

ORDER

This revision application is filed by M/s Sydler Remedies Pvt. Ltd., Waluj, Aurangabad (hereinafter referred to as "the applicant") against the Order-in-Appeal No.AV(187)209/2014 dated 01.09.2014 passed by the Commissioner (Appeals) of Central Excise & Customs, Aurangabad.

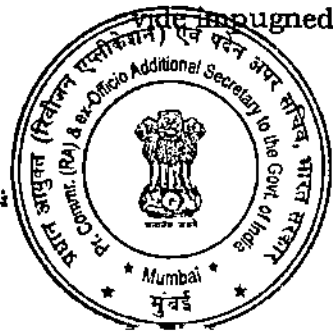
2. Brief facts of the case are that the applicant, a Merchant Exporter had filed rebate claim for Rs. 1,38,205/- for goods cleared for export under claim of rebate from the premises of M/s Decon Herbals Pvt. Ltd., C-3, Sheetal Industries Estate, Mira-Bhayandar Road, Bhayandar (E), Thane. On scrutiny of the above rebate claim, following discrepancies were noticed:-

- (i) *Duty debit particulars/payment particulars made by M/s Decon Herbals Pvt. Ltd., were not submitted along with the claim.*
- (ii) *Duty debit particulars/ payment particulars in respect of the goods cleared for export under claim of rebate were not appearing on ARE-1 No. 1 dated 15.03.2013.*
- (iii) *Certification regarding description and value of the goods and their packing was appearing on the pink copy of above ARE-1 alone. No such certification was appearing on other copies of the said ARE1.*
- (iv) *No details of duty payments, i.e. PLA/Cenvat debit entries were appearing on the copy of Invoice No. DEX/002/2012-13 (not self-attested) submitted with the claim.*
- (v) *Invoice issued under Rule 11 of CER, 2002 was not submitted.*

3. The said claim was returned to the appellant on 18.03.2014 and the above discrepancies were communicated. However, the applicant resubmitted the said claim on 28.03.2014 without compliance of the deficiencies. Therefore show cause notice No. 01/C. Ex. / A.C./2014 dated 29.04.2014 was issued by the Original Adjudicating authority to the applicant proposing rejection of the said rebate claim under Section 11B of the Central Excise Act,1944. The said show cause notice was adjudicated by the Original Adjudicating authority the Order in Original No. 678/CEX/RBT/AC/2014-15 dated 28.05.2014 rejecting the rebate claim filed by the applicant

4. Being aggrieved by the aforssaid Order in Original the applicant filed appeal on before Commissioner (Appeals) Aurangabad. However, the Commissioner (Appeals)

vide impugned order rejected the appeal filed by the applicant observing as under:-



"I have perused the copies of following documents of M/s Decon Herbals Pvt. Ltd.

- (i) copy of Personal Ledger Account (PLA) of for the period 01.01.2013 to 15.03.2013,
- (ii) copy of R. G. 23A (Part II) for the period 01.03.2013 to 31.03.2013,
- (iii) copy of ARE-1 No.1 dated 15.03.2013 and
- (iv) copy of challan dated 20.03.2013 showing deposit of
 - (i) Basic Excise duty Rs..61,396/- (ii) Primary Education Cess Rs. 1,228/- and (iii) Secondary & Higher Education Cess, Rs. 614/-,

I find from copy of ARE-1 No.1 dated 15.03.2013 that goods were cleared for export under the said ARE-1 for export having duty liability of (i) Basic Excise duty Rs, 1,34,179/- Primary Education Cess Rs. 2684/- (iii) Secondary & Higher Education Cess Rs. 1,342/. I have perused the copy of R G 23A (Part II) page no.3 for the Period 01.03.2013 to 31.01.2013 and find that the opening balance and closing balance of Cenvat credit were shown as (i) Basic Excise duty Rs.10,290.14 (ii) Primary Education Cess, Rs.206.26 (iii) Secondary & Higher education Cess Rs. 103.63 only without any credit or debit entries during the whole month. Thus, no duty on goods exported vide ARE-1 No. 1 dated 15.03.2013 was debited from R.G. 23A (Part. II).

