

REGISTERED SPEED POST



**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**  
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F NO. 198/44/14-RA / 8544

Date of Issue: 02.10.2020

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ORDER NO. 647 /2020-CX (WZ) /ASRA/MUMBAI DATED 15.09.2020 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 CENTRAL EXCISE ACT,1944.

**Applicant** : Commissioner, Central Excise, Kolhapur.

**Respondent** : M/s Rieter India Pvt. Ltd., Satara.

**Subject** : Revision Application filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. PUN-EXCUS-002-APP-196 to 197-13-14 dated 28.02.2014 passed by the Commissioner (Appeals), Central Excise Pune-II.

**ORDER**

This Revision Application has been filed by the Commissioner of Central Excise, Kolhapur (hereinafter referred to as the "applicant") against the Order -in -Appeal No. PUN-EXCUS-002-APP-196 to 197 -13-14 dated 28.02.2014 passed by The Commissioner (Appeals) Central Excise, Pune-II.

2. The brief facts of the case is that M/s Rieter India Pvt. Ltd., Satara (hereinafter referred to as the "respondent") had cleared excisable goods for export on payment of central excise duty and subsequently filed rebate claims for the relevant ARE-1s amounting to Rs.1,52,60,684/- and Rs.20,68,933/-. The said Rebate claims were sanctioned by the Assistant Commissioner, Central. Excise, Satara Division vide the Orders-in-Original No. SATARA/26/ADJ/2013 dated 17.05.2013 and SATARA/ 28/ADJ/2013 dated 17.05.2013 respectively.

3(a). On scrutiny of rebate claims in respect of the Order in Original involving rebate amount of Rs.1,52,60,684/- the following discrepancies were noticed :

- in the ARE-1 No. 1120 dated 21.11.2012 involving rebate of Rs. 32,18,309/-, ARE-1 No. 1121 dated 21.11.2012 involving rebate of Rs. 32,18,309/- and ARE 1 No. 1130 dated 29.11.2012 involving rebate of Rs. 5,69,895/- it was observed that the sailing date of vessel mentioned in the concerned Mate Receipt and in Part-B of the said ARE-1s was not tallying with the respective dates mentioned in the concerned Bill of Lading. Also, in respect of the above mentioned ARE-1 Nos. 1120 & 1121 it was also observed that the Shipping Bill No. mentioned in the Bill of Lading was not tallying with the corresponding Shipping Bill.
- Further in the ARE 1 No. 1107 dated 31.10.2012 involving rebate of Rs. 5,16,550/- and the aforementioned ARE-1 No. 1130 it was observed that there was no information about the concerned Shipping Bill given in the corresponding Bill of Lading. Thus the documents submitted by the respondent were not tallying with each other. Therefore, the documents submitted were not evidence of proof of export.

3(b). In respect of the Order in Original involving rebate amount of Rs, 20,68,933/- the following discrepancies were noticed :

- in the ARE-1 No. 1122 dated 21.11.2012 involving rebate of Rs. 2,58,925/- it was observed that the sailing date of vessel mentioned in the concerned Mate Receipt and in Part-B of the said ARE-1 is not tallying with the respective date mentioned in the concerned Bill of Lading.
- In respect of ARE-1 Nos. 1118 dated 20.11.2012 involving rebate of Rs. 78,422/-, 1125 dated 28.11.2012 involving rebate of Rs. 6560, 1126 dated 28.11.2012 involving rebate of Rs. 13,886/-, 1128 dated 29.11.2012 involving rebate of Rs. 1,309/-, 1129 dated 29.11.2012 involving rebate of Rs. 1,79,937/-, 1149 dated 17.12.2012 involving rebate of Rs. 1,28,888/- and 1159 dated 28.12.2012 involving rebate of Rs. 1,08,206/- it was observed that in the Part-B of the said ARE-1s the flight date mentioned is not tallying with the respective date mentioned in the concerned Airway bill and or the EGM filing date. Thus the documents submitted by the applicant were not tallying with each other. Therefore, the documents submitted were not evidence of proof of export.

