

REGISTERED
SPEED POST

F.No. 198/450-453/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
3NEW DELHI-110 066

Date of Issue...19/6/13

ORDER NO. 572-575/13-Cx DATED 18-06-2013 OF THE GOVERNMENT OF
INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE
ACT, 1944.

SUBJECT : Revision Application filed, under section 35 EE of the
Central Excise, 1944 against the Orders-in-Appeal No.
37-40-CE/APPL/Noida/10 dated 24.02.2011 passed by
the Commissioner of Central Excise, (Appeals), Noida.

APPLICANT : Commissioner of Central Excise, Noida

RESPONDENT : M/s Vee Excel Drugs and Pharmaceuticals Pvt.Ltd.,
Noida (UP).

Order

These revision applications are filed by Commissioner of Central Excise, Noida against the Orders-in-Appeal No. 37-40-CE/APPL/Noida/10 dated 24.02.2011 passed by the Commissioner of Central Excise, (Appeals), Noida with respect to Orders-in-Original passed by the Assistant Commissioner, Central Excise, Division-I. M/s Vee Excel Drugs & Pharmaceuticals Pvt. Ltd is the respondent in these cases.

2. Brief facts of the case are that the respondent M/s Vee Excel Drugs & Pharmaceuticals Pvt. Ltd. are a merchant exporter and used to procure medicines from the manufacturer namely M/s Shifa Laboratories (P) Ltd, Noida for export of these purchased goods at their end. M/s Vee Excel Drugs & Pharmaceuticals Pvt. Ltd filed four rebate claims under Rule 18 of Central Excise Rules, 2002 for the Central Excise duty paid on such goods exported. The adjudicating authority issued show cause notices proposing to reject the above said four claims on the ground the ARE-1 procedure, as stipulated under Notification No. 19/2004-CE(NT) dated 06.09.2004, issued under Rule 18 of Central Excise Rules, 2002, was not followed by M/s Vee Excel Drugs & Pharmaceuticals Pvt. Ltd. The adjudicating authority, after considering the submission made by the party, rejected the claims vide impugned Orders-in-Original on the ground that he was not at liberty to condone the procedural lapse when the party failed to make exports on proper ARE-1s as per procedure prescribed under the Notification No. 19/2004-CE(NT) dated 06.09.2004. Being aggrieved with the above said orders of the adjudicating authority, M/s Vee Excel Drugs & Pharmaceuticals Pvt. Ltd, preferred appeals before the Commissioner (appeals) Central Excise, Noida who remanded the case to original authority vide Orders-in-Appeal No. 132-135/CE/Noida/2007 dated 05.12.2007. However, the respondent being aggrieved with the above orders dated 05.12.2007 of remand passed by the Commissioner (appeals) Central Excise, Noida filed Revision

Application before the Revisionary Authority, Government of India who vide its Revision Order No. 1458/10-CX dated 16.09.2010 remanded the matter to Commissioner (appeals), Central Excise, Noida to decide the cases on merits by holding that Commissioner (appeals) has no power to remand the case. Consequent upon the above Revision Order of the Government of India, the Commissioner (appeals), Central Excise, Noida passed the impugned Order-in-Appeal by way of setting aside the Orders-in-Original dated 27.4.2007 and held that the appellant is eligible for the rebate of duty paid subject to the verification of the concerned documents by the adjudicating authority sans ARE-1, if admissible otherwise.

3. Being aggrieved by the said orders-in-original, applicant department has filed appeals before Commissioner (Appeal), who rejected the same.

