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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, Cuff Parade,
Mumbai- 400 005

F. NO. 195/144/15-RA (3109)

Date of Issue: 25.07.2022

ORDER NO. 701/2022-CX (WZ) /ASRA/Mumbai DATED 19.07.2022
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 Magna Trades Consortium,
GS-1, Plot No. A-17, MIDC Ambad, Nashik 422010

Respondent : The Commissioner, Central Excise, Pune IV

Subject : Revision Application filed under section 35EE of the Central Excise
Act, 1944 against the Order-in-Appeal No.PUN- SVTAX- 000-APP-
0033-14-15 dated 23.02.2015 passed by the Commissioner of
Service Tax (Appeals), Pune.

ORDER

This Revision Application is filed by M/s Magna Trades Consortium, GS-1, Plot No. A-17, MIDC Ambad, Nashik 422 010 (hereinafter referred to as "applicant") against the Order-in-Appeal No. PUN-SVTAX-000-APP-0033-14-15 dated 23.02.2015 passed by the Commissioner of Service Tax (Appeals), Pune.

2. The facts of the case in brief are that the applicant, a registered Merchant Exporter, had filed a rebate claim on 28.04.2013 for Rs. 8,07,505/-, in respect of duty paid on the goods exported by them under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004 CE(NT) dated 06.09.2004 and Section 11B of the Central Excise Act, 1944. The applicant had purchased the goods i.e. 'Airconditioning Supply Unit and Airconditioning Indoor Unit' from the manufacturer M/s L.G. Electronics, Ranjangaon, Pune on payment of duty and subsequently exported it to Tanzania. On scrutiny of the rebate claim it was found that the applicant had not submitted Original, Duplicate & Triplicate copies of Form ARE-1 pertaining to their claim of export of the said goods. Pursuant to the issue of show cause notice the Original Authority rejected the rebate claim on the grounds that in the absence of copies of ARE-1 duly endorsed by the Customs officer, it could not be proved that the same goods were exported.

3. Being aggrieved with the impugned Order-in-Original, the applicant filed an appeal before the Commissioner of Service Tax (Appeals), Pune. The Appellate Authority rejected the appeal vide Order-in-Appeal No. PUN-SVTAX-000-APP-0033-14-15 dated 23.02.2015.

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

4.1 That being a merchant exporter, the right to rebate of duty accruing under Rule 18 of the Central Excise Rules 2002 on export of goods and is not obliterated if the application for rebate of duty is not filed with copy of ARE-1's and Rule 18 of the said Rules empowers the excise authorities to grant rebate of duty even if some of the procedural requirements are not fulfilled and the right to rebate of duty which flows from Rule 18 is not destroyed by failure to apply for rebate of duty without producing copies of ARE-1s.

4.2 That in the present case, there is no dispute raised in respect of the export of goods which has taken place under the three Central Excise invoices, one shipping bills/Airway bills and the duty of Rs.8,07,505/- was paid by the manufacturer i.e. M/s LG Electronics India Pvt. Ltd., A-5, MIDC, Ranjangaon, Pune Nagar Road, Tal-Shirur Dist-Pune and the rebate claim is filed within the stipulated time limit.

4.3 The applicant has also relied upon the judgement of The Bombay High Court in the case of M/s Um Cables Limited vs. Union of India [2013 (293) E.L.T. 641 (Bom.)] to support their claim that the non-production of original and duplicate copy of ARE-1 cannot invalidate rebate claim and that the procedure prescribed under Notification No. 19/2004-C.E. (N.T.) and C.B.E. & C. Manual of Supplementary Instructions of 2005 only facilitates processing of rebate application and enables authority to be satisfied that requirement of goods having been exported and being of duty paid character. Further the Hon'ble High court has stated that *"the object of requirement of attaching documents along with rebate claim is nothing but cross-examination of the fact that (a) the goods are exported outside India and (b) such goods are duty paid goods. That is why the requirement of the Rules to obtain endorsement from the Customs officials on the shipping bills under which the goods have been exported. The Hon'ble High Court further held that "the position in law is well settled that any procedure prescribed by a subsidiary legislation has to be in aid of justice and procedural requirements cannot be read so as to defeat the cause of justice"*.