4. The Commissioner, Central Excise, Kolhapur, in exercise of powers vested under section 35E (2) of Central Excise Act, 1944, examined the records of proceedings of the said Orders-in-Original and on being not satisfied with the legality and propriety of the orders passed by the jurisdictional Assistant Commissioner, vide two Orders dated 06.08.2013 and 20.08.2013, directed the Jurisdictional Assistant Commissioner to file applications with the Commissioner (Appeals) for determination of points mentioned in the said directions arising out of the aforementioned Order in Original. Accordingly the Department filed appeal before the Commissioner (Appeals) Pune-II against the Orders-in-Original No. SATARA/26/ADJ/2013 dated 17.05.2013 and SATARA/28/ADJ/2013 dated 17.05.2013 requesting him to set aside the Orders in Original to the extent of sanction of rebate of Rs. 75,23,063/- & Rs. 7,76,133/- respectively.

5. Commissioner (Appeals) vide impugned Order upheld the Orders-in-Original No. SATARA/26/ADJ/2013 dated 17.05.2013 and SATARA/28/ADJ/2013 dated 17.05.2013 and rejected the appeal filed by Department.

6. Being aggrieved with the Order-in-Appeal, the applicant has filed this Revision Application mainly on the following grounds :

- 6.1 The rebate of duty on export of goods is admissible under the provisions of Section 11 B of the Central Excise Act, 1944. Further, the Notification No. 19/2004-C.E. (N.T.) dated 06.09.2004 issued under rule 18 of Central Excise Rules, 2002 lays down the conditions, limitations and procedure for filing rebate claims with the Department. The details of goods viz. description, classification, quantity, value and duty payable etc. are to be filled in by the exporter on the face of the said ARE-1, whereas details like Shipping Bill number, Vessel through which export took place is to be filled on the reverse of the ARE-1. It was the sole responsibility of the exporter to confirm the correctness of the details filled in at the time of clearance itself.
- 6.2 The reverse side of A.R.E. -1 under the notification has four parts A, B, C and D each for a specific purpose. While Part-A, which is the 'Certification by the Central Excise Officer', clearly mentions that the certification pertains to "goods described overleaf .....", Part B, which is the 'Certification by the officer of Customs' mentions that the certification pertains to " .....the above mentioned consignment ....."
- When read together, the format prescribed as per law clearly stipulates that it has to be prepared in such a way that the details of goods to be exported appear on the face of the ARE-1 and the certifications by the various authorities in relation to the goods being exported are to be obtained on the reverse of the same.
- 6.3 Further, Sr. No. (3) (xiv) of Notification No. 19/2004 C. E. (N.T.) dated 06.09.2004 reads as under:

*"The Commissioner of Customs or other duly appointed officer shall examine the consignments with the particulars as cited in the application and if he finds that the same are correct and exportable in accordance with the laws for the time being in force, shall allow export thereof and certify on the copies of the application that the goods have been duly exported citing the shipping bill number and date and other particulars of export."*

Also, in Chapter 8 of the Central Excise Manual, a procedure for sanctioning of claim for rebate has been given. Para 8.4 of the said Chapter reads as under:

*Para 8.4- "After satisfying himself that the goods cleared for export under the relevant ARE-1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of ARE-1 duly certified by Customs....., the rebate sanctioning authority will sanction the rebate, in part or full....."*

6.4 The Commissioner (Appeals) has erred while deciding the case in favour of the claimant in as much as, the following judgments, which are clearly applicable in the instant case, appear not to have been considered by him:-

i) *The Government of India, Ministry of Finance IN RE West Coast Pigment Corporation {2013 (290)E.L.T. 135 (G.O.I.)}, wherein it has been held that ARE-1 is the basic essential document for export of goods under rebate claim, certification of original and duplicate copies of which by customs proves the export of goods. In 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.*

ii) *The same view as above was taken in the case of The Government of India, Ministry of Finance IN RE Enkay Containers-2013 (295) E.L.T. 165 (G.O.I.), wherein it has been further held that such requirement being statutory obligation allowing leniency would lead to fraudulent claims of additional/ double benefits.*

iii) *The Government of India, Ministry of Finance IN RE Stanley Products 2012 (275) E.L.T. 507 (G.O.I.), wherein it has been held that non furnishing of legible and proper documents, it is not possible to cross check the details of each and every item cleared from the factory premises and the excise invoice with the details given in shipping bills. The shipping bills do not contain all the particulars as required under Law and thus are not proper and legible documents and therefore rebate is not admissible.*

6.5 The Legal position as well as procedure for export and claiming rebate of duty, as outlined above, clearly indicates that documents viz. original/ duplicate copy of ARE-1 duly certified by Custom Officer are fundamental requirement for sanctioning rebate claim. In absence of original/ duplicate copy of ARE-1 duly endorsed by Customs, export of duty paid goods cleared on ARE-I form, from factory cannot be established.

