

SPEED POST



**F. No. 195/171/2018—R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue... 31/03/2021

Order No. 66/2021-CX dated 31-03-2021 of the Government of India, passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject: Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. LUD-EXCUS-001-APP-833-18 dated 28.03.2018 passed by Commissioner (Appeals), Central Goods and Service Tax, Ludhiana.

Applicant: M/s Taurus Agile Technology Corporation Pvt. Ltd.,
Delhi.

Respondent: Commissioner of CGST, Ludhiana.

ORDER

A Revision Application No. 195/171/2018-R.A. dated 23.07.2018 has been filed by M/s Taurus Agile Technology Corporation Pvt. Ltd., Delhi (hereinafter referred to as applicant) against Order-in-Appeal No. LUD-EXCUS-001-APP-833-18 dated 28.03.2018 passed by Commissioner (Appeals), Central Goods and Service Tax, Ludhiana, wherein the appeal filed by the applicant against Order-in-Original No. 1245/AC/DB/2016 dated 19.01.2016, passed by the Assistant Commissioner of Central Excise, Dera Bassi, Mohali, has been rejected.

2. The brief facts leading to the present proceedings are that the applicant filed nine rebate claims, for a total amount of Rs. 9,69,925/-, in respect of duty paid on the goods exported by them under Rule 18 of Central Excise Rules, 2002. The applicant was ostensibly required to furnish a copy of the Bank Realization Certificate (BRC) within 120 days from the date of export for the purpose of acceptance of proof of export. The rebate claims were filed after 180 days from the date of export but the applicant could not file copies of the BRCs along with these claims. Thus, the original authority rejected the said claims on this ground. Aggrieved, the applicant filed an appeal before Commissioner (Appeals) who rejected

their appeal on the same grounds. The instant revision application has been filed mainly on the ground that Rule 18 of Central excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 nowhere mention submission of BRCs as a condition for sanction of rebate. It is also claimed that the export proceeds have been realized and proof thereof in form of Bank Statement was submitted to the lower authorities. Hence, the Commissioner (Appeals)'s order needs to be set aside and rebate allowed to them along with interest.

3. Personal hearing was held on 26.03.2021. Ms. Tuhina Sinha, Advocate, appeared for the applicant and reiterated the contents of the revision application as well as compilation filed on the same date. She highlighted the following:-

- (i) The original authority has rejected the claim without issuing a Show Cause Notice. Hence the order is not sustainable.
- (ii) Realization of export proceeds is not a condition precedent for grant of rebate.
- (iii) Export proceeds have been realized and they are not in a position to produce BRCs. But account statements were produced which has not been disputed. Thus, the rebate cannot be denied merely for non-production of

BRCs. She relied upon the cases of M/s Jubilant Life Sciences Ltd. Vs. UOI [2016(341) ELT 44(All)] and M/s Salasar Techno Engineering Pvt. Ltd.[2018(364) ELT 1143(GOI)] in this regard.

None attended for the respondent and no request for adjournment has been received. Hence, the matter is taken up for disposal on the basis of facts available on record.

4.1 The Government has examined the matter. The factum of export is not disputed. The Commissioner (Appeals), vide the impugned order, has observed that the applicant had submitted some documents relating to foreign remittance before the original authority but the same were not in the standard format and hence could not obviate the submission of BRCs. The Government observes that Rule 18 of Central Excise Rules, 2002 and the relevant Notification No. 19/2004-CE (NT) do not prescribe realisation of export proceeds and submission of BRC to evidence the same, as a condition precedent to the sanction of rebate claim. Hence, denial of rebate to the applicant solely on this count is not sustainable.

