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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.195/522/2013-RA (1349)

Date of Issue: 14.02.2024

ORDER NO. 69 /2021-CX (WZ)/ASRA/MUMBAI DATED 28.01.2021
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 Seimens Ltd.

Respondent : Commissioner (Appeals-II), Central Excise Mumbai.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.
US/938/RGD/2012 dated 27.12.2012 passed by the
Commissioner (Appeals-II), Central Excise Mumbai.

ORDER

This Revision Application is filed by M/s Seimens Ltd., 130, Pandurang Budhkar Marg, Worli, Mumbai 400 030 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. US/938/RGD/2012 dated 27.12.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

2. The issue in brief is that the Applicant, a Merchant Exporter had filed two rebate claims dated 26.07.2011 and two rebate claims dated 11.05.2010 all amounting to Rs. 13,48,393/- (Rupees Thirteen Lakhs Fourty Eight Thousand Three Hundred and Ninety Three Only). On scrutiny of the claims, the Applicant was issued a Deficiency Memo Cum Show Cause Notice dated 21.12.2011. The Deputy Commissioner(Rebate), Central Excise, Raigad vide Order-in-Original No. 741/11-12/DC(Rebate)/Raigad dated 31.05.2012 reject the four rebate claims on the ground that the Applicant had not followed the procedure of self sealing as required vide Para 3(a)(xi) of Notification No. 19/2004-CE(NT) dated 06.09.2004 and Para 6.1. of Part-1 of Chapter 8 of CBEC's Excise Manual of Supplementary Instructions. Aggrieved, the Applicant filed an appeal with the Commissioner (Appeals-II), Central Excise Mumbai, who vide Order-in-Appeal No. US/938/RGD/2012 dated 27.12.2012 upheld the Order-in-Original dated 31.05.2012 and rejected their appeal.

3. Being aggrieved, the Applicant filed the current Revision Application on the following grounds :

- (i) The Applicant had followed the appropriate process pertaining to exports of goods and filed rebate claims under Rule 18, as per the procedure prescribed, hence the rebate claim should be granted to them.

- (ii) It is not in dispute that the manufacturer M/s HBL Power Systems Ltd. had not sealed the goods being exported with one time seal. There has been no adverse observation to this effect neither in the shipping bill nor in the impugned order. The only procedural lapse that has happened in the instant case was that a declaration to this effect was not put on ARE-1 by the manufacturer. Therefore, the rebate claim cannot be denied on this meager ground.
- (iii) The goods were always open to the custom official to verify and examine the goods being exported before issuing the Let Export order. However, the official chooses not to physically examine the goods by noting thereof. Therefore, the Applicant cannot be made responsible for such choice of the customs officials.
- (iv) The payment terms as agreed with the customer categorically provides that payment would be made only after delivery and in some case even after installation of the goods so supplied and the Applicant have already received payment against the Export invoices. Further, for supplies made to Kenya Energy Sector Recovery Project, a certificate had been issued by Kenya Bureau of Standards under the authority of Pre-Export Verification of Conformity Programme authenticating the description of goods inspected at the manufacturer premises which itself demonstrates the identity of goods exported. The consignee has already made the payment in respect of the export which itself demonstrates the acknowledgment of the receipt of goods. The Applicant had substantially complied with the conditions and procedures as laid down in Notification No. 19/2004 while filing the rebate claims.
- (v) The responsibility of complying with the sealing and certification procedures was on the manufacturer. The Applicant having already paid the excise duty, should not be penalized for non-compliance done by the manufacturer. The goods exported by the Applicant had

suffered excise duty and the same was certified by the Jurisdictional Superintendent of Central Excise.