4. Being aggrieved by the impugned orders-in-appeal, the applicant has filed these revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government mainly the following grounds :

4.1 The provisions of Central Excise, Act, 1944 and Rules made thereunder govern the Rebate of duty paid on export of goods and the procedure as laid down under Rule 18 of Central Excise Rules, 2002 and Notification No. 19/2004-CE(NT) dated 06.09.2004 ought to be followed by the exporters opting to claim the rebate of the duty paid. In the instant case, the respondent failed to follow the prescribed ARE-1 procedure which is a mandatory requirement for claiming rebate under the stipulated provisions. The enabling rule i.e. Rule 18 of Central Excise Rules, 2002 stipulates that rebate is entitled subject to fulfillment of conditions and procedures specified in the Notification issued in terms of the said Rule. Notification No. 19/2004-CE(NT) dated 06.09.2004 has been issued for governing of rebate which outlines conditions and limitations (vide its para

2) and procedure (vide its para 3) in this regard. Sub para (iv) of para 3 of the above said notification read as follows:

"For the sealing of goods intended for export, at the place of dispatch, the exporter shall present the goods along with four copies of application in the Form ARE-1 specified in the Annexure to this notification to the Superintendent or Inspector of Central Excise having jurisdiction over the factory of production or manufacture or warehouse."

The party has admitted that procedure of ARE-1 was not followed due to ignorance of law, Non-compliance of ARE-1 procedure for claiming export rebate is not procedural but mandatory condition. Commissioner (appeals) in para 6.1 admitted that " I find that the exporter never filed any such application i.e. ARE-1 exercising their option for export of goods under the claim of rebate of duty." This is a case where ARE-1 was not followed at all which can not be taken a procedural lapse specially when the goods were not directly exported from the factory but routed through merchant exporter.

4.2 It is pertinent to add here that the two case laws viz. Home Care (I) Pvt. Ltd., Vs. CCE, Delhi reported in 2006 (197) ELT 110 (Tri. Del.) and Harrison Chemicals reported in 2006 (200) ELT 171 (GOI), quoted by the Commissioner (appeals), Central Excise, Noida in its impugned Orders-in-Appeal, are not relevant in the present case as both the cases were remanded, hence not binding. Moreover, these were not on the identical.

4.3 Further, reliance is placed upon the Revision Order 39/2011-Cx dated 19.01.2011 of the Government of India passed in the case of M/s Agrawal Marbles & Industries Pvt. Ltd. captioned as 2011(267) ELT 414 (GOI) facts of which are identical to present case. Ratio of the judgement of Hon'ble Supreme Court of India passed in the case of 1991(55) ELT 454 is also applicable in the Instant case.

5. Show cause notice was issued to the respondent under Section 35EE of Central Excise Act, 1944 to file their counter reply. The respondent vide their

letter dated 31.10.2012 apart from re – iterating contents of impugned Order-in-Original mainly stated that:-

5.1 The Adjudicating authority neither implemented the Commissioner (Appeals) order dated 5.12.2007 as above nor filed an appeal against the same. The findings on the two counts discussed above have therefore become final. The adjudicating authority as well as Commissioner having accepted the said Order-in-Appeal by not challenging the same cannot file an appeal on the basis of same issue by taking the shelter behind the Order-in-Appeal dated 24.02.2011 which has been passed consequent to the order of Government of India F.No. 195/76/08-RA-Cx dated 23.09.2010 which had been passed because the noticee had challenged the remand order given in Order-in-Appeal dated 5.12.2007. The afore said GOI order dt. 19.01.2011 is being sought to be used to uphold the Order-in-Original dated 27.4.2007. The GOI order dated 19.01.2011 cannot be used to reopen the Order-in-Appeal dated 5.12.2007 which the Deptt. had not challenged in appeal and had become the final order which were passed in 2007 and the deptt. had chosen not to challenge Order-in-Appeal dt. 5.12.07 otherwise no matter will ever get settled.

6. Personal hearing was scheduled in the case on 10.10.2012 & 22.02.2013. Hearing held on 10.10.2012 attended by Shri Raghvendra Pal Singh, Assistant Commissioner on behalf of the applicant who reiterated the grounds of revision application. The respondent requested for adjournment on scheduled dates of 18.10.2011 & 06.12.2012. Subsequently, respondent appeared for hearing on 22.02.2013 and reiterated submission made in their written reply dated 31.10.2012.

