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REGISTERED SPEED POST AD



**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**

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Mumbai- 400 005

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Date of Issue: 10.8.2020

ORDER NO. ⁵³³⁻⁵³⁶ /2020-CX (WZ) /ASRA/MUMBAI DATED 13/07/2020 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 : Commissioner of CGST & CX, Surat

Respondent : M/s Shree Rama News Prints Ltd.
Barbodhan, Tal. Oplad,
Dist. Surat - 395 005

Subject: Revision Applications filed under Section 35EE of the Central
Excise Act, 1944 against OIA No. SUR-EXCUS-002-APP-012-14-15
dated 19.05.2014, OIA No. SUR-EXCUS-002-APP-025-14-15 dated
16.06.2014, OIA No. SUR-EXCUS-002-APP-026-14-15 dated
16.06.2014 & OIA No. SUR-EXCUS-002-APP-027-14-15 dated
16.06.2014 passed by the Commissioner(Appeals), Central Excise,
Customs & Service Tax, Surat-II.

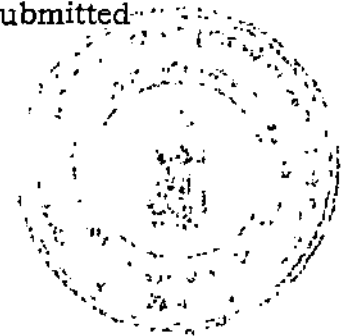


ORDER

These revision applications have been filed by Commissioner, Central Excise & Customs, Surat-II(hereinafter referred to as "the applicant") against OIA No. SUR-EXCUS-002-APP-012-14-15 dated 19.05.2014, OIA No. SUR-EXCUS-002-APP-025-14-15 dated 16.06.2014, OIA No. SUR-EXCUS-002-APP-026-14-15 dated 16.06.2014 & OIA No. SUR-EXCUS-002-APP-027-14-15 dated 16.06.2014 passed by the Commissioner(Appeals), Central Excise, Customs & Service Tax, Surat-II in respect of M/s Shree Rama News Prints Ltd.(hereinafter referred to as "the respondent").

2.1 The respondents are holders of Central Excise Registration No. AAACR2499HXM001 are engaged in the manufacture of News Printing Paper falling under chapter 4802 of the CETA, 1985. They had filed four rebate claims for goods exported by them. They had submitted original copy/xerox copy and extra copies of ARE-1's duly endorsed by customs authorities. They also submitted original copy of central excise invoice, self-certified copy of bill of export, original copy of shipping bill and self-certified copy of bill of lading, original copy of mate receipt, self-certified copy of RG23A Part-II Account, declaration /undertaking for refund of rebate claim amount in case of excess/erroneous sanction of refund alongwith NOC from merchant exporter. The respondents had not filed original(in one case) and duplicate copies of ARE-1 as required under para 8.3 of Part I of Chapter 8 of the CBEC Manual of Supplementary Instructions. The rebate sanctioning authority did not accept their claim and issued SCN for rejection of refund. The rebate sanctioning authority thereafter rejected the rebate claims.

2.2 Aggrieved by the rejection of their rebate claims, the respondent filed appeal before the Commissioner(Appeals). The Commissioner(Appeals) observed that the rebate claims had been rejected because the respondent could not file duplicate copy of ARE-1's as they had been lost/misplaced by their agent. He observed that there was no dispute about the fact that the goods had been exported and that all other documents had been submitted.



to the satisfaction of the rebate sanctioning authority. He further observed that the copies of the ARE-1 had duly been endorsed by the Customs authorities. In fact the rebate sanctioning authority had confirmed from the land customs authorities regarding genuineness of exports. The Commissioner(Appeals) averred that the failure of the respondent to file FIR for loss of documents was a procedural mistake.

