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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.195/257/2014-RA

Date of Issue:

ORDER NO. 597 /2020-CX (WZ)/ASRA/MUMBAI DATED 26 .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 Stallion Laboratories Pvt. Ltd., Ahmedabad.

Respondent : The Commissioner of Central Excise, Ahmedabad-II

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. AHM-EXCUS-
002-APP-014-14-15 dated 24.04.2014 passed by the
Commissioner (Appeals-I), Central Excise, Ahmedabad

ORDER

These Revision Application are filed by M/s Stallion Laboratories Pvt. Ltd., Plot No. 305, 2 7 3, GIDC-Kerala, Bavla, Ahmedabad-382 412 (hereinafter referred to as "the Applicants") against the Order-in-Appeal No. AHM-EXCUS-002-APP-014-14-15 dated 24.04.2014 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad.

2. The issue in brief is that the Applicant is manufacturer of excisable goods namely P.P. Medicine of Chapter 30 of the Central Excise Tariff Act, 1985. The Applicant had filed two rebate claims totaling to Rs. 2,88,968/- dated 15.05.2013 as detailed below:

Sl. No	ARE-1 No & date	Product/Qty exported	S/B No & date	B/L No. & date	Amount of duty paid (Rs)	Cenvat A/C E.No & date
1	30 dt 30.5.12	ORS Powder, 34615 nos	120018 dt 30.5.12	501304956 dt 30.5.12	1,63,330	E.No. 206 dt 30.5.12
2	31 dt 30.5.12	ORS Powder, 34615 nos	120019 dt 30.5.12	501304955 dt 30.5.12	1,25,638	E.No. 207 dt 30.5.12
				Total	2,88,968	

On the grounds that the Applicant had not submitted duplicate copy of the Original/Duplicate copy of ARE-1 No 30 and 31 both dated 30.05.2012 along with the claims. the adjudication authority Deputy Commissioner, Central Excise, Division-IV, Ahmedabad-II vide Order-in-Original No. 4698 to 4699/REBATE/2013 dated 23.09.2013 rejected their claims. Aggrieved, the Applicant then filed appeal with the Commissioner (Appeals-I), Central Excise, Ahmedabad. The Commissioner (Appeals-I) vide Order-in-Appeal No. AHM-EXCUS-002-APP-014-14-15 dated 24.04.2014 held that the rebate claim in respect of ARE-1 30 dated 30.05.2015 is not admissible and in respect of ARE-1 31 dated 30.05.2015 remanded the matter back to the adjudicating authority to consider the claim on merits.

3. Aggrieved with that part of Order-in-Appeal in respect of ARE-1 No. 30 dated 30.05.2015, the Applicant filed Revision Applicant on the following grounds:

- (i) The Commissioner(Appeals) had not followed the instruction contained in Para 2.4 of Chapter 9 and Para 8.3, 8.4 of Chapter 8 of CBEC Manual.
- (ii) They had submitted rebate claim of Rs. 1,63,330/- towards duty paid on goods exported under ARE-1 No. 30 dated 30.05.2012 to Nepal through Land Customs of Nepalganj, Nepal by Road. The Original/Duplicate copy of ARE-1 had not been received from the Custom Authority of Nepal Border directly to the Exporter or to the Central Excise Authority and as the time limit for submission of rebate claim was likely to be over, the Applicant then submitted with the Triplicate copy along with the claim.
- (iii) The Applicant had submitted the Bank realization Certificate dated 14.06.2012 before the adjudicating authority. As the export of goods its remittance and payment of duty is not disputed by the department, the rebate cannot be rejected for non submission of the documents for which the Customs Department is accountable. The Customs Officer has not acted as per Para 3(XV) of Notification No. 19/2004-CE (NT) dated 06.09.2004 and therefore it is the failure on the part of department for which the Applicant should not be punished. In such situation, the department should have inquired with the Office of Land Customs, which was not done. They placed reliance on the cases of UM Cables Ltd Vs UOI [2013 (293) ELT 641 (Bom)], In RE: Bajaj Electrical Ltd [2012(281) ELT 146 (GOI)] and Aarti Industries Ltd Vs UOI [2014 (305) ELT 196 (Bom.)] in this regard.
- (iv) It is general practice at Land Customs at Indo Nepal Border that the Original and Duplicate copy of ARE-1 duly endorsed by the Customs is directly sent to the Rebate Sanctioning Authority of Central Excise or Jurisdictional Range Office of Central Excise and therefore the Office of the Land Customs at Nepal Gunj Customs Office is fully responsible for not forwarding the copies and the department is accountable for such omission. Hence the Applicant cannot be punished as long as the export of goods, payment thereof received by them and payment of duty on export goods are not disputed by the department.