4.2 In the present case, the rebate claims have been rejected on the basis of Board's Circular No. 354/70/97-CX dated 13.11.1997. The

Government observes that the lower authorities have totally misapplied these instructions of the Board in as much as:

- (i) In Para 2.3.1 of the Circular dated 13.11.1997 it is stated that “The file for acceptance of proof of export shall be closed, once TR copy is received from ICD/CFS within 120 days of the LET Export Order containing details of actual export. In case TR copy is not received within 120 days, the exporter may submit the Bank Realisation Certificate of export receipts..... .” In the present case, the exports have taken place by air. The original authority, in Para 4 of his Order dated 19.01.2016, has clearly recorded that original and duplicate copies of ARE 1 with Customs endorsement in respect of Airway Bill, Flight No. & Date, of airlifting as well as Customs endorsed copies of Shipping Bills were produced. With the proof of export having been so produced, there was no need for the applicant to produce a copy of BRC towards proof of export in terms of Para 2.3.1.
- (ii) In Para 2.3.2, it is stated that “If TR copy or Bank Realisation Certificate is not received *within 160 days of the date of*

sanction of rebate, action for recovery shall be initiated well within the limitation period.” Thus, on a plain reading, the action under this Para should be initiated if TR copy or BRC is not received within 160 days of the *date of sanction of rebate*. In the present case, the rebate itself having not been sanctioned, Para 2.3.2 is not applicable.

- (iii) As per Para 2.3.3, “In case TR copy or bank Realization Certificate is not received within *180 days of clearance for export, where exports are affected under bond*, action for recovery should be taken in terms of Rule 14A of the Central Excise Rules, 2002.” Thus, the time limit of 180 days to initiate recovery is stipulated where exports are affected under bond whereas in the present case the exports are affected under a claim of rebate. This is besides the point that recovery can be initiated only if the rebate had been sanctioned and paid.
- (iv) It is clear on a plain reading of Circular dated 13.11.1997 that it has been issued to address the “inordinate delays in acceptance of proof of export where goods are exported through an Inland Container Depot/Customs Freight Stations (ICDs/CFSS)

because of delayed receipt/non-receipt of Transference Copies from the Customs formations at the port of exit.” Accordingly, “for the exports through ICDs/CFSS”, a revised procedure was put in place. In the present case, the exports having taken place by air, and not through ICDs/CFSS, there is no applicability of this Circular itself.

4.3 As already observed, there is no requirement in Rule 18 and/or notification no. 19/2004-CE (NT) for realisation of export proceeds as a condition precedent to sanction of rebate. Thus, the action, if any, for non-realisation can be taken by the authorities competent under FEMA and relevant RBI notifications etc. and not by the Central Excise authorities. As rightly pointed out by the applicant, the Government has taken this view earlier in the case of M/s Salasar Techno Engineering Pvt. Ltd. (supra). The judgment of Hon’ble Allahabad High Court in the case of M/s Jubilant life Sciences Ltd. (supra) also supports this view.

4.4 Notwithstanding the position that realisation of export proceeds cannot be insisted upon for sanction of rebate, in the present case, the applicant has claimed that export proceeds were actually realized. This

claim of the applicant has not been disputed, by the lower authorities, after verification of the evidence which was produced before them.

4.5. It is observed that no Show Cause Notice was issued to the applicant nor any hearing was granted before the original authority rejected the rebate claims, which is undoubtedly a gross violation of principles of natural justice.

5. In view of the above, the Government finds that the orders of the lower authorities, impugned herein, cannot be sustained. These are, accordingly, set aside and the revision application is allowed with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Taurus Agile Technology Corporation Pvt. Ltd.,
7/1, 2nd Floor, Block 41, Singh Sabha Road,
Shakti Nagar, Delhi-110 007

G.O.I. Order No. 66/21-Cx dated 31-3-2021

Copy to:-

1. The Principal Commissioner, CE & CGST, Ludhiana.
2. Commissioner (Appeals), CGST Audit Commissionerate, Ludhiana.
3. TLC Legal, Nirmal, 1st Floor, Nariman Point, Mumbai-400 021.
4. PA to AS (Revision Application)
5. Spare Copy
6. Guard File.



(Ashish Tiwari)

Assistant Commissioner (R.A.)