- (vi) The Para 6.1. of Part-1 of Chapter 8 of CBEC's Excise Manual of Supplementary Instructions obliges only the manufacturer-exporters to certify the copies of the ARE-1. In the instant case, the Applicant being merchant exporter should not be bound with these provisions.
- (vii) The Commissioner(Appeals) had relied upon the decision of Revisionary Authority in the case of Re: Bronze Logistics Pvt Ltd [2012 (272) ELT 505 (GOI)] wherein the revision application was rejected as the exporter was not able to furnish the original and duplicate copies of ARE-1. The Revisionary Authority considered such lapses are not minor/technical and consequently rejected the revision application. The Applicant submitted that subject case is not comparable with their present case as the facts and circumstances on which the said order was passed completely different as they had produced all the documents and the Dy. Commissioner also accepted the same in the Order-in-Original dated 31.05.2012.
- (viii) Fundamental requirement of rebate claim is manufacture and subsequent export. The Applicant had paid excise duty to the manufacturer. The said manufacture had paid excise duty to the credit of the Central Government. On this is the admitted factual position, the rebate claim cannot be rejected due to technical or procedural breach. In this the Applicant relied on few law cases.

4. A personal hearing in the case was held on 20.01.2021. Shri Mahesh Parnekar, Chief Manager Indirect Taxes and Ms Kajal Bhadra, Manager Indirect Taxes appeared online on behalf of the Applicant. They reiterated the submissions and submitted that for small procedural lapse substantive benefit should not be denied. Mere lapse of certification by Company person cannot be ground for granting rebate. There is no doubt on export of duty paid goods.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.
6. Government notes that the Notification No.19/2004-CE(NT) dated 6.9.2004 which grants rebate of duty paid on the goods, laid down the conditions and limitations in paragraph (2) and the procedure to be complied with in paragraph (3). The fact that the Notification has placed the requirement of "presentation of claim for rebate to Central Excise" in para 3(b) under the heading "procedures" itself shows that this is a procedural requirement. Such procedural infractions can be condoned.
7. Government notes that as per Para 11.1 of the CBEC Circular No. 81/81/94-CX dated 25.11.1994 under F.No. 209/18/93-CX.6 (Pt.) -

"11.1 Relaxation to be granted by the Collector : The Collector is empowered to condone/ relax any condition relating to rebate of excise duty on goods exported for reasons to be recorded in writing, if he is satisfied that the goods have actually been exported. However, the Collector is not empowered to condone delay in filing of the rebate claim filed after the expiration of six months from the date of export, the time limit prescribed under Section 11B of the Central Excise Act. It may be noted that his power has to be exercised by the Collector and not the Assistant Collector who may be acting as Maritime Collector or the Jurisdictional Assistant Collector."

8. Government observes that as regards to the Appellant not furnishing the certification of self sealing on the ARE-1 the Applicant submitted that

"... only procedural lapse that has happened in the instant case is that a declaration to this effect was not put on ARE-1 by the manufacturer. Therefore, applicants submitted that the rebate claim cannot be denied on this meager ground."

Government notes that the Appellant had admitted their mistake of not giving the certificate of self sealing. Further Government notes that the Appellant had submitted sufficient documentary evidence that the goods in

question have been exported. Government finds that the said mistake was a procedural lapse and the same is condoned and hence their rebate claims cannot be rejected on the point of procedural lapse.

9. Government finds that the deficiencies observed by the adjudicating authority and Appellate authority are of technical nature. In cases of export, the essential fact is to ascertain and verify whether the said goods have been exported. In case of errors, 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 consisted 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 foregoing, the Government holds that detail verification of the rebate claims amounting to Rs. 13,48,393/- by the original adjudicating authority as to the evidence regarding payment of duty i.e relevant Invoice and ARE 1 as produced by the Applicant in their rebate claims, has to be taken into consideration. The Applicant is also directed to

submit their relevant records/ documents to the original authority in this regard for verification.

11. In view of the above, Government sets aside the impugned Order-in-Appeal No. US/938/RGD/2012 dated 27.12.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai and remands back the instance case to the original authority which shall consider and pass appropriate orders on the claimed rebate and in accordance with law after giving proper opportunity within four weeks from receipt of this order.

12. The Revision Application is allowed with consequential relief.

Shrawan
28/01/21
(SHRAWAN KUMAR)

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

ORDER No. 69/2021-CX (WZ)/ASRA/Mumbai DATED 28.01.2021

To,
M/s Seimens Ltd.,
130, Pandurang Budhkar Marg,
Worli,
Mumbai 400 030

Copy to:

1. The Commissioner, Central Goods & ST, Belapur, 1st floor, CGO Complex, Sector 10, CBD Belapur, Navi Mumbai 4400 614.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy