सत्यमेव जयते

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, Cuff Parade,
Mumbai- 400 005

F NO. 195/236-239/14-RA/5433 Date of Issue: 12.09.2020

ORDER NO.575-578/2020-CX (WZ) /ASRA/MUMBAI DATED 04.08.2020 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 : M/s. Super Auto Forge Pvt. Ltd., Chennai.

Respondent : The Commissioner of Central Excise, Chennai-IV.

Subject : Revision Applications filed under Section 35 EE of the Central Excise Act, 1944 against Orders-in-Appeal No. 49, 50, 51 & 52 (M-IV) dated 05.05.2014 passed by the Commissioner of Central Excise (Appeals), Chennai.

Order

These Revision Applications are filed by M/s. Super Auto Forge Pvt. Ltd., Chennai, (hereinafter referred to as "the applicant") against the Orders in Appeal No.49, 50, 51 & 52 (M-IV) dated 05.05.2014 passed by the Commissioner of Central Excise (Appeals), Chennai.

2. The brief facts of the case are that the applicant exported Electrical parts covered under chapter No. 85489000 of the Central Excise Tariff Act,1985 from their factory at Chennai under ARE-1s by debiting applicable Basic Excise Duty, Education Cess and S&H Ed. Cess through their Cenvat Credit Account and filed a 4 rebate claims in respect of the duty paid on goods exported by them. Though the applicant had followed self sealing procedure necessary self certification by the authorized person was not made in any of the ARE-1s. Further, invoices submitted by the applicant along with the rebate claims did not show details such as Registration No., Address of the Central Excise Division, Classification, Time and date of Removal, Mode of Transport, Vehicle Registration No., Rate of Duty etc. and hence the said invoices were also not in conformity with invoices required to be made under Rule 11 of Central Excise Rules, 2002. Therefore, in all these four cases, the applicant was issued Show cause Notices proposing to reject the rebate claims on both these counts. After due process of law, the Original Authority rejected all the four rebate claims vide 4 different Orders in Original.

3. Being aggrieved by the said Orders in Original the applicant filed appeals before, Commissioner of Central Excise, (Appeals), Chennai who vide impugned Orders in appeal upheld all the four Orders in Original and rejected the appeals filed by the applicant.

Details of these 4 rebate claims so filed by the applicant are tabulated as under:-

Sr. No.	Amount of Rebate claim (Rs.)	Order in Original No. & Date rejecting the Rebate claims	Reasons for rejection of claim	Order in Appeal No. upholding the Order in Original
1.	2.	3.	4.	5.
1.	4,82,895/-	37/2011 dated 16.02.2012	1) No Self certification by the authorized person of the applicant was appearing on all ARE-1s as required under para 6.1 of Chapter 8 of CBEC's Manual of Supplementary instructions 2005 and para (3) (xi) of Notification No.19/2004-CE(NT) dated 06.09.2004.	49,50,51 & 52 /2014 (M-IV) dated 05.05.2014

			2) Clearance of goods for export were made without preparation of invoice required under Rule 11 of CER, 2002.	
2.	4,75,058/-	38/2011 dated 17.02.2012	do -	do
3.	4,81,710/-	39/2011 dated 17.02.2012	do -	do
4.	58,53,021/-	45/2011 dated 19.03.2012	do -	do
	TOTAL 72,92,684/-			

4. Being aggrieved with the impugned Orders-in-Appeal, the applicant filed this Revision Applications mainly on the following common grounds:

4.1 The order of the lower appellate authority is totally perverse and not in conformity with the Central Excise Act and rules framed therein. They have opted for self sealing procedure and accordingly the authorized signatory of the company signed in the ARE Is stating that whatever declared in the ARE1 are true and correct. There was no specific column for self certification in the ARE Is for which reason the applicants had not mentioned the same specifically;

4.2 As far as second objection saying that exports invoice in terms of Rule 11 of Central Excise Rules not raised for the export consignments, they submit that it is the practice in their organization to issue 'export invoice" for export consignments. Export invoice should be forwarded to the supplier, which will carry the value of the export goods in currency of the supplier's country. There cannot be two invoices for the same consignment and it is not acceptable for the foreign purchaser to describe the goods in the currency of the supplier of the goods. The invoice raised by the applicants is in the format prescribed under Customs Act, and the ARE-Is carry the details of duty payment on such goods through Cenvat Account. Apart from the custom invoice, other documents viz. ARE-I, packing list, shipping bill and other shipment documents will very much correlate with the goods exported to support that the goods exported are duty paid.

