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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  
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Mumbai- 400 005

F.No.195/15/WZ/2020

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Date of Issue:

28.06.2022

ORDER NO. 661/2022-CX (WZ)/ASRA/MUMBAI DATED 28.06.2022  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT,  
1944.

Applicants : M/s VE Commercial Vehicles Ltd,  
Plot No 52/1,52/2,  
Indore Ratlam Highway  
Village Baggad, Distt Dhar.

Respondents : Commissioner of CGST, Indore

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. IND-EXCUS-  
000-APP-332-18-19 dated 30.11.2018 passed by the  
Commissioner (Appeals), CGST & CEX, Indore.

ORDER

This Revision Application is filed by M/s VE Commercial Vehicles Ltd, Plot No 52/1,52/2,Indore Ratlam Highway, Village Baggad, Distt Dhar (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. IND-EXCUS-000-APP-332-18-19 dated 30.11.2018 passed by the Commissioner (Appeals), CGST & CEX, Indore

2. The facts of the case are that the applicant filed the rebate claim under Rule 18 of the Central Excise Rules, 2002 in respect of goods cleared for export vide ARE-1 No. 42/17-18 dated 26.04.2017, No. 54/17-18 dated 26.04.2017 and No. 55/17-18 dated 26.04.2017. The sanctioning authority rejected the said claim on the ground that the applicant had failed to follow conditions stipulated under Notification No. 19/2004-CE (NT) dated 06.09.2004 issued under Rule 18 of the said Rules, in as much as :

- (i) that the excisable goods were not exported directly from the factory of the manufacturer;
- (ii) that due to consolidated duty debit entry made at the end of the month for the excisable goods cleared for domestic and export clearances, it was not possible to ascertain as to whether proper duty payment was made and as to whether sufficient balance was there in the applicants cenvat credit account or not;
- (iii) that the applicant had not submitted the original and duplicate copies of the relevant ARE-1's in Original as required under condition No. 3(b) of the said Notification.
- (iv) that no certification of the authorised person was found on the relevant ARE-1 copies, as required in case of self-sealing and self certification in terms of condition at 3(a)(xi) of the said Notification;
- (v) that the declared FOB value of goods exported is less than the invoice value

3. Being aggrieved by the Original-in-Original, the applicant filed an appeal before the Commissioner (Appeals), CGST & CEX, Indore. The Appellate Authority vide Order-in-Appeal No. IND-EXCUS-000-APP-332-18-19 dated 30.11.2018 rejected the appeal filed by applicant and upheld the order in original. The Appellate Authority while passing the impugned Order-in-Appeal observed that in the absence

of original and duplicate copies of the relevant ARE-1's, the rebate claim had been rightly rejected by the Adjudicating Authority and that there was no point in discussing the case on merits.

4. Being aggrieved by the impugned Order in Appeal, the applicant filed instant Revision Application on the following grounds:-

a) That the photocopies of the ARE-1 alongwith Bill of Export duly endorsed by Customs authority indicate that the goods under respective ARE-1's were actually exported and the rebate claim liable to be sanctioned.

(b) That the ARE-1 Nos. 42/2017-18, 54/2017-18 & 55/2017-18 all dated 26.04.2017 were lost and the same could not be produced alongwith the rebate claim filed by the applicant. The applicant had submitted a declaration that they had not filed any claim nor would file another claim against the loss of both copies of ARE-1 and that they would submit the original and duplicate of the said ARE-Is if they would receive the same in future.

(c) That while upholding the impugned OIO, the Appellate Authority only considered that as the original and duplicate copies of ARE-1 was not available so rebate cannot be granted. The Appellate Authority failed to appreciate that the aforesaid ARE-1's number and Export Excise invoice number are clearly mentioned on the bill of export which is duly endorsed by the customs authority leaving no doubt that goods cleared under the said ARE-1's were actually exported to Nepal.

(d) That the export invoices prepared under Rule 11 of the Central Excise Rules, 2002 by them specifically indicated that the goods covered under the invoice Nos. nos. 33081, 33093 & 33094 all dated 26.04.17 were exported under rebate. The applicant is using separate set of invoices for export other than domestic clearances and that on the body of the invoices it is also mentioned "FOR FURTHER EXPORT TO EASTERN AGENCIES PVT LTD, WARD NO.9, NAYA BAZAAR NEPAL". The vehicle cleared by the applicant from their factory directly moved to Nepal through Land Customs at UP as evident from the clear stamp visible on Bill of Export. The vehicle cleared by the applicant from their factory directly moved to port / Land Customs

Station which indicated that the buses covered under the present ARE-I went to port for export from the factory premises of the applicant.

e) The applicant has relied upon the following case laws in support of their contention that after loss of original and duplicate of copy of ARE-1, rebate can be allowed after confirmation from the corroborated evidences that the goods under reference of the said ARE-1's were actually exported from the factory of manufacturer on payment of the duty.

