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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, Cuff Parade,
Mumbai- 400 005

F. NO. 198/55/14-RA/5689 Date of Issue: 28.09.2020
~~08.2020~~

ORDER NO. 600/2020-CX (WZ) /ASRA/Mumbai DATED 27.08.2020 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 : The Commissioner of Central Excise, Kolhapur.

Respondent : M/s Emerson Climate Technologies (I) Ltd.
Atit Pali Road, Atit, Tal & Dist. Satara - 415 519.

Subject : Revision Applications filed, under section 35EE of the
Central Excise Act, 1944 against the Orders-in-Appeal
No.PUN-EXCUS-002-APP-103-13-14 dated 02.04.2014
passed by the Commissioner of Central Excise
(Appeals), Pune-II.

ORDER

This revision application is filed by the Commissioner of Central Excise, Pune (hereinafter referred to as "the Department") against the Order-in-Appeal No.PUN-EXCUS-002-APP-103-13-14 dated 02.04.2014 passed by the Commissioner of Central Excise (Appeals), Pune-II.

2. Brief facts of the case are that M/s Emerson Climate Technologies (I) Ltd., Satara (herein after referred to as "the respondent") are engaged in the manufacture of Gas Compressors falling under Chapter No. 84 of the CETA, 1985. The respondent had cleared excisable goods for export on payment of Central Excise duty vide ARE-1 No. 577 dated 30.12.2011 and filed a rebate claim for Rs. 6,05,466/- (Rupees Six Lakh Five Thousand Four Hundred Sixty Six Only) under Rule 18 of the Central Excise Rules, 2002. On scrutiny of the claim, the Rebate Sanctioning Authority observed that the applicant had not submitted the Original & Duplicate copies of ARE-1 as required under para (3)(b) of Notification No. 19/2004-CE(NT) dated 06.09.2004. The Rebate Sanctioning Authority vide Order in Original No. Satara /20/Adj./2013 dated 02.04.2013l rejected the impugned rebate claim.

3. Being aggrieved, the respondent filed an appeal before Commissioner (Appeals), Central Excise, Pune-II. The Appellate Authority allowed the appeal and set aside the Order in Original.

4. Being aggrieved and dissatisfied with the impugned order in appeal, the Department has filed this Revision Application on the following grounds that ARE-1 is the basic essential document for export of goods under rebate claim. In the absence of Original / Duplicate copy of ARE-1 duly endorsed by Customs, export of duty paid goods cleared on ARE-1 form from factory cannot be established, which is fundamental and statutory requirement for sanctioning rebate claim.

5. A Personal hearing in the matter was granted on 16.01.2020 and 22.01.2020. Shri Mukesh Kumar Kushwaha, Superintendent appeared for hearing on behalf of the Department on 22.01.2020. No one appeared on behalf of the respondent for the personal hearing so granted.

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

7. Government observes that rebate claim was prima facie rejected by the Rebate Sanctioning Authority for the reason that the applicant has not submitted the Original & Duplicate copy of ARE-1 No. 577 dated 30.12.2011.

8. The Government notes that 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 / Duplicate copies of the ARE-1, the invoice and self-attested copy of shipping bill and bill of lading. Further paragraph 8.4 of the said Manual specifies that the rebate sanctioning authority has to satisfy itself in respect of essentially 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-1 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 ARE-1 form received from the jurisdictional Superintendent of Central Excise.

9. In the instant case, the attested photocopies of ARE-1 available on record shows that the container in question was examined and sealed by the Range Superintendent and the Inspector which is substantiated by the endorsement of Central Excise Officers in Part-1 of the ARE-1 No. 577 dated 30.12.2011. Further, the applicant had submitted the photocopies of impugned ARE-1 duly attested by the Customs Authority i.e. the officers endorsing Part -B of ARE-1. As such, non-submission of Original / Duplicate Copies of ARE-1 is a procedural lapse on the part of applicant ARE-1 especially when they have submitted collateral documents viz. shipping bill and bill of lading in respect of the said consignment exported by them. These collateral documents are sufficient to check whether the goods cleared under said ARE-1 had been exported or otherwise. Further, in case of any doubt arising with the Maritime Commissioner the genuineness of the document could have been referred to the Customs Authorities and Central Excise Authorities and could have been verified. However, Government finds that the Rebate Sanctioning Authority had returned the rebate claim without looking in to this aspect and verifying the collateral documents submitted by the applicant along with their rebate claim initially filed on 18.09.2012 which was well within the time limit of one year from the date of export. The applicant said to have submitted the copies of BRC to the Rebate Sanctioning Authority in respect of export proceeds realized in the instant case.

9.2 Government finds that the deficiencies observed by the original adjudicating authority are merely of procedural or technical nature. In cases of export, the essential fact is to ascertain and verify whether the goods have been exported. If the

same can be ascertained from substantive proof in other documents available for scrutiny, the rebate claims cannot be restricted by narrow interpretation of the provisions, thereby denying the scope of beneficial provision. Mere technical interpretation of procedures is to be best avoided if the substantive fact of export is not in doubt. In this regard the Government finds support from the decision of Hon'ble Supreme Court in the case of Suksha International - 1989 (39) ELT 503 (SC) wherein it was held 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 UOI vs. A.V. Narasimhalu - 1983 (13) ELT 1534 (SC), the Apex Court observed that the administrative authorities should instead of relying on technicalities, act in a manner consisted with the broader concept of justice. In fact, in cases of rebate it is a settled law that the procedural infraction of Notifications, Circulars etc., are to be condoned if exports have really taken place, and that substantive benefit cannot be denied for procedural lapses. Procedures have been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is the manufacture of goods, discharge of duty thereon and subsequent export.

10. In view of the discussion in foregoing paras, Government holds that the rejection /returning the rebate claim solely on the ground of non-submission of Original / Duplicate copies of ARE-1, when sufficient collateral documents are available on records, is not just and proper.

11. In view of above position, Government does not find any infirmity in the impugned orders-in-appeal and therefore upholds the same.

12. The revision application is thus rejected in terms of above.

13. So ordered.


(SEEMA ARORA)

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

ORDER No. ⁶⁰⁰/2020-CX (WZ) /ASRA/Mumbai DATED 27.08.2020

To,

M/s Emerson Climate Technologies (I) Ltd.
Atit Pali Road, Atit, Tal & Dist.
Satara - 415 519.

Copy to:

1. The Commissioner of CGST & CX, Kolhapur Commissionerate, Vasant Plaza Commercial Complex, 4th & 5th Floor, C.S. No. 1079/2 K.H., Rajaram Road, Bagal Chowk, Kolhapur- 416 001.
2. The Commissioner of GST & CX, (Appeals-I), Pune, F-Wing, 3rd Floor, GST Bhavan, 41/A, Sassoon Road, Pune-411 001.
3. The Deputy Commissioner, Satara-I Division, Plot-11/14, Old MIDC, Satara-415-004
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.