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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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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. 195/377/14-RA / 5016

Date of Issue:- ~~08-2020~~

09.10.2020

ORDER NO. 618/2020-CX(SZ)/ASRA/MUMBAI DATED 04.03.2020
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.

Sl.No.	Revision Application No.	Applicant	Respondent
1	195/377/2013-RA	M/s SRI Energy Valves Pvt. Ltd., SF No. 115/4, Vadugapatti Village, Illupur Taluk, Viralimalai-621316, Pudukottai Dist.	Commissioner of CGST, Tiruchirappalli.

Subject: Revision applications filed under Section 35EE of the Central Excise Act, 1944, against the Order in Appeal No.TCP-CEX-000-100-14 dated 05.09.2014 passed by the Commissioner of Central Excise(Appeals), Trichirappalli.

ORDER

This Revision application is filed by M/s M/s SRI Energy Valves Pvt. Ltd., SF No. 115/4, Vadugapatti Village, Illupur Taluk, Viralimalai-621316, Pudukottai Dist.(hereinafter referred to as the 'applicant') against the Orders-In-Appeal No. TCP-CEX-000-100-14 dated 05.09.2014 passed by the Commissioner of Central Excise(Appeals), Trichirappalli.

2. The applicants are holders of Central Excise Registration No. AALCS6303EXM001 for manufacturer of Valves falling under Chapter S.H. 84818090 of the First Schedule to the Central Excise Tariff Act, 1985. The Applicant had filed a rebate claim on 08.05.2013 for Rs. 20,09,485/- (Rupees Twenty Lakh Nine Thousand Four Hundred Eighty Five Only) under Section 11B of the Central Excise Act, 1944 being the duty paid on valves removed from the factory under 5 nos. of ARE-1s for export during the month of January 2013. On scrutiny of the rebate claims, the Rebate Sanctioning Authority had observed that in respect of ARE-1 No. 38/SEVPL/12-13 dated 24.01.2013 Bill of Lading and Invoices show the consignee name as M/s Array Holdings, Houston, U.S.A. whereas in the relevant shipping bill the same was mentioned as M/s Cactus Flow Products, Houston, USA. The Auditors in the pre-audit report directed the rebate sanctioning authority to verify the details given in ARE-1, Shipping Bill, Bill of Lading from BRC particulars in order to ascertain the details of buyer, port of discharge, amount and the receipt from the buyer. However, the applicant vide their letter dated 12.09.2013 informed that they had not realised the proceeds from their customer for the impugned ARE-1 and they were unable to produce the BRC for the said ARE-1. As such rebate amount of Rs. 2,76,258/- (Rupees Two Lakh Seventy Six Thousand Two Hundred and Fifty Eight Only) in respect of ARE-1 No. 38/SEVPL/12-13 dated 24.01.2013 was rejected vide Order in Original No. 100/2013-R dated 13.09.2013.

3. Being aggrieved by the Order in Original, the applicant filed appeal before the Commissioner of Central Excise (Appeals), Tiruchirappalli. The appellate authority vide Order in Appeal No. TCP-CEX-000-APP-100-14 dated 05.09.2014 rejected the appeal and upheld the Order in Original. The appellate authority observed that :-

3.1 BRC is an essential document which will give the actual export realisation particulars against the subject ARE-1.

3.2 In the absence of such document the rebate sanctioning authority was not in a position to establish identity of exported goods and co-relate with goods actually cleared through ARE-1.unable to correlate the details as per BRC in respect of impugned ARE-1.

3.3 corrected copy of shipping bill was not submitted.

5. Aggrieved by the said order, the applicant filed this Revision Application on following grounds :-

5.1 Let Export Certificate had been issued and further non-re-landing of the export goods had also been confirmed and hence there could be no doubt regarding export of goods.

5.2 The exported goods had suffered duty as per particulars in ARE-1 and this was not in dispute.

5.3 The ARE-1 No. was mentioned in the shipping bill.

5.4 The appellate authority cannot reject the BRC filed by the applicant on the plea that this was not produced before the Original Authority.

5.5 The submission of BRC is not condition precedent for sanction of rebate claim under Rule 18 of Central Excise Rules, 2002.

5.6 The appellate authority cannot be heard to say that because of discrepancy in the claim i.e. consignee name in the invoice and shipping bill being different the export goods cannot be established.

5.7 Rebate claim cannot be rejected on technical grounds when there is substantive compliance regarding export.

6. A Personal Hearing in the matter was fixed on 24.05.2018, 10.10.2019 and 28.11.2019. Shri R. Raghvan and Shri M. Kannan, Advocates attended the same on behalf of the applicant. No one appeared on behalf of the respondent on 28.11.2019.

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

8. In the instant case, the Government finds that the impugned rebate claim was rejected by the original authority on the grounds that there was difference in consignee name shown in the Bill of Lading and Invoices and that of the relevant shipping bill. It is seen that these discrepancies could have been sorted out by verifying the collateral documents available on the records or by calling for the same from the applicant. The Government observes that on pre-audit of the claim, the IAD (Audit) section of the department instructed the rebate sanctioning authority to verify the said details given in ARE-1, shipping bill, bill of lading from the BRC particulars in order to ascertain the details of buyer, port of discharge etc. However, the applicant could not produce the relevant BRC to the original authority for such verification and hence the claim was rejected. It is further found that the applicant had filed the said BRC to the Appellate Authority, however the same was taken note of as it was not produced before the original authority. Government finds that the BRCs are required to be verified to determine its authenticity, validity and as to whether the export proceeds were realised within stipulated period.

9. 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 consistent 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.

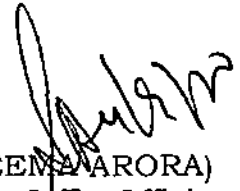
10. In view of the fact that the applicant have done substantive compliance with respect to the rebate claim filed by them in the instant case, the Government holds that in the interest of justice, a reasonable opportunity is required be given to the applicant to produce the relevant BRC for necessary verification of the details found to be varying in export document submitted by them alongwith impugned rebate claim. Therefore, Government directs the applicant to furnish relevant BRC copies in original for verification to the Original Authority for verification and processing the rebate claim afresh on the basis of outcome of such verification.

11. In view of discussion in foregoing para, the Government sets aside the impugned Order in Appeal and remands the case back to the Original Authority for fresh decision in the matter on the basis of verification of the BRC submitted by the applicant. The department Applicant are directed to produce

the BRC to the Original Authority within a period of four weeks from the date of receipt of this order for necessary verification.

12. The revision application is allowed on the above terms.

13. So ordered.



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

To

M/s SRI Energy Valves Pvt. Ltd.,
SF No. 115/4, Vadugapatti Village,
Illupur Taluk, Viralimalai-621316,
Pudukottai Dist.

Copy to :

1. The Commissioner of CGST, Trichy Commissionerate, No. 1, Williams Road, Cantonment, Trichy- 620 001.
2. The Commissioner of CGST & Central Excise (Appeals), No. 1, Williams Road, Cantonment, Trichy- 620 001.
3. The Assistant Commissioner of Central Tax (GST) & Central Excise, Ponnagar, Medical College Road, Thanjavur - 613 007.
4. Sr.P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare copy.