7. Government has carefully gone through the relevant case records, ground of revision application and counter written submissions made by respondent party and perused the impugned order-in-original and order-in-appeal.

8. Government observes that rebate claims were rejected by the original authority vide impugned Orders-in-Original on the ground that the respondent failed to follow ARE-1 procedure as stipulated under Notification No. 19/2004-CE(NT) dated 06.09.2004. Commissioner (appeals) vide impugned Orders-in-Appeal decided the cases in favour of respondent. Now, the applicant department has filed these Revision Applications on grounds mentioned in para (4) above.

9. In this regard, for proper understanding of issue, the relevant provisions of Notification and instructions regarding filing of rebate claim along with requisite documents are extracted below :-

9.1 Para 8.2, 8.3 and 8.4 of part I of Chapter 8 of CBEC Excise Manual of Supplementary Instructions stipulates as under:-

"8.2 It shall be essential for the exporter to indicate on the A.R.E. 1 at the time of removal of export goods the office and its complete address with which they intend to file claim of rebate.

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]*

8.4 After satisfying himself that the goods cleared for export under the relevant A.R.E.1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of A.R.E. 1 duty certified by Customs, and that the goods are of 'duty-paid' character as certified on the triplicate copy of A.R.E.1 received from the jurisdictional Superintendent of Central Excise (Range Office), the rebate sanctioning authority shall sanction the rebate, in part or full. In case of any reduction or rejection of the claim, an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued."

9.2 Para 3(b) of Notification No. 19/2004-CE/(NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002, envisage as under:-

"3(b) Presentation of claim for rebate to Central Excise:-

- (i) Claim of the rebate of duty paid on all excisable goods 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;*
- (ii) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime Commissioner of Central Excise shall compare the duplicate copy of application received from the officer of customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part."*

9.3 As per these statutory provisions and procedure prescribed under Notification No. 19/2004-CE/(NT) dated 06.09.2004 the goods shall be exported on the application ARE-1, directly from the factory or warehouse. The ARE-1 form, an application for removal of excisable goods for export is presented by the exporter to Superintendent Central excise for goods intended for export who shall verify the identity of goods mentioned in the application and the particulars of duty paid or payable and if found in order shall allow clearance and seal each package or the container in the specified manner and endorse each copy of the application (ARE-1s) in token of having done the examination of goods. The original and duplicate copies of ARE-1 will be handed over to exporter who will present the same before customs. The triplicate copy of application will be sent to the office with whom rebate claim is to be filed. On arrival at place of export, the goods shall be presented to customs together with original duplicate and quadruplicate (optional) copies of the ARE-1 application. The Customs who shall examine the consignments with the particulars as cited in the application and if they find that the same are correct and exportable in accordance with law, shall allow export thereof and certify on the application that the goods have been duly

exported citing the Shipping Bill number and date & other particulars of export. The Customs officers shall return the original copy of the ARE-1 to the exporter and forward duplicate copy of ARE-1 either by post or by handing over to the exporter in a tamper proof sealed cover to the officer specified in the ARE-1 application. The rebate sanctioning authority shall compare the duplicate copy of ARE-1 received from Customs with original copy of ARE-1 received from exporter and also with Triplicate copy of ARE-1 received from Superintendent of Central Excise and if satisfied that claim is in order, he shall sanction the claim either in whole or in part.

9.4 From above position, it becomes quite clear that ARE-1 application is the basic essential document for export of duty paid goods under rebate claim. The Customs certification on these copies of ARE-1 proves the export of goods but in the absence of duly certified copies of ARE-1, rebate sanctioning authority has no chance to compare these documents with triplicate copy of ARE-1 as stipulated under above discussed provisions of Notification No. 19/2004-CE/(NT) dated 06.09.2004 and therefore he can not satisfy himself of the correctness of the rebate claim. So, observance of ARE-1 procedure for export of duty paid goods under rebate claim under Rule 18 of Central Excise Rules, 2002, is an essential requirements which can not be done away with.

