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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. 198/33/14-RA/3825

Date of Issue: 10.8.2020

ORDER NO. 525/2020/C.EX (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 : The Commissioner of Central Excise & Service Tax,
Kolhapur.

Respondent : M/s. Hindoostan Technical Fabrics Ltd.,
Plot No. D-1, MIDC, Tasawade, Karad,
Dist- Satara, Maharashtra - 415 109.

Subject : Revision Application filed, under section 35EE (1A) of the
Central Excise Act, 1944 against the Orders-in-Appeal
No. PUN-EXCS-002-APP-175-13-14 dated 29.01.2014
passed by the Commissioner of Central Excise (Appeals),
Pune-II.



ORDER

This revision application has been filed by The Commissioner of Central Excise & Service Tax, Kolhapur (hereinafter referred to as "the applicant") against the Order-in-Appeal No. PUN-EXCS-002-APP-175-13-14 dated 29.01.2014 passed by the Commissioner of Central Excise (Appeals), Pune-II.

2. Brief facts of the case are that M/s. Hindoostan Technical Fabrics Ltd., (hereinafter referred to as 'the respondent') having Central Excise Registration Certificate No. AACCH4457KEM001 for manufacture of excisable goods viz. 'wooden carbon Fibre Fabrics' falling under Chapter sub Heading No. 68 of the Central Excise Tariff Act, 1985 had exported goods on payment of duty and subsequently filed rebate claim of Rs. 50,584/- (Rupees Fifty Thousand Five Hundred Eighty Four Only). The said Rebate claim was sanctioned by the Assistant Commissioner, Central Excise, Satara Divn. vide Order-in-Original No. SATARA/192/ADJ/2012 dated 01.03.2013.

3. On scrutiny of the rebate claim, it was observed that the respondent had failed to submit Original and Duplicate copies of ARE-1, having complete details and particulars of export such as details of the vessel through which the export took place, the date of export and Mate Receipt number. Thus, it appeared that proof of export had not been submitted. Hence rebate claim was not admissible. The applicant, therefore, filed an appeal before the Commissioner (Appeals) Pune-II.

4. The Appellate Authority vide the impugned order has decided the appeal in favour of the respondent. The Appellate Authority, while passing the order, observed that the respondent had submitted connected documents like shipping bills, bill of lading, Export invoice etc. which sufficiently proved the export of goods. The deficiency in the documents (name of the vessel and date not mentioned by Customs Officer, on the reverse of the ARE-1s, in support of the endorsement regarding details of export) was purely procedural or technical and attributable to the



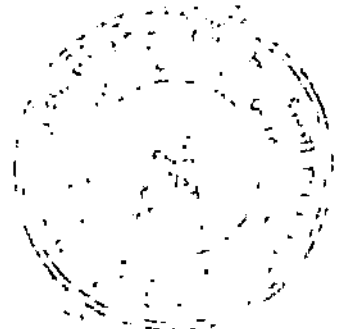
lapses on the part of Customs Officers. The said documents are prepared by the Customs and the respondent had no control. Therefore the respondent cannot be held responsible for any deficiency on the part of Departmental officer. Hence, the Appellate Authority did not agree with the contention that the proof of export was not submitted and thereby dismissed the appeal.

5. Being aggrieved by the impugned Order-in-Appeal, the applicant filed Revision Application on the following grounds :-

5.1 The rebate of duty on export of goods is admissible under the provisions of Section 11 B of the Central Excise Act, 1944. Further, the Notification No. 19/2004-C. E. (N.T.) dated 06.09.2004 issued under rule 18 of Central Excise Rules, 2002 lays down the conditions, limitations and procedure for filing rebate claims with the Department. The details of goods viz. description, classification, quantity, value and duty payable etc. are to be filled in by the exporter on the face of the said ARE-1. Whereas details like Shipping Bill number, Vessel through which export took place is to be filled on the reverse of the ARE-1.

5.2 The reverse side of A.R.E. -1 has four parts A, B, C and D each for a specific purpose. While Part-A, which is the 'Certification by the Central Excise Officer', clearly mentions that the certification pertains to "goods described overleaf ", Part B, which is the 'Certification by the officer of Customs' mentions that the certification pertains to " the above mentioned consignment When read together, the format prescribed as per law clearly stipulates that it has to be prepared in such a way that the details of goods to be exported appear on the face of the said ARE-1 and the certifications by the various authorities in relation to the goods being exported are to be obtained on the reverse of the same.

5.3 The Sr. No. (3) (xiv) of Notification No. 19/2004 C. E. (N.T.) dated 06.09.2004 reads as under :



" The Commissioner of Customs or other duly appointed officer shall examine the consignments with the particulars as cited in the application and if he finds that the same are correct and exportable in accordance with the laws for the time being in force, shall allow export thereof and certify on the copies of the application that the goods have been duly exported citing the shipping bill number and date and other particulars of export."

5.4 In Chapter 8 of the Central Excise Manual, a procedure for sanctioning of claim for rebate has been given. Para 8.4 of the said Chapter reads as under :-

Para 8.4- "After satisfying himself that the goods cleared for export under the relevant ARE-1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of ARE-1 duly certified by Customs ,the rebate sanctioning authority will sanction the rebate , in part or full....".