2.3 The Commissioner(Appeals) opined that the adjudicating authority had failed to consider the ratio of the judgment of the Hon'ble Bombay High Court in the case of UM Cables Ltd. vs. UOI[2013-TIOL-386-HC-MUM-CX]. He took note of the fact that although the respondent had failed to file the duplicate copy of ARE-1, they had filed extra copy/xerox copy of ARE-1 which bore endorsement of the customs authorities. The Commissioner(Appeals) found that as per the CBEC Manual of Supplementary Instructions, the rebate sanctioning authority was required to satisfy himself about the facts that the goods had been cleared for export and that the goods were duty paid. He opined that the procedure laid down in the notification had been instituted for the same purpose and that this procedure cannot be raised to the level of a mandatory requirement. The Commissioner(Appeals) placed reliance upon the judgement of the Hon'ble Madras High Court in the case of Tablets India Ltd. vs. Joint Secretary, Ministry of Finance and CCE, Chennai-I[2010-TIOL-652-HC-MAD-CX] & the decision in Re : Garg Tex-O-Fab Pvt. Ltd.[2011(271)ELT 449(GOI)]. He concluded that the rebate claimed by them was admissible. However, since they had failed to file FIR for loss of the documents they would not be entitled to any claim for interest. The respondent was cautioned to be more careful and to avoid such mistakes in future. The Commissioner(Appeals) therefore allowed the appeals filed by the respondents vide the four OIA's impugned in these proceedings.

3. The Department found that the OIA's were not proper and legal and therefore preferred revision applications on the following grounds :



(a) The applicant for rebate was required to follow condition no. 3(b)(i) of the notification according to which rebate claims were required to be filed with original copy of ARE-1. Thereafter duplicate copy of ARE-1 received from customs authorities was to be compared with the original copy received from the exporter & the triplicate copy received from the Range Superintendent. The rebate claim was to be sanctioned after carrying out this exercise of verification.

(b) It was further contended that if such vital documents are lost, it is not possible for the AC/DC to compare the copies of ARE-1's and there were chances of misuse/fraudulent claims being filed.

(c) Para 8.3 and 8.4 of Chapter 8 of the CBEC Manual were referred and it was submitted that the AC/DC was required to compare original, duplicate and triplicate copy of ARE-1 & satisfy himself that the goods had been exported.

(d) Reference was made to CBEC Circular No. 81/81/94-CX dated 25.11.1994 and 87/87/94-CX dated 26.12.1994 to contend that one of the required documents for acceptance of proof of export, sanctioning rebate or for granting credit in running bond account or for discharging individual export bond was the attested copy/photocopy of shipping bill (export promotion copy). The said procedure was liberalised to allow self attestation by the exporter himself. It was therefore contended that the Commissioner (Appeals) had wrongly interpreted that non-production of original and duplicate copy of ARE-1's can be exempted.

(e) It was observed that the Commissioner (Appeals) had relied upon supporting documents like bill of export, bank receipt voucher and original copy of central excise invoice as proof of export whereas the Department considers original, duplicate and quadruplicate copies of ARE-1 duly certified by the Customs Officer as the proper documents as they linked the movement of the goods from the factory upto the point where the goods crossed the border of India from the Land Customs Station. Therefore, none of the above supporting documents can be relied upon as proof of export.

(f) It was contended that the Commissioner (Appeals) had erred in not considering that the conditions, limitations and procedures prescribed



under Notification No. 19/2004-CE(NT) dated 06.09.2004 were mandatory in nature and therefore they cannot be relaxed.

(g) The Department contended that the claimant had not lodged FIR with the police for the loss of the documents; viz. the original and duplicate copies of ARE-1's which ought to have been done.

4. Personal hearings were fixed in the matter on 22.10.2018, 15.10.2019 and 22.01.2020. However, neither the Department nor the respondent appeared for personal hearing.

5. Government has carefully gone through the case records, the revision application filed by the Department; the impugned orders and the order passed by the adjudicating authority. Government finds that the common issue for decision in these revision applications is whether the failure of the respondent to submit duplicate copy of the ARE-1 is a condonable lapse or if it would be fatal to the rebate claims. Government in the instant case notes that the original/duplicate copies of the ARE-1's had been lost by the agent/CHA of the respondent.