I have also perused copy of Personal Ledger Account (PLA) for the period 01.01.2013 to 15.03.2013 showing (i) Opening Balance-NIL. (ii) Total deposits during the period in Basic Excise duty Rs. 72,783/- (against this the total debits were shown as Rs. 1,39,770/-) leaving the negative balance of Rs. 66,987/- i.e. Rs. 72,783/- (-) Rs. 1,39,770/- = Rs. (-) 66,987/.. Thus, even if the deposits in Basic Excise duty vide challan dated 20.03.2013 of Rs.61,396/- were considered then also it falls short of the negative duty liability of Rs. (-) 66,987/-.

Therefore, I hold that the goods were exported without payment of appropriate duty. As no appropriate duty was paid on the exported goods, the rebate claim filed by the applicant cannot be entertained. Since the basic requirement of duty payment on exported goods was not fulfilled, the short comings in other documents need not be discussed for the purpose of evaluating the validity or otherwise of the rebate claim.

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

- 5.1 At the outset it is submitted that they have discharged the appropriate Excise duty liability. They at varied points had submitted details of payment of excise duty of Rs.1,38,205/- Details of the payment are again submitted herewith:-

Particulars	Amount (INR)
Excise duty Payable on invoice No.DEX/002/12-13	1,38,205/-
Duty paid by Challan No.03610862003201380056	63,238/-



dated 20.03.2013	
Duty paid by CENVAT Credit	74,967/-

- 5.2 A copy of challan evidencing payment of duty of Rs.63,238/- has been attached . Further, duly payment of Rs.74,967/- by utilizing CENVAT credit balance can be evidenced from RG 23 A (Part-II) , PLA, ER-3 return etc. From these documents it can be conclusively established that they have paid the appropriate Excise duty.
- 5.3 The OIA has been passed without giving them opportunity to be heard in person. Commissioner (Appeals) has not even considered it necessary to provide an adjournment and thereby an opportunity to them to render submissions.
- 5.4 They have demonstrated that the duty was paid by the applicant. Further it is submitted that all other documents in relation to the rebate claim have been submitted by them. In relation to the other discrepancies, point wise rebuttal was made by them in the appeal memorandum before Commissioner (Appeals). However, the same has been conveniently been ignored in the OIA.
- 5.5 Various judicial precedents have held that rebate / refund are export oriented schemes and unduly restricted and technical interpretation of procedure 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. 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.
- Sanket Industries Ltd. 2011 (268) E.L.T. 125 (G.O.I.)
 - Ikea Trading (India) Ltd. 2003 (157) E.L.T. 359 (G.O.I.)
 - Krishna Filaments Ltd. 2001 (131) E.L.T. 726 (G.O.I.)
 - Allanasons Ltd. 1999 (111) E.L.T. 295 (G.O.I.)
 - Indian Oil Corporation Ltd. Vs UOI 2012 (280) E.L.T. 507 (Guj.)
 - Collector Of Central Excise Vs T.I. Cycles Of India 1993 (66) E.L.T. 497 (Tribunal)
 - Birla VXL Vs CCE Chandigarh, 1998 (99) E.L.T. 387 (Tribunal)
 - Leighton Contractors (India) Pvt. Ltd. 2011 (267) E.L.T. 422 (G.O.I.)
- 5.6 Assuming without admitting that there have been procedural lapses in the documentation relating to rebate claim. The same should be condoned as held by plethora of judicial precedents. Accordingly, the rebate claim filed by them should be allowed.



6. In reply to the Notice dated 15.12.2014 issued under Section 35EE of the Central Excise Act, 1944, the respondent department vide letter F.No. TC/RBT-195/RA/Sydlar/A'bad-II/2014 dated 15.04.2015 submitted that :

as per Notification No. 40/2001-Central Excise (N.T.) dated 20.06.2001 -

“(4) Presentation of claim for rebate to Central Excise.- (a) Claim of the rebate of duty shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner”.

It may kindly be seen from the facts narrated herein above that undisputedly the export has taken place from manufacturer premises and the claim has been filed by Merchant Exporter to the authority other than that prescribed in the Notification No. 40/2001-Central Excise (N.T.) dated 20.06.2001. Thus, the Deputy / Assistant Commissioner Aurangabad-II Division does not have jurisdiction to entertain the claim.

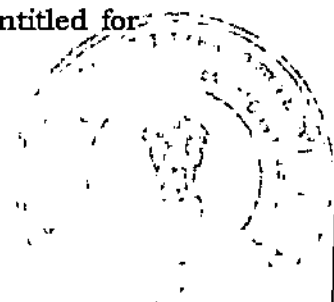
In view of this, the rejection of claim already ordered by the original authority and appellate authority be upheld and the present appeal be considered for rejection on the basis of above submissions.

7. Personal hearing in this case was held on 09.12.2019 which was attended by Shri Rajneesh A. Jain, Chief Financial Officer of the applicant. He reiterated the submissions filed through Revision Application and it was submitted that all duties were paid but due to submission of duty paying documents in piecemeal, it led to confusion. It was pleaded that Order in Appeal be set aside and Revision Application be allowed.

8. Government has carefully gone through the relevant case records available in case files, oral & written submissions/counter objections and perused the impugned Order-in-Original and Order-in-Appeal.

9. Government observes that the Original authority on receipt of rebate claim from the applicant had issued show cause notice to the applicant pointing out the discrepancies noticed in the said rebate claim (mentioned at Sr. No.(i) to (v) of para 2 above). However, the applicant without complying to any of the deficiencies pointed out in the said show cause notice, resubmitted the said rebate claim. As such, the Original authority arrived at a conclusion that all the allegations made in the show

cause notice are proved beyond doubt and held that the claimant is not entitled for



rebate of Rs.1,38,205/- in light of these deficiencies. On appeal being filed by the applicant, the Commissioner (Appeals) on the basis of his observations (detailed at para 4 above) held that the goods were exported without payment of appropriate duty and hence the rebate claim filed by the applicant cannot be entertained. He further held that since the basic requirement of duty payment on exported goods was not fulfilled, the short comings in other documents need not be discussed for the purpose of evaluating the validity or otherwise of the rebate claims.

10. The Department in its cross objection on the ground of revision application vide letter dated 15.04.2015 submitted that the export had taken place from manufacturer premises and the claim has been filed by Merchant Exporter to the authority other than that prescribed in the Notification No. 40/2001-Central Excise (N.T.) dated 20.06.2001. Thus, the Deputy / Assistant Commissioner Aurangabad-II Division does not have jurisdiction to entertain the claim and therefore, the rejection of claim already ordered by the original authority and appellate authority be upheld and the present appeal be considered for rejection on the basis of their submissions.

11. Government observes that if the application was filed with the wrong officer, the said officer/authority could have returned the application directing it to be filed before the jurisdictional officer/Maritime Commissioner. Instead, he considered it on merits and passed an order rejecting it. The applicant appealed to Commissioner (Appeals) and it is clear from the impugned Order that the department also failed to raise this issue of jurisdiction before the Commissioner (Appeals) either. Thus, it is clear that the issue of jurisdiction had not been raised by the Department before the lower authorities. It is only when the applicant filed the present Revision Application against rejection of its appeal by Commissioner (Appeals), that the department has cited/ come up with the issue of jurisdiction at a belated stage.

12. In the case of CCE, Allahabad v. Ghosi Sahkari Kray-Vikray Prakriyatmak Samit, Azamgarh [1988 (34) E.L.T. 716 (Tri.)] it was held way back in 1988 by the Tribunal that when the assessee had made the claim before wrong authority, the authority should have guided the assessee immediately to the proper officer and if not so guided, no fault can be attributed to the assessee and in the case of Modi Rubber Ltd. v. Union of India & Others reported in 1997 (19) RLT 479 (H.C.) Hon'ble Delhi Court had categorically held that refund claims filed before the authority not



having territorial jurisdiction is not void ab initio and can be treated as refund claim if otherwise valid.

13. Government observes that Para 8 of Chapter 8 of C.B.E.& C. Excise Manual of Supplementary Instructions stipulates that the rebate can be sanctioned by Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of production of export goods or the warehouse; or Maritime Commissioner and the exporter has to indicate on the ARE-1 at the time of removal of export goods the office and its complete address with which they intend to file claim of rebate. As the applicant who is a merchant exporter in the present case, intended to file the rebate claim after exports with his jurisdictional Assistant Commissioner at Aurangabad and accordingly mentioned the name of Assistant Commissioner of Central Excise, N-5, CIDCO, Aurangabad Division-II, as rebate sanctioning authority in ARE-1 form. Moreover, the refund claim filed by the applicant was considered for sanction by the Original adjudicating authority as well as by the Commissioner (Appeals) on merits and rejected on the basis of their respective findings. The Government is not inclined to accept Department's view that the rejection of claim already ordered by the original authority and appellate authority be upheld and the present appeal be considered for rejection on the basis of issue of jurisdiction. The Government proceeds to decide the case on merits on the basis of available records.

14. As regards the discrepancies observed by the Original Adjudicating authority, Government observes that the applicant subsequently submitted duty debit / payment particulars made by M/s Decon Herbals Pvt. Ltd. to Original Adjudicating authority. Further, copy of the ARE-1 No. 1 dated 15.03.2013 submitted with the Revision Application mentions the No. and date of Invoice under which duty was paid by M/s Decon Herbals Pvt. Ltd. As regards no certification appearing on some copies of the ARE-1 No.1 dated 15.03.2013, Government observes that the procedure for sealing by Central excise Officer or Self-Sealing and Self Certification procedure, has been prescribed to identify and correlate export goods at the place of dispatch. Government however observes that failure to comply with provision of self-sealing and self-certification as laid down in para 3(a) (xi) of the Notification No.19/2004-CE (NT) dated 06.09.2004 is condonable if exported goods are co-relatable with goods cleared from factory of manufacture or warehouse and sufficient corroborative evidence available to



correlate exported goods with goods cleared under Excise documents. Export oriented schemes like rebate/drawback are not deniable by merely on technical interpretation of procedures, etc. Government further observes that rebate claim cannot be rejected for non submission of Invoice issued under Rule 11 of CER, 2002 as GOI in its Order No. 357/2014-CX, dated 14-11-2014 In Re:- Tricon Enterprises Pvt. Ltd. 2015 (320) E.L.T. 667 (G.O.I.) had held that even if copy of Excise invoices not submitted, export of duty-paid goods can be ascertained on basis of collateral documents .

15. Copy of Form RG 23A (Part-II) for the month March 2013, in r/o M/s Debon Herbals Pvt. Ltd. enclosed to the Revision Application reveals that total amount of Rs.72,785/- (Basic), Rs.1,456/- (Ed. Cess) and Rs. 728/- (H.E.Cess) has been debited against Invoice No. DEX/002/2012-13. It is seen that the opening balance for the said month was Rs. 79,572.43, credits taken during the month were Rs.5,994.60 total amount debited during the month is 74,967/- and closing balance is Rs.10,600.03. Therefore, Commissioner (Appeals)' observation in the impugned order that *'the opening balance and closing balance of Cenvat credit were shown as (i) Basic Excise duty Rs.10,290.14 (ii) Primary Education Cess, Rs.206.26 (iii) Secondary & Higher education Cess Rs. 103.63 only without any credit or debit entries during the whole month. Thus, no duty on goods exported vide ARE-1 No. 1 dated 15.03.2013 was debited from R.G. 23A (Part. II)'* appears to be improper. Also, total duty paid on goods exported vide ARE-1 No. 1 dated 15.03.2013 for which rebate claim is filed is Rs. 1,38,205/- , out of which Amount of Rs 74,967/- is paid through Cenvat Credit by M/s Debon Herbals Pvt. Ltd. and the remaining amount of Rs.63,238/- has been paid by M/s Debon Herbals Pvt. Ltd. vide Challan No.03610862003201380056 dated 20.03.2013, copy of which is also appended to this Revision Application by the applicant.

16. Government observes that as per provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No 19/2004-C.E.(N.T.) dated 06.09.2004, the rebate of duty paid on excisable goods exported is granted subject to compliance of conditions and procedure prescribed in Notification No 19/2004-C.E.(N.T.) dated 06.09.2004. Condition 2(a) of the said Notification stipulates that goods shall be exported on the payment of duty directly from factory or warehouse. Government further notes that as per provisions contained in para 1.1(1) of Part-I, Chapter 8 of CBEC's Excise Manual



of Supplementary Instructions the excisable goods shall be exported after payment of duty. The condition of "payment of duty" is satisfied once the exporter records the details of removals in the Daily Stock Account maintained under Rule 10 of Central Excise Rules, 2002 whereas as per Rule 4(1) of the 'Rules' "every person who produces or manufactures any excisable goods shall pay the duty leviable on such goods in the manner provided in Rule 8 or under any other law". This rule provides that every person engaged in the manufacture of excisable goods, can remove the goods from his factory only after payment of duty leviable on such goods. With effect from 01.04.2003 the assessee was required to pay duty for a particular month by the 5th of the next month. However, duty for the month of March had to be paid by the 31st March. Rule 10 of the said Rules required maintenance of Daily Stock Account by giving complete details of goods produced and manufactured including amount of duty actually paid. As per Rule 8 of Central Excise Rules, 2002 the amounts involved for such exports become entitled for rebate claim when the mandatory provisions of Rule 8 requiring payment to be made by 31st for the month of March & by 5th of next month or complied to the satisfaction of the proper officer.

17. Government observes that in the present case though the goods were cleared for export under ARE-1 No.1 dated 15.03.2013 M/s Debon Herbals Pvt. Ltd. has paid shortfall of duty of Rs.63,238/- vide Challan No.03610862003201380056 dated 20.03.2013, i.e. within the prescribed date i.e. before the 31st of the month from the date of clearance. In view of the above position, Government holds that the applicant is prima facie eligible for rebate under Rule 18 of the Central Excise Rules, 2002 subject to verification of documents by the Original Authority with reference to the mandatory conditions like export of subject goods, their duty-paid character, and then decide the case afresh in accordance with law on merits by taking into account the above observations.

18. In view of above discussion, Government sets aside impugned Order-in-Appeal and remands the case back to the original authority. The applicant is directed to submit all the export documents with respect to concerned ARE-1, duty paying documents (RG23A Part-II & PLA register etc.), BRC as mandated for verification by obtaining the same from the manufacturer M/s Debon Herbals Pvt. Ltd. The original authority will complete the requisite verification expeditiously and pass a speaking



order within four weeks of receipt of said documents from the applicant after following the principles of natural justice.

19. The Revision application is disposed of in the above terms.

20. So ordered.



(SEEMA ARORA)

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

ORDER No. ⁵³² /2020-CX (WZ) /ASRA/Mumbai DATED 06/07/2020.

To,
M/s Sydler Remedies Pvt. Ltd.
M-190, MIDC, Waluj,
Aurangabad-431 210

Copy to:

1. The Commissioner of CGST & CX, N5, Town Centre, Cidco, Aurangabad -431 003
2. The Commissioner of CGST (Appeals), Plot No.155, Sector34, Nh Jaisthavaishakh , Cidco, Nashik 422 008.
3. Assistant Commissioner, CGST & CX, Aurangabad Rural Division, N-5, Town Centre, CIDCO, Aurangabad - 431 003.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

ATTESTED

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