4.3 In the Manual of instructions that has been issued by the CBEC specifies the documents which are required for filing a claim for rebate. Among them is the original copy of the ARE I. the invoice and self attested copies of shipping bill and the bill of lading. Para 8.4 specifies that the rebate sanctioning authority has to satisfy himself in respect of essential two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported as evident from the original and duplicate copies of the ARE I form duly certified by customs. The second is that

the goods are of a duty paid character as certified on the triplicate copy of the ARE1 form received from the Jurisdictional superintendent of Central Excise. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

4.4 The procedure which has been laid down in the notification dated 06.09.2004 and in CBEC's Manual of 2005 is to facilitate the processing of an application for rebate and to enable the authority to be duly satisfied that the two fold requirement of the goods having been exported and of the goods bearing a duty character is fulfilled. The procedure cannot be raised to the level of a mandatory requirement. Rule 18, itself makes a clear distinction between conditions and limitation on the one hand subject to which a rebate can be granted and the procedure for the grant of a rebate on the other hand. While the conditions and limitation for the grant of rebate are mandatory, matters of procedure am directory.

4.5 Their claims were rejected in the impugned orders for non fulfillment of procedures specified in para 6.1 and para 8.3(iii) the CBEC Manual of supplementary instructions. As stated above, the procedures required to be followed in terms of CBEC manual are only directory and not mandatory. The sanctioning authority should also consider the other documents viz., bills of lading, Bank realization certificate in regard to inward remittance of export proceeds and the certification by the customs authorities on the ARE-1 forms. But in spite of this the respondent rejected the rebate claim. This is so because he had not given due importance to the two basic facts i.e. duty paid nature of the export goods and the fact of their having been exported and instead they gave undue importance to minor procedural lapses while filing these documents.

4.6 The goods covered under the ARE-1s were shipped, which has been clearly mentioned in Part B of ARE-1s makes it clear that the goods were exported. This has also been authenticated by the proper officer of customs by affixing the customs seal, with signature and seal.

4.7 In order to grant rebate, what has to be seen is whether the goods have been exported and duty on those exported goods had been paid on not. Once the duty paid nature and export proof submitted, then sanction of rebate claim becomes automatic. In the case of In Re: Omsons Cookware Pvt. Ltd reported in 2011 (268) E.L.T. 111 (GOI) has held in Para 14

"14. In this regard, Govt. further observes that rebate/drawback etc. are export-oriented schemes and unduly restricted and technical interpretation of procedure etc. 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 and 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. In Suksha International v. UOI, 1989 (39) E.L.T. 503 (S.C.), the Hon'ble Supreme Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In the Union of India v. A. V. Narasimhalu, 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. Similar observation was made by the Apex Court in the Formica India v. Collector of Central Excise, 1995 (77) E.L.T. 511 (S.C.) in observing that once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so, had elapsed".

4.8 As per the settled legal position substantial benefits cannot be denied because of procedural infractions. It is not the case of department that the goods have been exported without payment of duty. It is well settled law that unless export of goods or payment of duties is disputed, the incentive of rebate cannot be denied for technical deficiencies/lapses. In the case of Mangalore Chemicals and Fertilizers Ltd. v. DCCE - 1991 (55) E.L.T. 437 (S.C.), Hon'ble Supreme Court while drawing a distinction between a procedural condition of technical nature and a substantive condition in interpreting statute observed that procedural lapses of technical nature can be condoned so that substantive benefit is not denied for mere procedural infractions. In fact, it is now trite law that the procedural infractions of notifications/circulars should be condoned if exports have really taken place and the law is settled that substantive benefit cannot be denied for procedural lapses. They submitted all the documents required for filing a rebate claim. Having done so, the department cannot harp of the procedural lapses/documentation. As long as the substantive compliance and the factum of export are not in doubt, rebate being a beneficial scheme, the same should be sanctioned. Reliance is placed on the decisions of the Govemment of India in a similar situation in the following cases.