- i) Harison Chemicals [[2006(200)ELT171(GOI)]]
- ii) Zandu Chemicals Ltd vs. UOI [2015 (315) E.L.T. 520 (Bom.)]
- iii) Sanket Industries Ltd.[2011 (268) ELT 125 (GOI)]
- iv) MET TRADE INDIA LTD. [2014 (311) E.L.T. 881 (G.O.I.)]

f) That the procedure which has been laid down in the notification Notification No. 19/2004-CE(NT) dated 06.09.2004 and in the Manual of Supplementary Instructions of 2005 issued by CBEC is to facilitate the processing of an application for rebate and to enable the authority to be duly satisfied that the two-fold requirement of the goods having been exported and of the goods bearing a duty paid character is fulfilled. The procedure cannot be raised to the level of a mandatory requirement. The applicant contended that Rule 18 itself makes a distinction between conditions and limitations, which are mandatory, for which a rebate can be granted and the procedure governing the grant of a rebate which are directory in nature.

The applicant has relied upon the following case laws in support of their contention

- i) Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner [1991 (55) E.L. 437 (S.C.) = (2002-TIOL-234-SC-CX)]

g) That the basic sprit of allowing rebate is that it should be ensured by the adjudicating authority that the goods under reference in ARE-1 have been exported on payment of Central Excise duty and thus in the present case even in absence of original & duplicate of ARE-1, there are sufficient evidences that the goods were exported on payment of Central Excise duty and so rebate claim deserves to be sanctioned.

The applicant has relied upon the following case laws in support of their contention that rebate should not be denied on procedural/technical grounds

- i) Commr of S.T vs. Atrenta India Pvt Ltd [2017 (48) S.T.R. 361 (All.)]
- ii) Formica India Division vs. Collector of Central Excise [1995 (77) E.L.T. 511 (S.C.)]
- iii) Tricon Enterprises Pvt Ltd [2015 (320) E.L.T. 667 (G.O.I.)]
- iv) Suksha International vs. UOI [1989 (39) E.L.T. 503 (S.C.)]
- v) Union of India vs. AV Narasimhalu [1983 (13) E.L.T. 1534 (S.C.)]
- vi) Birla VXL Ltd. [1998 (99) E.L.T. 387 (Tri)]
- vii) Alfa Garments [1996 (86) E.L.T. 600 (Tri)]
- viii) T.I. Cycles [1993 (66) E.L.T. 497 (Tri.)]
- ix) Atma Tube Products [1998 (103) E.L.T. 270 (Tri)]
- x) Creative Mobus [2003 (58) RLT 111 (GOI)]
- xi) Ikea Trading India Ltd. [2003 (157) E.L.T. 359 (GOI)]

5. Personal hearing in this case was scheduled on 02.12.2021. Shri Rabi Sankar Roychoudhury, Advocate and Shri Chimanlal Dangi, Consultant appeared for hearing on behalf of the applicant and made additional submissions pertaining to the instant case and stated that in respect of non submission of original and duplicate copies of ARE-1s, the procedural infraction can not take away their substantial right when export of goods is not in dispute and requested to allow the claims.

6. The applicant in their additional submission filed on the date of hearing reiterated the facts and grounds made by them in the Revision Application and in addition to the same have stated as under

i) That the invoice numbers 33081, 33093 and 33094 all dated 26.04.2017 were used for export of goods under rebate. The ARE1 number and export invoices number are clearly mentioned in the bill of export which is duly endorsed by the customs authorities which leaves no doubt that the goods cleared were actually exported vide Bill of Export No 761897, 761896 and 761894 all dated 31.08.2017 to Nepal.

ii) That the amount as reflected in the invoices no 33081,33093 and 33094 all dated 26.04.2017 were received from the purchaser and thus the basic condition for obtaining the rebate that the goods were exported on payment of duty is completely satisfied. The applicant has lodged a FIR for the loss of original and duplicate ARE-1 in transit from their factory to Customs Office Pithampur.

The applicant has cited the following case laws in addition to the above in support of their contention

- a) Ace Hygiene Products Pvt Ltd [2012(276) ELT 131(GOI)]
- b) United Phosphorus [ 2015(321) ELT 148 (GOI)]

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

8. The Government observes that the sanctioning authority vide impugned Order-in-Original rejected the three rebate claims amounting to Rs. 3,36,000/-. The impugned rebate claims were rejected by the rebate sanctioning authority on the grounds that

- i) the goods were not directly exported from the factory or obtained any permission for the same in violation of condition no 1 of Notification No. 19/2004-CE (NT) dated 06.04.2004 read with Rule 18 of the Central Excise Rules, 2002
- ii) for non submission of records evidencing payment of duty and availment and utilization of cenvat credit and showing on consolidated debit entry number
- iii) for non submission of original and duplicate copies of ARE 1 and original copy of Bill of Exports as required under Sr. No 3(b) of the said Notification
- iv) for not fulfilling the requirements of Sr No 3(a)(xi) of the Notification and
- v) for showing less FOB value of the goods exported.