9.5 In case of export of goods without payment of duty under bond in terms of Rule 19 of Central Excise Rule 2002, there is a provision under Chapter 7 of CBEC Excise Manual of Supplementary Instructions (the chapter which relate to procedure/instructions in respect of export under bond without payment of duty) for accepting proof of export on the basis of collateral documentary evidences if original and duplicate copies of ARE-1 are lost. But in case of exports on payment of duty under rebate claim in terms of Rule 18 of the Central Excise Rules, 2002, there is no such provision under relevant Chapter 8 of CBEC Excise Manual of Supplementary Instructions (the chapter which relates to

procedure/instruction in respect of export under claim for rebate) for acceptance of collateral document evidence if original and duplicate ARE-1 is missing. In the Chapter 8 of CBEC Excise Manual of Supplementary Instructions, CBEC has not relaxed the condition of submission of original and duplicate ARE-1 alongwith rebate claim in any exegency and therefore respondent's argument that collateral evidences may be accepted.

9.6 Commissioner (appeals), has not taken into account these statutory provision. In case of Harrison Chemicals cited by Commissioner (appeals), the requirement for compliance of ARE-1 procedure was not condoned. Similarly in other case law of M/s Home Care (I) Pvt. Ltd., the issue involved was of refund of Cenvat Credit. As such the ratio of these judgements is not applicable to this case.

9.7 Government notes that nature of above requirement is a statutory condition. The submission of application for removal of export goods in ARE-I form is must because allowing such leniencies would lead to possible fraud of claiming an alternatively available benefit which may amount to additional/double benefit. This has never been the policy of the Government to allow unintended benefit Hon'ble Supreme Court in case of Sharif-ud-Din. Abdul Gani AIR 1980 SC (3403) & 203 (156) ELT (178) Bombay) has observed that distinction between required forms and other declarations of compulsory nature and/or simple technical nature is to be judiciously done. When non-compliance of said requirement leads to any specific / odd consequences then it would be difficult to hold that requirement as non-mandatory. As such there is no force in the plea of the respondent that this lapse should be considered on a procedural lapse of technical nature which is condonable in term of case laws cited by applicant.

10. In view of above position, Government is of considered view non compliance of ARE-1 procedure and non submission of original/duplicate copy of ARE-1 duly endorsed by customs, the export of duty paid goods can not be established which is fundamental requirement for sanctioning the rebate claim under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE/(NT) dated 06.09.2004. As such the rebate claim is not admissible in this case under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004.

11. In view of above circumstances, Government sets aside the orders passed by Commissioner (Appeals) and restores the orders passed by the original adjudicating authority.

12. Revision Applications succeed in terms of above.

13. So, ordered.

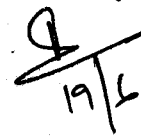


(D.P. Singh)

Joint Secretary to the Govt. of India

Commissioner Customs, Central Excise and Service Tax,
Noida, C-56/42,
Sector-62,
Noida, UP.

(Attested)




(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt of India
नई दिल्ली/New Delhi

G.O.I. Order No.572-575/13-CX dated 18-06-2013

Copy to:-

1. The Commissioner (Appeals), Customs, Central Excise and Service Tax, Noida, C-56/42, Sector-62, Noida, UP.
2. The Assistant Commissioner, Customs, Central Excise and Service Tax, Division-I Commissionerate, Noida, U.P.
3. M/s Vee Excel Drugs and Pharmaceuticals Pvt. Ltd., B-44, Sector-4, Noida.
4. Shri Tek Chand Saini , Advocate, N.K. Sharma & Associates, 131, NH-V, NIT, Faridabad - 121001
- ✓ 5. PS to JS(Revision Application)
6. Guard File
7. Spare Copy.


19/6

(Bhagwat P. Sharma)
OSD-I (Revision Application)

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