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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, Cuffe Parade,
Mumbai- 400 005

F. NO. 195/163/17-RA (CX)/2780 Date of Issue: 08.07.2022

ORDER NO. 675/2022-CX (SZ) /ASRA/MUMBAI DATED 07.07.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s LG Polymers India Private Limited,
R.R. Venkatapuram,
Visakhapatnam 530029.

Respondent : Commissioner of Central Excise & Service Tax,
Visakhapatnam – I, Central Excise Building,
Port Area, Visakhapatnam – 530 035.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. VIZ-EXCUS-001-APP-093-16-17 dated 30.12.2016 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Visakhapatnam – 530035.

ORDER

The subject Revision Application has been filed by M/s LG Polymers India P. Limited, Visakhapatnam (here-in-after referred to as 'the applicant') against the impugned Order-in-Appeal dated 30.12.2016 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Visakhapatnam. The said Order-in-Appeal disposed of appeals against the Order-in-Original No.72/2014 (R) dated 27.02.2015 passed by the Assistant Commissioner of Central Excise, Division III, Visakhapatnam Commissionerate, which in turn disposed of 12 rebate claims filed by the applicant.

2. Brief facts of the case are that the applicant who holds Central Excise registration exported High Impact Polystyrene manufactured by them on payment of Central Excise duty. The applicant thereafter submitted claims for rebate of such duty paid under Rule 18 of Central Excise Rules, 2002 read with notification no.19/2004-CE(NT) dated 06.09.2004 along with ARE-1's and other relevant documents. The original rebate sanctioning authority found that the applicant had failed to follow the procedure envisaged in notification no.19/2004-CE (NT) dated 06.09.2014 inasmuch as they had failed to declare whether they had availed the benefit of notification no.21/2004-CE (NT) dated 06.09.2004 at para 3(b) of the Form ARE-1s under which the goods were exported and proceeded to reject the rebate claims filed by the applicant. Aggrieved, the applicant preferred appeals before the Commissioner (Appeals) who vide the impugned Order-in-Appeal dated 30.12.2016 upheld the Orders-in-Original and dismissed the appeals filed by the applicant. Both the said authorities relied on the Order of the Hon'ble High Court of Allahabad in the case of M/s Vee Excel Drugs & Pharmaceuticals P. Ltd. Vs UOI [2014 (1) ECS (15) (HC-ALL)] in support of their decisions.

3. Aggrieved, the applicant has filed the subject Revision Application against the Order-in-Appeal dated 30.12.2016 on the following grounds:-

(a) The Commissioner (Appeals) had erred in relying on the decision of M/s. Vee Excel Drugs and Pharmaceuticals Pvt. Limited V/s. UOI [2014 (1) ECS (15) (HC-ALL)] as the facts and circumstances were completely different as the said case pertained to non-filing of ARE-1, whereas in the present case ARE-1 was filed alongwith all the necessary documents;

(b) They had correctly availed of the facility provided under Rule 18 of the Central Excise Rules, 2002 for claiming rebate of the duty paid on goods which were exported and that they had met the conditions and followed the procedures laid down in the notification no.19/2004-CE(NT) dated 06.09.2004;

(c) They had filed the original copy of ARE -1 duly endorsed by Customs & Central Excise in support of goods exported along with Export Shipping Bill, Central Excise Invoice, Bill of lading, Mate receipt and also the Bank Realization Certificate (BRC) in support of the realization of the export proceeds; that the fact of submission these documents along with proof of payment of duty was never under dispute;

(d) The notification no.21/2004-CE(NT) dated 06.09.2004 dealt with procurement of duty free goods by the manufacturers with the intent to export and that they had neither procured duty free goods nor ever availed the benefit of exemption provided by notification no.21/2004-CE(NT);

(e) The only allegation raised was that the ARE-1's submitted were not in the correct format and the declaration at para 3(b) of the same was not correct; in this context they submitted that as follows:-