(i) In Re Modem Process Printers-2006 (204) E.L.T 632
(ii) In Re: Superfil Products ltd., - 2013(295) ELT 152
(iii) UM cables Ltd., to U01— 2013(293) ELT 641(Bom)
(iv) Garg Tex-O-Fab — 2011(271) ELT 449 GOI
(v) Shreeji Colour Chem Industries — 2009(233) ELT 367.

5. The respondent Department in response to the Notice issued under Section 35EE of the Central Excise Act, 1944, vide letter dated V/02/89/2014-R&T dated 29.10.2014 furnished additional submissions on Revision Applications No.

195/236-239/14-Cx filed by the applicant. The respondent Department in said submissions mainly submitted that:-

- Self Certification as per para 6.1 of Chapter 8 of CBEC's Manual of Supplementary Instructions to the effect that *'the description and value of the goods covered by this invoice/ARE-1 have been checked by me and goods have been packed and sealed with lead seal / one time lock sweal having number _____ under my supervision'* was not made by the assessee in the connected ARE-1s and hence there was a non compliance of instructions;

- Vital details such as Registration No., Time and date of Removal, Mode of Transport, Vehicle Registration No., were not indicated in the invoices and hence invoices were not in conformity with Rule 11 of Central Excise Rules, 2002;

- The assessee in Revision Applications submitted that there is no specific column in the ARE-1 and that they have raised export invoice and that two invoices cannot be raised for the same consignment;

- The assessee have not fulfilled the mandatory / directory conditions / procedures laid out under Notification No.19/2004. It is the manufacturer's responsibility of sealing and certification when they have opted to export the goods under self sealing procedure. When the self sealing has not taken place, the veracity / nature of goods exported may not be free from doubt;

- One of the documents as per para 8.3.iii of Chapter 8 of CBEC's Excise Manual of Supplementary instructions for filing of refund claim is Rule 11 invoice. The invoice raised by the assessee does not contain the details required under Rule 11 invoice;

- Rule 18 of Central Excise Rules 2002 allows grant of rebate of duty paid subject to condition / limitation & fulfillment of procedure under Notification No.19/2004 dated 6/9/2004;

- The deviations by the assessee are not just a procedural lapse but a mandatory lapse. Hence the reasons adduced by the assessee in para (b) of grounds appended to the Revision Applications that there was no specific column for self certification in the ARE-1 and in Para (c) and that there cannot be two sets of invoice for the same consignment and that it was not acceptable for the foreign purchaser to describe the goods in the currency of the suppliers of goods is not justified and therefore untenable. The fact that the assessee has been able to correct them now shows that the assessee has disregarded the conditions laid down under Notification No.19/2004 read with Rule 18 of Central Excise Rules,2002.

6. Personal hearing in this case was held on 08.05.2018 before my predecessor which was attended by Mr. R Manzoor Ilahi, Advocate on behalf of the applicant. He reiterated the submission filed through Revision Application and compendium of the case laws during the said personal hearing. It was pleaded their Revision

Applications be allowed and the Orders-in-Appeal be set aside as these are merely technical / procedural lapses and technical infirmities should not be the ground for rejection of rebate claims. Another opportunity of hearing was offered to the applicant on 09.12.2019 on account of change of revisionary authority. However, neither the applicant nor anyone from the respondent department appeared for the said hearing.. As the applicant had been heard by my predecessor and no complex questions of law or facts are involved in the instant Revision Applications, Government proceeds to decide the case on the basis of available records and detailed synopsis submitted by the applicant on 09.04.2018.

7. Government has carefully gone through the relevant case records available in case files, perused the impugned Orders-in-Original and Orders-in-Appeal. The issue involved in all these 4 Revision Applications being common, they are taken up together and are disposed of vide this common order.