4. The Applicant delayed filing the Revision Application, details of which are as follows :

Sl. No	OIA No. & dt	Revision Application date recd	No. of delay	Application for COD date
1	AHM-EXCUS-002-APP-014-14-15 dated 24.04.2014 (Recd on 25.04.2014)	195/257/2014-RA 26.07.2014	03 days	Filed on 28.07.2014

The Applicant filed the Revision Application along with the Miscellaneous Application for Condonation of Delay 24.04.2014 (herein after as 'COD') of five days.

5. Personal hearing in this case was held on 21.11.2019. Shri Dhaval H. Shah, Manager and Shri R.R. Dave, Consultant appeared on behalf of the Applicants.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal.

7. Government first proceeds to take up the application for COD in filing the Revision application by the Applicant. On consideration of the same, Government condones the delay of 03 days and proceeds to examine the case on merits.

8. On perusal of the records, Government observes that the Commissioner (Appeals) had rejected the Applicant's rebate claim for non-furnishing of Original and Duplicate ARE-1 No. 30 dated 30.05.2012. The Applicant vide their letter dated 21.11.2019 submitted the following documents :

- (i) Original and Duplicate copy of the ARE-30 dated 30.05.2012. (in original) and not in a sealed envelope.
- (ii) Copy of Nepalgunj Customs Pragyapan Patra Manifest, Computer Registration No. R 16169 dated 27.06.2012

- (iii) Copy of Nepal Government, Department of Finance, Customs Department Tax Challan/Receipt No. 765833 dated 13.08.2012
- (iv) Copy of Government of Nepal, Customs Office certificate dated 28.06.2012

Government finds that the department has not disputed the export of goods and payment of duty on export goods thereof as the Applicant was issued Show Cause Notice dated 29.08.2013 only for non submission of the Original and Duplicate copy of ARE-1. The Applicant had submitted the Triplicate Copy of the ARE-1 along with the rebate claim. Government finds that their goods had been cleared on payment of duty and goods had been exported, hence non furnishing of original and duplicate ARE-1 cannot result in denial of substantive benefit.

9. In this regard 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.

10. 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".

11. Government finds that rationale of aforesaid Hon'ble High Court orders are squarely applicable to this case. Government in the instant case notes that the original and duplicate copies of relevant ARE-1s were misplaced/lost by the Customs. The Applicant have now submitted the Original and Duplicate copy of the ARE-1 at the time of hearing.

12. In view of above discussions and findings, Government sets aside the impugned Order-in-Appeal No. AHM-EXCUS-002-APP-014-14-15 dated 24.04.2014 passed by the Commissioner (Appeals), Central Excise, Ahmedabad and in view of submission of Original documents by the Applicant, the case is remanded to the original authority which shall consider and pass appropriate orders on the claimed rebate and in accordance with law.

13. The Revision Application is allowed in terms of above.

14. So ordered.



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

ORDER No. 597/2020-CX (WZ)/ASRA/Mumbai DATED 26 .08.2020.

To,

1. M/s Stallion Laboratories Pvt. Ltd.,
Plot No. 305, 273,
GIDC-Kerala, Bavla,
Ahmedabad-382 412.

Copy to:

1. The Commissioner of CGST, Ahmedabad North, Customs House, 1st floor, Navrangpura, Ahmedabad – 380 009.
2. The Commissioner (Appeals), Central Excise, Ahmedabad.
3. Sr. P.S. to AS (RA), Mumbai
4. ~~Guard file.~~