- The excisable goods viz., polystyrene had been exported directly from the factory on payment of duty;
- The goods had been exported within six months from the date on

which they were cleared for export from their factory;

- The rebate claim had been filed electronically for export of goods;
- The market price of the goods exported was not less than the amount of rebate of due claimed;
- The amount of rebate of duty claimed was not less than five hundred rupees;
- There was no prohibition for export of goods in the present case;
- The exported goods had been cleared from their factory under ARE-1 procedure as prescribed under notification no.19/2004-CE(NT) dated 06.09.2004;
- The rebate claims had been lodged with the Assistant Commissioner of Central Excise, Visakhapatnam Division — III duly accompanied by all export proof documents such as endorsed copy of ARE-1, Export shipping bill, Bill of lading, Bank Realization Certificate and extract copy of CENVAT Credit account for debiting the duty amount;

(f) They had inadvertently quoted notification no.19/2004-CE(NT) instead of Notification No.21/2004-CE (N.T.) and this was the very basis on which the adjudicating authority and the Commissioner (Appeals) had sought to reject the refund claim filed by them; that the mere non quoting of a notification specified in the format could not take away the benefits available under law;

(g) They had never availed the benefit of notification no.21/2004-CE (NT) dated 06.09.2004 and that had they availed the benefit of the said notification they would have approached the Assistant Commissioner to obtain procurement certificate for duty free inputs; that they had availed Cenvat credit which was utilized for paying duty on the goods exported and that the same was declared on the ARE-1's;

(h) They submitted that substantial benefit could not be denied due to minor procedural infractions and relied upon the following judgments in

support of their case:-

- Zandu Chemicals Ltd. vs UOI- [Taxmann.com 2014 Vol.51 Pg. No.396]
- UM Cables Limited vs UOI - [Taxmann.com 2014 Vol.46 Pg. No.326]
- CST, Delhi vs Convergys India (P) Ltd [2009-TIOL-888-CESTAT-DEL]
- Mangalore Chemicals & Fertilizers Ltd vs Deputy Commissioner;

(i) The jurisdictional Central Excise authorities had been sanctioning rebate claims filed by them in the past for export of goods by following the procedure under notification no.19/2004-CE(NT) and that they were at a loss to know as to why and how the rebate claims for the very same goods exported were now being questioned; that Revenue cannot be permitted to take a contrary stand in a subsequent case;

(j) The placed reliance on the Order-in-Appeal bearing nos.VIZ-EXCUS-001-APP-76 to 83-16-17 and VIZ-EXCUS-001-APP-84 TO 89-16-17 passed the same Commissioner (Appeals) in their case itself which pertained to rebate claims filed during the period from February 2014 to June 2014 wherein the Commissioner (Appeals) had dismissed the appeals filed by the Department by holding that they had established the proof of export, payment of duty and that the claims for rebate were filed in time. Further, the Commissioner (Appeals) found that they had availed the benefit of notification no.21/2004-CE(NT) and had held that once the goods were exported and the payment of duty established, it was trite in law to deny the substantial benefit of the export scheme to the applicant on the basis of technical lapses; that the Commissioner (Appeals) in the above cases had distinguished the judgment of the Hon'ble High Court of Allahabad in the case of M/S VEE EXCEL DRUGS & PHARMACEUTICALS P LTD [2014 (305) ELT 100 (ALL)] and had not accepted the views of the Department to rely on the same; that the Commissioner (Appeals) could not take a divergent view for two different periods when the facts of the case remained the same;

(k) That the Order of the Commissioner (Appeals) fell outside the normal time limit for disposal of an appeal in terms of Section 35A of the Central Excise Act, 1944;

In light of the above, the applicant prayed that the impugned Order-in-Appeal be set aside and it may be held that they were eligible for the rebate of duty paid on the goods exported.