8. Government observes that the Original Adjudicating Authority rejected the rebate claims filed by the applicant on the grounds that though the applicant had opted to export the goods under self sealing procedure, there was no Self certification by the authorized person of the applicant appearing on all ARE-1s as required under para 6.1 of Chapter 8 of CBEC's Manual of Supplementary instructions, 2005 and para (3) (xi) of Notification No.19/2004-CE(NT) dated 06.09.2004 and clearance of goods for export were made without preparation of central excise invoice required under Rule 11 of Central Excise Rules, 2002 (details tabulated at para 3 above). The appeal filed by the applicant against the said Orders in Original was rejected by the Commissioner of Central Excise (Appeals), Chennai holding that Self sealing and Self Supervision Certificate on the ARE-1 was a mandatory requirement which was required to be scrupulously followed by the applicant and also for production of invoice which did not contain details such as Registration No., Address of the Central Excise Division, Classification, Time and date of Removal, Mode of Transport, Vehicle Registration No., Rate of Duty etc. and hence the said invoices were also not in conformity with invoices required to be made under Rule 11 of Central Excise Rules, 2002.

9. Government observes that Para (3)(a)(xi) relating to procedure of Notification No. 19/2004-C.E. (N.T.) dated 6-9-2004 provides that where the exporter desires self-sealing and self-certification for removal of goods from the factory or warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit of the goods or the owner of warehouse or a person duly authorized by such owner,

working partner or the Board of Directors of such Company, as the case may be, shall certify all the copies of the application that the goods have been sealed in his presence, and shall send original and duplicate copies of the application along with goods at the place of export, and shall send triplicate and quadruplicate copies of application to the Superintendent or Inspector of Central Excise, having jurisdiction over the factory or warehouse, within twenty-four hours of removal of the goods. Government notes that in the instant case the impugned goods were cleared from the factory without sealing by Central Excise officers and without certification about the goods cleared from the factory under self-sealing and self-certification procedure and therefore the conditions and procedure of sealing of goods at the place of dispatch were not followed.

10. 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 from factory. Such correlation can be done by cross reference of ARE-1s with shipping bills, quantities/weight and description mentioned in export invoices/shipping bills, endorsement by Customs officer to effect that goods actually exported etc. If the correlation, as above is established, then export of duty paid goods may be treated as completed for admissibility of rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. In this regard Government refers and relies on GOI Order 1253-1254/2011-CX, dated 30-9-2011 in Re: Met Trade India Ltd. 2014 (311) E.L.T. 881 (G.O.I.). In this case the Rebate was denied to the applicant by the lower authorities for failure to follow procedure under Notification No. 19/2004-C.E. (N.T.) as goods were not cleared after examination by Central Excise officer or under self-certification and also for failure to produce all four copies of AREs-1. While allowing the Revision Application filed by the applicant, Government observed that substantial requirement for rebate under Rule 18 of Central Excise Rules, 2002 met as goods exported on payment of appropriate duties and rebate claim filed within stipulated period; Duty paid character of goods exported not dispute; Co-relation of exported goods with goods cleared from factory conclusively proved by harmonious perusal of documents produced.... A similar view is also taken by GOI in Re: Bhagvandas Maganlal Shah [2019 (370) E.L.T. 1717 (G.O.I.)] wherein Self-sealing of goods not done, as prescribed in Notification No. 19/2004-

C.E. (N.T.) was held to be a procedural lapse and rebate was allowed to the applicant by the GOI holding that :

> *"Reliance is placed on the judgment of Hon'ble High Court of Bombay in the case of Zandu Chemicals Ltd. v. Union of India wherein the court has held that interpretation of statues, procedural requirement are capable of substantial compliance, and cannot be held to be mandatory 2015 (315) E.L.T. 520 (Bom.). Further, Government, in the case of Agio Pharmaceuticals Ltd. has held substantial condition of Rule 18 of Central Excise Rules, 2002 are complied with, therefore rebate cannot be denied for minor procedural infraction 2014 (312) E.L.T. 854 (G.O.I)".*