4.4 That the Revisionary Authority and Hon'ble Tribunals in the following cases have allowed rebate claims in the absence of ARE-1s when other documents such as shipping bills/bill of lading etc. were available on record proving the duty paid nature of the goods and actual export of the said goods.

- a) IN RE:GARG TEX-O FAB PVT. LTD. [2011 (271) E.L.T. 449 (G.O.I.)]
- b) CCE v. Kanwal Engg. - [1996 (87) E.L.T. 141]
- c) Wonderseal Packing v. CCE - [2002 (147) E.L.T. 626]
- d) Home Care (1) P. Ltd. v. CCE- [2006 (197) E.L.T. 110]
- e) G.T.C. Industries Ltd. v. CCE [2003 (162) E.L.T. 109]
- f) Model Buckets & Attachments Pvt. Ltd. - [2007 (217) E.L.T. 264]

4.5 That the applicant has relied upon the following case laws in support of their contention that Substantive benefit to be given by condoning non-mandatory procedural provisions :

- i) Re: Barot Exports [2006(203)ELT 321(GOI)]
- ii) Catfab Exports - [2006 (205) E.L.T. 1027 (GOI) and
- iii) Birla VXL Ltd. - [1998 (99) E.L.T. 387 (T);

- iv) Order No PII/PAP/208/2008 dated 21-10-2008 of the Commissioner (Appeals) Pune-II in the case of M/s. Aditi Foods (I) Pvt. Ltd.

5. Personal hearing in the matter was scheduled for 22.03.2022. Shri K.K Koshy, CEO of the applicant appeared online for the personal hearing and reiterated his earlier submissions. He stated that not making of ARE 1 should not deprive them of otherwise eligible rebate as goods purchased from M/s LG Electronics were directly shipped to customs bonded warehouse where the same were stuffed in containers for export under Customs supervision and the description of goods, model numbers etc. could be verified from invoices, shipping bills etc. Shri Koshy submitted additional written submissions at the time of hearing.

6. The applicant in his additional submission has stated that they were not aware that being a merchant exporter they could prepare ARE-1 and that regularly for the exports they obtained CT-1 form and submitted to the manufacturers for exemption of Excise Duty but in the instant case the manufacturer refused to accept the CT-1 form or the H form for VAT exemption due to the amount of duty involved.

6.1 The applicant further submitted clarifications and documents regarding the aspect whether the goods procured by payment of duty were the same that were exported and clarification regarding discrepancies of the date of invoices, the gist of which is as under:

6.2 That the goods procured in instant case were transported by the supplier from their factory directly to the Customs Bonded Warehouse, the address of which is mentioned in their respective invoices, and hence there is no question of the goods being delivered to any other place.

6.3 That though the ARE-1 form was not prepared, the model numbers, quantity and description of every item tallied with the manufacturer invoices, shipping bill, their commercial invoice and the bill of lading.

6.4 That since 2012 till date, the invoices prepared by them were 100% export invoices and no domestic invoice was raised.

6.5 As the goods are directly delivered by the manufacturer to the excise bonded warehouse, it is mandatory for the exporter to file the necessary documents including the respective sale invoice with the customs office at the bonded warehouse prior to

the arrival of the goods, without which the goods are not accepted at the said warehouse.

6.6 That the forwarding agent required one day for preparing the necessary documents for the Customs and one day for filing the same with the Customs, before the arrival of the goods and the work of the forwarding agent starts after the Commercial Invoice and Packing List is submitted to them by the exporter.

6.7 That in most of the cases when there are more than one or two suppliers, and the export is done as an FCL and single invoice, the sale invoice date is earlier than the purchase invoices dates, if the goods are received directly at the Customs Bonded Warehouse.

7. 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.

7.1 In the instant case, Government observes that :-

a) As per the order in original, the applicant had submitted the original copy of the invoices from the manufacturer, attested copy of shipping bills, bill of lading, mate receipt, commercial invoice and bank realization certificate from the DGFT site, disclaimer certificate showing that the manufacturer had not claimed refund, and declaration showing that no claim of rebate is filed by them or will be made and to refund any excess or erroneous payment made to them.