4. Personal hearing in the matter was granted to the applicant on 07.06.2022. Shri Prasanjeet Choudhary, Manager, and Shri Saurav Mundra, Assistant Manager/Consultant appeared on behalf of the applicant. They submitted additional written submissions, which reiterated their earlier submissions and also submitted a Chartered Accountant certificate confirming that they had not availed the benefit of notification no.21/2004-CE(NT). They further submitted that mentioning notification no.19/2004-CE(NT) instead of notification no.21/2004-CE (NT) was a clerical error with zero implication. Similar cases had been allowed by the original authority. They submitted that the goods being exported was not in dispute, procedure followed was correct and therefore their claim be allowed.

5. Personal hearing was also granted to the respondent and Ms Swetha Suresh, Assistant Commissioner, Central Division, Visakhapatnam, appeared online for the same. She submitted that wrong mentioning of notification on the ARE-1 made the applicant ineligible for rebate. Further, she relied on two judgments mentioned in the written submission and requested that the Order-in-Appeal be maintained.

6. Government has carefully gone through the relevant records, the written and oral submissions and also perused the impugned Orders-in-Original and the impugned Order-in-Appeal.

7. Government finds that the issue involved in the present case lies in a narrow compass and is limited to deciding whether the impugned Order-in-Appeal was proper in upholding the Order of the original authority to disallow the rebate claims filed by the applicant for the reason that they had failed to declare whether they had availed the benefit of notification no.21/2004-CE(NT) dated 06.09.2004.

8. Government notes that in the present case, the fact that the goods in question were exported and that duty was paid on the same, is not in dispute. Government notes that the impugned Order-in-Appeal itself records that the relevant documents establishing the above, viz. Shipping Bill, Bill of Lading, ARE-1s (Original and Duplicate), Bank Realization Certificates and copies of the relevant Cenvat debit account evidencing payment of duty had been submitted by the applicant along with their claims for rebate. Government notes that the neither the original authority nor the Commissioner (Appeals) has found any flaw in the documents submitted by the applicant barring the declaration in the ARE-1s.

9. Government notes that the crux of the issue is that the applicant instead of the required declaration which read as –

> *"not availing facility under Notification no.21/2004-Central Excise (N.T.) dated the 6th September, 2004 issued under Rule 18 of the Central Excise Rules, 2002."*

made a declaration which read as -

> *"availing/not availing facility under Notification no.19/2004-Central Excise (N.T.) dated the 6th September, 2004 issued under Rule 18 of the Central Excise Rules, 2002."*

The applicant has submitted that the above was an inadvertent error. They have further submitted that they have never availed the benefit of notification no.21/2004-CE(NT) dated 06.09.2004 and have submitted a certificate dated 03.06.2022 issued by Ms Rao & Kumar, Chartered Accountants in support of the said claim. On examining the notification no.21/2004-CE(NT), Government finds that the same provided for rebate of duty paid on the material used to manufacture goods that were subsequently exported, wherein, the exporter did not avail the facility of Cenvat Credit under the Cenvat Credit Rules, 2002. Government finds that in this case the applicant has availed Cenvat Credit and has utilized the same to pay duty on goods exported by them, the rebate of which has been claimed by them. Government notes that the applicant is a manufacturing

unit holding Central Excise registration and the exports have taken place from the same unit which indicates that the original rebate sanctioning authority also had jurisdiction over the manufacturing unit. In such a situation, Government notes that the original authority could have easily ascertained if the applicant had availed of the benefit of notification no.21/2004-CE(NT). Government notes that at no stage during the entire proceedings has any evidence been adduced by the Department to indicate that the applicant had availed the benefit of notification no.21/2004-CE(NT). The applicant has vehemently denied having availed the benefit of notification no.21/2004-CE(NT) before the original authority and the Commissioner (Appeals), however, the same was not taken cognizance of and the decision to reject their rebate claims was based on the extremely narrow view that they had failed to mention that they had not availed the benefit of notification no.21/2004-CE(NT) on the ARE-1s, which the applicant has stated to be a clerical error. In this case the applicant has availed Cenvat credit on the inputs and paid Central Excise duty through their Cenvat Account, thus the question of having availed the benefit of notification no.21/2004-CE(NT) does not arise. Government finds that this was an issue that could have been easily verified by the jurisdictional authorities, who also happens to be the rebate sanctioning authority; however, the same was not done, and instead the error committed by the applicant in the declaration on the ARE-1s was the one singular reason on the basis of which the rebate claims filed by them were rejected. Government notes that it has been reiterated in several judicial pronouncements that substantial benefit, like that of rebate of duty paid of goods exported, should not be denied on the grounds of procedural infractions. Government finds that in the present case, except for the error of not having mentioned the correct notification number in the declaration on the ARE-1, no other reason has been cited by the lower authorities to reject the rebate claims of the applicant. Government finds that the said error to be a procedural one and the rebate of duty paid on the goods exported cannot be denied for the said reason. Given the above facts, Government finds the decision of the Commissioner (Appeals) to uphold the