6.6 In the present case, it is seen that:

i) in respect of ARE-1 No. 1120/21.11.2012, 1121/21.11.2012, 1130/29.11.2012, it was observed that sailing date of vessel mentioned in the concerned Mate Receipt and in Part-B of the said ARE-is not tallying with the respective dates mentioned in the concerned Bill of Lading. Also the Shipping Bill number mentioned in the Bill of Lading is not tallying with the actual Shipping Bill.

ii) in respect of ARE I No. 1130/29-11-2012 8E, 1107/31.10.2012 there is no information about the concerned Shipping Bill mentioned in the corresponding Bill of Lading.

iii) in respect of ARE I No. 1122/21.11.2012 sailing date of vessel mentioned in the concerned Mate Receipt and in Part-B of the said ARE-1 is not tallying with the respective dates mentioned in the concerned Bill of Lading.

iv) in respect of ARE I No's 1118/20.11.2012, 1125/28.11.2012, 1126/28.11.2012, 1128/29.11.2012, 1129/29.11.2012, 1149/17.12.2012 & 1159/2012 it was observed that in the Part-B of the said ARE-1s the flight date mentioned is not tallying with the respective date mentioned in the concerned Airway bill and or the EGM filing date.

In such circumstances, actual export does not get established.

7. In their cross objection filed in reply to show cause the respondent mainly contended that :-

- 7.1 The physical export of goods is not disputed and not questioned by the department since the beginning of the case.
- 7.2 The present application is based on manual errors while endorsing certification of the part B in the ARE-1s and manual errors in Bill of Lading at the time of preparation of Bill of Lading by forwarding agents and Customs Authorities. The fact is goods are exported out of India, and the same can be evident from the other documents i.e. Shipping Bills, Bill of Lading, Mate receipt, Container numbers and other details mentioned on these documents.
- 7.3 On being pointed out the said errors to our Freight forwarder, he has submitted a letter stating actual facts of the case and has also provided the Copies of Master Bill of Ladings / Air Waybills. In respect of ARE-1 No. 1122 Dated 21.11.2012, the goods were factually sailed on 25.11.2012, the confusion or the query raised is due to mistake on the bill of lading prepared by Forwarder /carrier while preparation of Bill of Lading where the sailed date is wrongly mentioned as 26.11.2012.
- 7.4 The mate receipt is the document signed by an officer of a vessel evidencing receipt of a shipment on board of the vessel and is issued as an interim measure until proper bill of lading can be issued; hence it has to be considered as the first evidence for sailed on date. In respect of ARE-1 1122 dt. 21.11.2012, the mate receipt No. 292908 dated 25.11.2012 issued by Maersk Line India Pvt. Ltd. (Maersk Line) mentions the sailed date 25.11.2012. The same has been verified and certified by the Customs Authorities in Part B of the respective ARE-1 with signature and Customs Seals. It proves that the goods were shipped on board on 25.11.2012.

- 7.5 In respect of ARE-1 1118 dtd. 20.11.2012, the actual flight date is 23.11.2012 and the same is mentioned on AIR WAY Bill No. BOM 324179 and EGM was also filed on 23.11.2012, however the Flight date in Part B of ARE-1 is wrongly mentioned as 22.11.2012 by Customs Authorities. A copy of Master Airway Bill No. 724 1082 8882 is submitted where in it can be verified that the actual flight date is 23.11.2012.
- 7.6 In respect of ARE-1 No. 1125 and 1126 dtd. 28.11.2012, the actual flight date is 03.12.2012 and the same is mentioned on Air waybill No. BOM 324219 and 324220, also the EGM was filed on 03.12.2012, however the flight date in Part B of ARE-1 is wrongly shown as 30.11.2012 by Customs Authorities. We are submitting a copy of Master Air Waybill No. 724 1082 8985 to substantiate that the actual flight date is 03.12.2012.
- 7.7 In respect of ARE-1 No. 1128 and 1129 dtd. 29.11.2012, the actual flight date is 04.12.2012 and the same is mentioned on Air Way Bill No. BOM 324219 and BOM 324220, also the EGM was filed on 03.12.2012, however the flight date in Part B of ARE-1 is wrongly mentioned as 02.12.2012 by the Customs Authorities. We have obtained Master Airway bill No. 105 4729 5102 where in it can be verified that the goods pertaining to above Air Waybills have been exported out of India by Flight No AY-8842 on Finnair Cargo, as the flight date is not mentioned on the Master Air Waybill, we are submitting Air Cargo Tracking report downloaded from the Airline Tracking System, where it can be seen that the shipment is exported under Master Air Way Bill No. 105 4729 5102 has been delivered to consignee at Switzerland on 10th Dec 2012. It is sufficient to prove that the goods have been exported out of the territories of India and delivered to the consignee abroad.
- 7.8 In respect of ARE-1 1149 dated 17.12.2012, the actual flight date is 20.12.2012 and the EGM is filed on the same date, however, there was a mistake by Freight Forwarder while preparation of Air Way Bill and the flight date was shown as 19.12.2012 and same date was certified by the Customs Authorities in Part B of ARE-1. On being pointed out the Freight Forwarder, M/s. Panalpina World Transport India Pvt. Ltd. have realized the mistake and provided a letter stating that at the time of preparation of Air Way bill there was a mistake from their side and the Actual flight date is 20.12.2012. They have also provided a copy of Master Air waybill No. 724 1082 9103 to verify the actual date of Flight.