11. As regards non issuance of Excise Invoice and non submission of the same along with the rebate claims by the applicant, Government refers and relies on GOI order 158-159/2018-CX, dated 2-4-2018 in Re:- Inani Marbles & Industries Ltd. [2018 (364) E.L.T. 1151 (G.O.I.)] In this case the Department had filed a Revision Application against the Order in Appeal wherein Commissioner (Appeals) had termed non-submission of invoice as a minor lapse despite this document is required for filing rebate claim as per Para 2.2 of Chapter 8 of C.B.E. & C.'s Excise Manual of Supplementary Instructions. While upholding the Order in Appeal and rejecting the Revision Application of the Department, GOI in its aforesaid Order observed as under :-

> ***5.*** *However, on merit the Government does not find the Revision Application maintainable merely because the respondent did not issue the Central Excise invoice in respect of exported goods. Non-issuing of invoice is primarily a breach of Rule 11 of the Central Excise Rules, 2002 and is not a sole evidence of payment of duty. But no penal action is apparently taken against the respondent for non-issuing of the invoice in contravention of Rule 11 and rather this lapse is being used by the applicant for denial of rebate of duty. The Commissioner (Appeals) has rightly observed in his order that the first and foremost condition for getting rebate of duty under Rule 18, read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, is that the goods cleared for export under ARE-1 are actually exported on payment of duty and this condition has been undisputedly satisfied in this case as per payment of duty and export certificates of the Custom Authorities on the original & duplicate copies of the ARE-1. The export of the goods on payment of duty is not doubted by the applicant also anywhere in the Revision Application. Further no allegation is also made that other conditions stipulated in Notification No. 19/2004 have not been complied with this case.Submission of copy of the invoice along with rebate claim is not a condition in the above Notification and its requirement in the C.B.E. & C.'s Manual of Supplementary Instructions is just for guiding the departmental officers for ensuring sanctioning rebate of duty against duty paid exported goods only. But it cannot be given precedence over Rule 18 and Notification No. 19/2004 for denial of rebate of duty to the*

respondent which is granted as an incentive by the Government of India to encourage maximum exports from this country.

12. In light of the various judicial pronouncements discussed above, the Government is of the view that no self-certification on the ARE-1s, and non issuance of Excise invoice is a procedural lapse on the part of the applicant. Government observes that the applicant has enclosed sample copies of the relevant ARE-1s and Export invoices to the Revision Application. However, copies of other export documents such as Shipping Bill, Bill of lading, Mate's receipt etc. are not enclosed. Government further observes that there are no finding of original authority in all the 4 Orders in Original (tabulated at para 3 above) regarding correlation between ARE-1s and export documents submitted by applicant in respect of Rebate claims filed by the applicant and this verification from the original authority is also essential to establish that the goods cleared for export under the aforesaid ARE-I applications were actually exported. Government further holds that if the documentary evidences submitted by the applicant could establish co-relation between goods cleared from the factory for export and goods exported and if the export of the goods on payment of duty is also not doubted then the substantial benefit of rebate cannot be denied for procedural lapse of not furnishing self-sealing and self-certification on the ARE-1s, and non issuance of Excise invoice. The applicant has also claimed to have received Bank realization certificates in regard to inward remittance of export proceeds in these cases.

13 In view of above discussions, the Government sets aside Orders-in-Appeal No.49, 50, 51 & 52 (M-IV) dated 05.05.2014 passed by the Commissioner of Central Excise (Appeals), Chennai and remands all the 4 cases back to original authority for deciding them afresh in accordance with law on merits by taking into account the above observations. A reasonable opportunity of hearing will be afforded to the applicant.

14. The Revision Applications are disposed off in the above terms.

15. So, ordered.

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

575-578
ORDER No. /2020-CX (WZ) /ASRA/Mumbai 04.08.2020

To,
M/s. Super Auto Forge Pvt. Ltd.,
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Copy to:-

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3. The Assistant Commissioner of CGST & CX, Guindy Division , 3rd Floor, EVR Periyar Building Anna Salai, Nandnam, Chennai-600 035.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.