are caters of judgments stating that substantive benefits can not be denied on mere procedural lapse.

7. In this regard it is noticed that while deciding an identical issue, 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 as TIOI. 386 HC MUM CX. = 2013 (293) E.L.T. 641 (Bom.), observed at para 16 as under :-

"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, Motel 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.

8. Further, the Hon'ble High Court, Gujarat in Raj Petro Specialities Vs Union of India [2017(345) ELT 496 (Guj)] also while deciding the identical issue, relied on aforesaid order of Hon'ble High Court of Bombay.

9. Government finds that rationale of aforesaid Hon'ble High Court orders are squarely applicable to issue in question. Government in the instant case notes that the original and duplicate copies of relevant ARE-1s were misplaced/lost by the Customs. Hence the Deputy Commissioner of Customs, Cochin vide F.No. EDP/01/2004-CUS dated 25.03.2008 issued "PROOF OF SHIPMENT TO SUBMIT AT CENTRAL EXCISE". The Applicant then filed a rebate claim of Rs. 2,02,684/- dated 28.03.2008. The Range Officer in his verification report dated 04.04.2008 also reported that the particulars in the document of proof of shipment with ARE-1 (Triplicate copy), invoice and Shipping Bills were found tallying.

10. Therefore the documents so furnished by the Applicant meguically proves that fact that goods under claim for rebate have been exported and hence the



rebate claim should not be denied on grounds of non production of original & duplicate copy of ARE-1s. It is incumbent upon the adjudicating authority to verify the document evidences furnished by the Applicant and resorting rejection on technical grounds/procedural lapses did not serve the purpose of fairness justice.

F.No.195/44/2014-RA

11. The impugned rebate claim was rejected on grounds that in the absence of endorsed original and duplicate copies of ARE-1 to ascertain the actual date of leaving the vessel, the date of ARE-1 has been taken as the actual date of removal of goods for the purpose of computing time period for Section 11B of Central Excise Act and according the claim was rejected as time barred. Therefore the issue to decide is whether the Applicant have any proof of corroboratory documentary evidence towards actual date of leaving the vessels.

12. In the copy of the ARE-1 No. 074/06-07 in the Part B, the Superintendent of Customs has certified on 02.06.2008 that *"Consignment was shipped under my supervision under shipping Bill No. 5074924 dated 12.3.2007 by SS/ Flight No.Iran Hesabi which left on the 21.03.07"*. Further Mate Receipt of M/s Samsara Shipping Pvt Ltd. shows- MR No. 53367, that Shipping Bill No 5074924, Sailed date 21.03.2007, Received for Shipment on Board the M.V.IRAN HESABI and Voyage 0030. The Exchange Control copy of Shipping Bill No. 5074924 dated 12.03.2007 shows the Vessel Name as IRAN HESABI and Voyage 0030. Therefore the goods appear to have been exported on 21.03.2007. Considering the documentary evidences furnished by the Applicant, the Government holds that the Applicant have a strong case in support of their claim that goods actual left the shores on 21.02.3007 and therefore the date for reckoning for time period under Section 11 of Central Excise Act shall be 21.03.2007 and not the date of ARE-1.

13. With the observations supra, Government remands both the matters to the original authority for the limited purpose of verification of the claim with directions that he shall reconsider the claims for rebate on the basis of the aforesaid documents submitted by the applicant after satisfying the authenticity of those documents. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.



14. In view of above, Government sets aside the impugned Orders-in-Appeal No. 62/2013-C.E. and 63/2013 both dated 22.11.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Cochin

15. The two revision applications are allowed in terms of above.

16. So ordered.


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

ORDER No. ⁵²⁰⁻⁵²¹ /2020-CX (SZ)/ASRA/Mumbai DATED 23.06.2020.

To,
M/s Sud-Chemie India Pvt. Ltd.,
Edayar Indl. Development Area,
Binanipuram,
Cochin-683 502.

ATTESTED


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

Copy to:

1. The Commissioner (Appeals), Central Excise, Customs & Service Tax, Cochin.
2. The Commissioner, Central Excise, Customs & Service Tax, Cochin.
3. The Assistant Commissioner, Ernakulam-1 Division.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file