order of the original authority which rejected the rebate claims on the basis of such clerical error on the part of the applicant, to be incorrect.

10. Government finds that both the lower authorities have relied upon the judgment of the Hon'ble High Court of Allahabad in the case of M/s Vee Excel Drugs & Pharmaceuticals Pvt. Ltd vs Union of India [2014(304)ELT 100(All.)]. Having examined the said judgment, Government finds that the issue for decision before the Hon'ble Court was whether rebate could be sanctioned in the absence of copies of ARE-1 duly certified by the Customs authorities; the Hon'ble Court had held that in case the procedure of filing ARE-1 was given a go-bye, the authorities available on spot shall not be able to verify that the goods sought to be exported are same, the description whereof had been mentioned therein and that the objective of the law was to avoid surreptitious and bogus export. Government finds that the present case is distinguishable from the case cited inasmuch as in the present case the applicant has filed all the documents required, including the ARE-1s, whereas in the case relied upon, the ARE-1 itself was missing. Government finds that the present case is limited to quoting an erroneous notification number in the ARE-1s and is not comparable to the case relied upon by the lower authorities. In view of the above, Government finds that the above cited judgment of the Hon'ble High Court of Allahabad will not be applicable to the instant case.

11. Further, Government finds that the Hon'ble High Court of Bombay in the case of M/s Portescap India Pvt. Limited vs UOI [2021 (376 ELT 161 (Bom)] had held that if the defect is procedural and curable, the same cannot deprive the exporter of the benefit due to them. Further, Government finds the Hon'ble High Court of Madras in the case of Shree Ambika Sugars Limited vs Jt. Secretary Ministry of Finance, Department of Revenue, New Delhi [2019 (368) ELT 334 (Mad)] had held that rebate claimed cannot be rejected on the ground of procedural infractions. Government finds that the defect in the present case is procedural and was curable. The error of mentioning an incorrect notification number will not

deprive the applicant from the rebate of duty paid on the goods exported by them.

12. In view of the above, Government holds that the error of mentioning an incorrect notification number in the ARE-1 by the applicant to be a procedural lapse and that the substantive benefit of rebate of the duty paid on the goods exported by them cannot be denied to them for such procedural lapse and that they will be eligible to the rebate claimed by them. Government finds the impugned Order-in-Appeal dated 30.12.2016 to be improper and not legal for the reasons discussed above and annuls the same.

13. The Revision Application is allowed with consequential relief.

Shrawan 7/7/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 675/2022-CX (SZ) /ASRA/Mumbai dated 07.07.2022

To,

M/s LG Polymers India Private Limited,
R.R. Venkatapuram,
Visakhapatnam 530029.

Copy to:

1. Pr. Commissioner of Central Tax, Visakhapatnam CGST Commissionerate, New GST Bhavan, Beside Port Admin Office / Dredging Corporation, Port Area, Visakhapatnam Port, Andhra Pradesh – 530035.
2. The Commissioner (Appeals), Customs, Central Excise & Service Tax, 4th floor, Custom House, Port Area, Visakhapatnam – 530035.
3. Sr. P.S. to AS (RA), Mumbai
4. Notice Board.