7.2 Government notes that the copy of the shipping bill has been duly endorsed by the customs authorities and the certificate from the DGFT site evidencing the realization of the proceeds in respect of the subject shipping bills.

7.3 Government notes that the Appellate Authority in the impugned order-in-Appeal has held that goods had been exported by the applicant and the goods had been procured by the applicant from the manufacturer on payment of duty. Despite the same, the Appellate Authority had expressed reservations as to whether the same goods that had been procured from the manufacturer were the goods that were exported, in the absence of the ARE-1's.

7.4 The applicant in their defence have submitted that the goods procured in the instant case were transported by the manufacturer from their factory directly to the Customs Bonded warehouse that even though the ARE-1 was not prepared, the model number, quantity and description of each and every item tallies with the manufacturers invoice, shipping bill, the applicants commercial invoice and the bill of lading.

7.5 The Government notes that the Manual of Instructions that have been issued by the CBEC specifies the documents which are required for filing a claim for rebate. Among them is the original / duplicate / triplicate copy of the ARE-1, the Excise Invoice and self-attested copy of shipping bill and bill of lading etc. Further paragraph 8.4 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 as evident from the original and duplicate copies of the ARE-1 form duly certified by customs. 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.

7.6 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.

7.7 The Government notes that the ARE 1 have not been furnished by the manufacturer and the applicant. However, there is no doubt that the goods in question has been exported by the applicant as is evident from the endorsement of the customs authorities on the shipping bill. As regards the duty paid on the goods exported, the same has been certified by the Appellate Authority that the duty on the goods received by the applicant was discharged by the manufacturer.

7.8 In view of above, the government holds that the deficiencies pointed out by the Appellate authority while setting aside the Order-in-Original sanctioning the rebate claims for the amount of Rs. 8,07,505/- 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.

8. The Government finds that 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 that the goods were not exported.

8.1. 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. v. 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."

8.2. 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 TIOI 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.

8.3. Government also observes that the Hon'ble High Court, Gujarat in *Raj Petro Specialities vs Union of India* [2017(345) ELT 496(Guj)] (relied by the applicant in the instant case) 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 AREs, 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. Government finds that ratios of aforesaid Hon'ble High Court orders are squarely applicable to the instant case in so far as the matter of sanction of rebate claim is concerned.

10. Be that as it may, as the other issue involved is of establishing whether the same goods which were procured from the manufacturer on payment of duty are the same goods which were exported by the applicant, as has been raised by the

Appellate Authority, Government observes that the same needs to be verified by the Original Authority by way of collateral evidences available

11. In view of discussions and findings elaborated above, Government holds that impugned rebate claims for Rs. 8,07,505/- are admissible in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/04-CE (N.T.) dated 06.09.2004, subject to verification on the above lines:

12. In view of the above, Government holds that ends of justice will be met if the impugned Order in Appeal is set aside. Accordingly, Government sets aside the Order in Appeal No PUN-SVTAX-000-APP-0033-14-15 dated 23.02.2015 passed by the Commissioner of Service Tax (Appeals), Pune and remands the case back to the Original Authority for verification on the basis of the collateral documents submitted by the applicant after satisfying itself in regard to the authenticity of those documents. However, the Original Authority shall not reject the claims merely on the ground of the non-production of copies of the ARE-1 form, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled. The Original Authority shall pass the order within eight weeks from the receipt of this order.

13. The Revision applications are allowed on above terms.


(SHRAWAN KUMAR)

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

ORDER No. 701/2022-CX (WZ) /ASRA/Mumbai DATED 09.07.2022

To,

M/s Magna Trades Consortium,
GS-1, Plot No. A-17, MIDC Ambad,
Nashik 422 010

Copy to:

1. The Commissioner of CGST, Nashik, Plot No 155, Sector -P-34, NH Jaishtha & Vaishakh, CIDCO, Nashik-422008
2. The Commissioner of CGST, Nashik (Appeals), Plot No 155, Sector -P-34, NH Jaishtha & Vaishakh, CIDCO, Nashik-422008

3. ~~Sr. P.S. to AS (RA), Mumbai~~
4. Notice Board
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