6. In this regard Government observes that while deciding the 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 TIOL 386 HC MUM CX. = 2013 (293) E.L.T. 641 (Bom.), at para 16 and 17 of its Order observed 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, Model 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.



17. We may only note that in the present case the Petitioner has inter alia relied upon the bills of lading, banker's certificate in regard to the inward remittance of export proceeds and the certification by the customs authorities on the triplicate copy of the ARE-1 form. We direct that the rebate sanctioning authority shall reconsider the claim for rebate on the basis of the documents which have been submitted by the Petitioner. We clarify that we have not dealt with the authenticity or the sufficiency of the documents on the basis of which the claim for rebate has been filed and the adjudicating authority shall reconsider the claim on the basis of those documents after satisfying itself in regard to the authenticity of those documents. However, the rebate sanctioning authority shall not upon remand reject the claim on the ground of the non-production of the original and the duplicate copies of the ARE-1 forms, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled. For the aforesaid reasons, we allow the Petitions by quashing and setting aside the impugned order of the revisional authority dated 22 May, 2012 and remand the proceedings back to the adjudicating authority for a fresh consideration. The rejection of the rebate claim dated 8 April, 2009 in the first writ petition is, however, for the reasons indicated earlier confirmed. Rule is made absolute in the aforesaid terms.

7. Government also observes that Hon'ble High Court, Gujarat in Raj Petro Specialities Vs Union of India [2017(345) ELT 496 (Guj)] also while deciding the identical issue, relying on aforesaid order of Hon'ble High Court of Bombay, vide its order dated 12.06.2013 observed as under :

7. "Considering the aforesaid facts and circumstances, more particularly, the finding given by the Commissioner (Appeals), it is not in dispute that all other conditions and limitations mentioned in Clause (2) of the notifications are satisfied and the rebate claim



have been rejected solely on the ground of non-submission of the original and duplicate ARE1s, the impugned order passed by the Revisional Authority rejecting the rebate claim of the respective petitioners are hereby quashed and set aside and it is held that the respective petitioners shall be entitled to the rebate of duty claimed for the excisable goods which are in fact exported on payment of excise duty from their respective factories. Rule is made absolute accordingly in both the petitions”.

8. Government finds that the rationale of the aforesaid Hon'ble High Court judgments are squarely applicable to this case. It is further observed from the record that the respondent had submitted the following documents to the rebate sanctioning authority along with their rebate claims:

- original copy of central excise invoice,
- self-certified copy of bill of export,
- original copy of shipping bill and self-certified copy of bill of lading,
- original copy of mate receipt,
- self-certified copy of RG23A Part-II Account,
- declaration /undertaking for refund of rebate claim amount in case of excess/erroneous sanction of refund alongwith NOC from merchant exporter

Government observes that the rebate claims had been rejected by the rebate sanctioning authority on the limited ground that the respondent had failed to submit the original/duplicate copy of ARE-1's. It is noted that in the case where the respondent has submitted xerox copy of original copy of ARE-1, the respondent has got the said document attested by the customs authorities. In the other cases, the rebate sanctioning authority has enquired from the Land Customs Station and confirmed that the respondent has actually exported the goods. Therefore, the fact of export of the goods has been established beyond doubt. It is further observed that although the duty paying documents were before the rebate sanctioning authority, he has not recorded any findings which repudiate the genuineness of the duty payment particulars. Government concludes that as the bonafides of export



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are proved the rebate claim cannot be withheld for non-production of original/duplicate copy of ARE-1.

9. Government therefore does not find any infirmity in the impugned OIA's and upholds the OIA's impugned in these proceedings. Government rejects the revision applications filed by the Department.

10. So ordered.


(SEEMA ARORA)

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

ORDER No. ⁵³³⁻⁵³⁶ /2020-CX (WZ) /ASRA/Mumbai DATED 13/07/2020.

To,
M/s Shree Rama News Prints Ltd.
Barbodhan, Tal. Oplad,
Dist. Surat - 395 005

Copy to:

1. The Commissioner of CGST & CX, Surat Commissionerate
2. The Commissioner of CGST & CX, (Appeals), Surat
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy

ATTESTED

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