In respect of ARE-1 No. 1159 dtd. 28.12.2012, the actual flight date is 04.01.2012, however, there is a manual mistake while preparation of Air waybill by our freight forwarder and the flight date in the Air Waybill No. BOM 324379 is mentioned as 30.12.2012 and the same is endorsed and certified by the Customs Authorities. EGM is filed on 04.01.2013; however the EGM date is also wrongly mentioned as 09.01.2013. On being pointed out the mistake to our Freight forwarder M/s. Panalpina World Transport India Pvt. Ltd, have realized the mistake and provided

the letter stating that at the time of preparation of Air Waybill there was a mistake from their side and instead of mentioning flight date as 04.01.2013 was mentioned wrongly mentioned as 30.12.2012. In support of the say copy of Master Air Way Bill No 724 1082 9125 is submitted which shows the Flight date as 04.01.2013.

- 7.8 Additional Document : Master Bill of Lading issued by Maersk Line India. Master Air Waybills issued by Swiss int'l AIR LINES Ltd and Finnair Cargo confirms the correct shipped on date Flight date.,

On being informed about the appeal filed by the department our freight forwarder M/s. Panalpina world Transport (India) Pvt. Ltd. has verified the data and has issued a letter with correct date of shipped on board/ flight date in respect of 3 are-1S I.E. are-1 No. 1122 dtd. 21.11.2012 , 1149 dtd. 18.12.2012 and 1159 dtd. 21.11.2012 and has also provided the Master Way Bill of Lading / Air Waybills for all the ARE-1s, from where the date of Shipped on Board / Flight Date can be checked and verified.

- 7.9 In respect of ARE-1 No. 1120 & 1121, the Mate Receipt No. 393263 DATED 25.11.2012 AND In respect of ARE- No. 1121 dtd. 21.11.2012 the Mate receipt No. 393264 dtd. 25.11.2012 issued by Maersk Line India Pvt. Ltd (Maersk Line) mentions the sailed date as 25.11.2012 and the same has been verified and endorsed by the Customs Authorities in Part B of the respective ARE-1 with signature and Customs Seal. It proves that the goods were shipped on Board on 25.11.2012.
- 7.10 The grounds put forth were raised because there was error while preparation of Bill of Lading by Shipper M/s. Panalpina World Transport (India) Pvt. Ltd. In the Bill of Lading No. BOM 489489 Dtd. 26.11.2012 where instead of mentioning shipped on board date 25.11.2012 it was wrongly mentioned as 26.11.2012.
- 7.11 In respect of ARE-1 No. 1130 dated 29.11.2012, the same error was observed , and hence we submitted corrected copy of Bill of Lading No. BOM489652 Dtd. 03.12.2013, where in the date of shipped on board was corrected as 02.12.2012. the said corrected document were submitted by our Freight Forwarder M/s. Panalpina World Transport India Pvt. LTD.
- 7.12 In respect of ARE-1 No. 1107 dtd. 31.10.2012, shipping Bill no was not mentioned on the bill of lading same has been corrected by our freight forwarder and we are submitting the corrected copy of B/L.
- 7.13 In respect of ARE-1 No. 1120 & 1121 dtd. 21.11.2012, Bill of Lading No. BOM489489 Dated 26.11.2012 issued by M/s. Panalpina World Transport India Pvt. Ltd and Master Bill of Lading No. MAEU 865382495 DTD. 29.11.2012 issued by carrier Maersk Line India can be linked and cross checked by the Pantainer AMS No. 12789489489 (On Bill Of



Lading) with the Export Reference No. 12789489489(On Master Bill of Lading).