In the present case, the claimant have failed to submit Original and Duplicate copies, having complete details and particulars of export such as details of the vessel through which the export took place, the date of export and Mate Receipt number. Therefore, it appears that proof of export had not submitted. Hence rebate claim was not admissible.

5.5 The Commissioner (Appeals) has erred while passing the decision in as much as the following judgments, clearly applicable in the instant case, appear not to have been considered:-

- i) The Government of India, Ministry of Finance IN RE West Coast Pigment Corporation {2013 (290)E.L.T. 135 (G.O.I)}, wherein it has been held that ARE-1 is the basic essential document for export of goods under rebate claim, certification of original and duplicate copies of which by customs proves the export of goods. In absence of original/ duplicate copy of ARE-1 duly endorsed by Customs, export of duty paid goods cleared on ARE-1 form from factory cannot be



established, which is fundamental and statutory requirement for sanctioning rebate claim.

ii) The Government of India, Ministry of Finance IN RE Enkay Containers- 2013 (295) E.L.T. 165 (G.O.I.), wherein it has been further held that such requirement being statutory obligation allowing leniency would lead to fraudulent claims of additional/ double benefits.

5.6 The legal position as well as procedure for export and claiming rebate of duty, as outlined above, clearly indicates that documents viz. original/ duplicate copy of ARE-I duly certified by Custom Officer are fundamental requirement for sanctioning rebate claim. In absence of original/ duplicate copy of ARE-1 duly endorsed by Customs, export of duty paid goods cleared on ARE-1 form, from factory cannot be established.

5.7 The Applicant, therefore, requested to set aside the impugned Order in Appeal passed by the Appellate Authority.

6. A Personal hearing was held in this case on 22.01.2020 and Shri Sachin S. Upadhye , Superintendent appeared for hearing on behalf of the applicant. The respondent did not appear for the personal hearing so fixed.

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

8. In the instant case, the original authority viz. Assistant Commissioner, Central Excise, Satara had sanctioned the rebated claim and subsequently Department filed appeal with Commissioner of Central Excise (Appeals), Pune-II. The Commissioner (Appeals), Pune-II dismissed the appeal of the Department. The applicant filed this revision application on grounds mentioned in para (5) above.

9. The Notification No. 19/2004-C.E. (N.T.) dated 6.09.2004 prescribes certain conditions, limitations and procedures and in the present case the



rebate claim was restricted only on the ground of procedural lapses though the character of duty payment on export goods, genuineness of the export has been accepted. The applicant vide their submissions dated 15.01.2015 had submitted the self-attested copies of various documents in support of their contention about genuineness of the export; establishing duty paid nature of export goods and mitigating procedural lapse.

10. It is noticed that in respect of Rebate Claim of Rs.50,584/- covered in ARE-1 No. 002/12 dated 07.09.2012, (Shipping bill no. 1665440 dated 08.09.2012), the respondent submitted the copy of Bill of Lading No. 59090 which incorporates the shipping bill number, Container number and Customs seal as '210325' and corresponding copy of ARE-1 No. 002/12 dated 07.09.12 also contains the certificate by the Customs officer showing the Shipping bill no. as 1665440 dated 08.09.2012 and Mate receipt no. 494 dated 17.09.2012 and this mate receipt also contains the shipping bill number and date on which Vessel left, , container number and custom seal number. The aforementioned documents submitted by the respondent shows that the goods covered in the said ARE-1 have been genuinely exported.

11. In this case, Government finds that there are some procedural shortcomings and these lapses might have been occurred while filing of the rebate claims. However, now the applicant has submitted the true copies of (self-certified) requisite documents to substantiate their rejected rebate claim.

12. It is now a trite law while sanctioning the rebate claim that the procedural infraction of Notification/Circulars 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 requirements. The core aspect or fundamental requirement for rebate is its manufacturer and subsequent export. As long as this requirement is met, other procedural deficiencies can be condoned. Such a view has been taken in *Birla VXL - 1998*



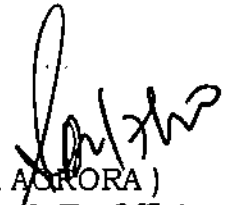
(99) E.L.T. 387 (Tri.), *Alfa Garments* - 1996 (86) E.L.T. 600 (Tri), *Alma Tube* - 1998 (103) E.L.T. 270, *Creative Mobous* - 2003 (58) RLT 111 (GOI), *Ikea Trading India Ltd.* - 2003 (157) E.L.T. 359 (GOI), and a host of other decisions on this issue.

13. In view of the discussions made above and keeping in mind the observations of Hon'ble Supreme Court in judgments cited supra and catena of decisions of Hon'ble CESTAT/Govt. of India that when substantive fact of actual export is not disputed, Government feels that denial of export relief in this case on the sole ground of technical lapses is not justified.

14. In view of above circumstances, Government finds no infirmity in the impugned order-in-appeal and therefore upholds the same.

15. Revision application is disposed of in terms of above.

16. So, ordered.


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

ORDER No. 525/2020-CX (WZ) /ASRA/Mumbai DATED 02/07/2020

To,
M/s. Hindoostan Technical Fabrics Ltd.,
Plot No. D-1, MIDC, Tasawade, Karad,
Dist- Satara, Maharashtra - 415 109.

ATTESTED

Copy to:

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

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5th Floor, CGO Complex, Belapur, Navi Mumbai, Thane.
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Belapur
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file
6. Spare Copy.