8.1 Government notes that the Appellate Authority had rejected the appeal without discussing the merits of the case, on the sole grounds of non submission of original and duplicate copies of ARE-1's.

8.2 Government notes that the applicant has stated that they had submitted that the original and duplicate copies of the ARE-1's were lost and had given a declaration dated 20.06.2018 stating that they had neither filed any claim or would file another claim in respect of the three ARE-1's of which the original and duplicate copies were lost by them.

8.3 The Government notes that the Manual of Instructions issued by the CBEC specifies the documents which are required for filing a claim for rebate. Further paragraph 8.4 of Chapter 8 of the said Manual specifies that the rebate sanctioning authority has to satisfy himself 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 and 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. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

8.4 The Government holds that in order to qualify for the grant of a rebate under Rule 18, the mandatory conditions required to be fulfilled are that the goods have been exported and duty had been paid on the goods.

8.5 In the instant case the applicant has submitted copies of the Bill of Exports and the copies of the ARE-1 bearing the endorsement of the officers of the Land customs station, Sonauli, Maharajganj evidencing the export and also certification from the Bhairahwa Customs office, Nepal. The applicant had also submitted the consolidated debit entry for the payment of duty in respect of the exported goods.

8.6 Hence the rejection of the refund claim for the deficiency i.e. non submission of original and duplicate copies of ARE-1s, pointed out by the sanctioning authority while rejecting the three rebate claims amounting to Rs. 3,36,000/- are merely procedural infractions and the same should not result in the deprivation of the statutory right to claim a rebate particularly when the substantial compliance has been done by the applicant with respect to conditions and procedure laid down under relevant notifications / instructions issued under Rule 18 of the Central Excise Rules, 2002. The Government finds that the sanctioning authority had disputed the facts about the export of the impugned goods, the documents submitted by the applicant suggests that the impugned goods cleared from the factory premises were duty paid and were duly exported.

8.7 Government observes that the Appellate Authority had also rejected the appeal on the on the solitary ground of non submission of original and duplicate copy of ARE-1s without going into the merits of the case and has not taken into consideration the submissions of the applicant on the issue of export of goods and payment of duty.

9 In several decisions of the Union Government in the revisional jurisdiction as well as in the decisions of the CESTAT, the production of the relevant forms has been held to be a procedural requirement and hence directory as a result of which, the mere non- production of such a forms would not result in an invalidation of a claim for rebate where the exporter is able to satisfy through the production of cogent documentary evidence that the relevant requirements for the grant of rebate have been fulfilled. In the present case, no doubt has been expressed whatsoever that the goods were not exported goods.

9.1 The Government further observes that a distinction between those regulatory provisions which are of a substantive character and those which are merely procedural or technical has been made in a judgment of the Supreme Court in "Mangalore Chemicals & Fertilizers Ltd. vs. Deputy Commissioner-1991 (55) E.L.T. 437 (S.C.)". The Supreme Court held that the mere fact that a provision is contained in a statutory instruction "does not matter one way or the other". The Supreme Court held that non-compliance of a condition which is substantive and fundamental to the policy underlying the grant of an exemption would result in an invalidation of the claim. On the other hand, other requirements may merely belong to the area of procedure and it would be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes which they were intended to serve. The Supreme Court held as follows:

*"The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some other may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."*

9.2 In this regard Government observes that 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.*

9.3 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".*

9.4 Government finds that ratio of aforesaid Hon'ble High Court orders are applicable to the instant case and holds that the rejection of the appeal by the Appellate Authority 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.

10. In view of above discussion, Government remands the matter back to the Original Authority for verification of the claim with directions to reconsider the same on merits and on the basis of the documents submitted by the applicant after satisfying itself in regard to the authenticity of those documents. However, the Original Authority shall not reject the claim only on the ground of the non-production of the original/ duplicate copy of the ARE-1, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled.

11. In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. IND-EXCUS-000-APP-332-18-19 dated 30.11.2018 passed by the Commissioner (Appeals), CGST & CEX, Indore and remands the case to the Original Authority for deciding the matter afresh as ordered supra.

12. The revision application is disposed off in terms of above.

*Shrawan*  
*21/06/22*  
(SHRAWAN KUMAR)

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

ORDER No. 66 | /2022-CX (WZ)/ASRA/Mumbai DATED, 2 | .06.2022.

To,  
M/s VE Commercial Vehicles Ltd,  
Plot No 52/1,52/2,  
Indore Ratlam Highway,  
Village Baggad, Distt Dhar.

Copy to:

1. The Commissioner of CGST, Ujjain, 29 GST Bhavan, Administrative Area, Bharatpuri, Ujjain 456 010.
2. The Commissioner (Appeals), Indore, Manik Bagh Palace, Post Box No. 10, Indore 452014 (M.P.)
3. Sr. P.S. to AS (RA), Mumbai
4. Notice Board
5. Spare Copy.