- 7.14 In respect of ARE-1 No. 1120 & 1121 dtd 21.11.2012, the date of shipped on Board and Shipping bill No. can be cross checked with the Mater Bill of Lading No. 865382495 dated 29.11.2012 issued by agent of Maersk line India, where in the shipped on Board date is clearly mentioned as date 25.11.2012. In respect of ARE-1 No. 1120 & 1121, the shipping bill numbers are mentioned on the 2nd page of bill of lading however were not verified by the department.
- 7.15 In respect of ARE-1 No. 1130 dtd. 29.11.2012, the master bill of lading No. 602409210 dtd. 03.12.2012 issued by Maersk Line (India) confirms that the goods are shipped on Board on 02.12.2012. In respect of ARE-1 No. 1130 dtd 29.11.2012 & 1107 dtd. 31.10.2012, On raising said query M/S. Panalpina World Transport India Pvt. Ltd. have provided the corrected Bill of Lading where in the shipping Bill number is properly mentioned.
- 7.16 In view of the above, the basic reason for filing of RA is the manual errors by Freight forwarders and the Certification by Customs Authorities, the fact of actual export is not at all denied by the department, and the actual export can evident based on the other documents i.e. Shipping Bill, Invoice Nos., Mate receipt, Bill of Lading, Container numbers can be correlated with each other. and hence the annulling the Order In Appeals and other order, based on the grounds put forth, which are not at all relevant to the case will be against principal of natural justice. Department has failed to appreciate the fact that the rebate claim was submitted along with all necessary and required document which are sufficient to establish that the goods removed under the ARE-1 are exported with in stipulated time period.
- 7.17 It is evident from the documents submitted here with that, in case of in all the questioned ARE-1s, export is taken place within 6 month from the date of removal, and the department has not doubted the actual fact of goods have been exported out of India. In view of the above the RA filed by the department needs to be squashed and rejected.
- 7.18 They have also submitted, the Bank Certificate of Export and Realization and Certificate of Foreign Inward remittance Certificate. These are evident to establish that the goods have been exported and hence the action proposed in the appeal is unwarranted and needs to be quashed.
- 7.19 The Commissioner (Appeals) Central Excise has rightly rejected the departmental appeal based on the facts and Procedural lapses-irregularities in the documents are purely procedural or technical holding as under:-

34) *Over all reason for filing the appeal and subsequent Revision application was due to deficiencies in the documents, apparently owing to inadvertent mistakes by other concerned authorities which are beyond noticees control and are purely procedural or technical thus condonable.*

35) *The incentive oriented beneficial schemes are intended to boost exports and where the substantive fact of export made is not in doubt, liberal interpretation is to be accorded in case of technical lapses so that the purpose incentives is not defeated.*

The said contention is supported by various case laws.

a) IN RE-BANARAS BEADS LTD- 2011(272) E.L.T. 433 (G.O.I)

Where in it is held that Export under Form ARE-1 instead of ARE-2 Export and duty paid nature of goods not in dispute ... only lapse, of exporting goods under ARE-1 instead of ARE-2 Forms, a procedural and technical lapse, hence condonable- Substantial compliance of procedure laid down in said notification — rebate claim admissible — Impugned order upheld — Rule 18 of Central Excise Rules, 2002(Para 8)

b) IN RE: ACE HYGINE PRODUCTS PVT. LTD. (2012 (276) E.L.T. 131 (G.O.I.)

Where in it is held that- No ambiguity in export of duty paid goods — Claim for rebate can't be denied merely on procedural /technical lapse — Rule 18 of Central Excise Rules 2002.- It is now trite law that the procedural infractions of notification should be condoned if exports have really taken place and the law is settled that substantive benefit cannot be denied for procedural lapses. (Para 8)

c) UOI V Suksha International and Nutron Gems & others —1989 (39) E.L.T. 503 (S.C.)

Hon'ble Supreme Court has observed that an interpretation unduly restricting the scope of beneficial provisions is to be avoided so that it may not take away with one hand what the policy gives with the other.

d) 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.