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SPEED POST



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. 195/465/WZ/2016-RA / 3648 Date of issue: 01.09.2022

ORDER NO. 779/2022-CX (WZ)/ASRA/MUMBAI DATED 25.8.2022
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. Shree Precoated Steels Limited

Respondent : Commissioner of Central Excise, Raigad.

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
CD/313/RGD/2016 dated 15.03.2016 passed by the
Commissioner of Central Excise (Appeals), Mumbai Zone-II.

ORDER

This Revision Application is filed by M/s. Shree Precoated Steels Limited, Rehman Building, 2nd Floor, Opp. Akbarallys, 24, Veer Nariman Road, Fort, Mumbai - 400 001 (hereinafter referred to as "the Applicant") against Order-in-Appeal No. CD/313/RGD/2016 dated 15.03.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II.

2. Brief facts of the case are that the applicant had submitted a letter dated 17.07.2015 submitting ARE-1 and EP copy of Shipping bill in respect of their rebate claim dated 04.10.2007 with Maritime Commissioner, Raigad. In reply, vide letter dated 07.08.2015, they were informed that the said rebate claim had already been decided and had attained finality by way of Order dated 27.10.2014 of Hon'ble High Court of Bombay. Aggrieved, the applicant filed an appeal, which was rejected by the Commissioner (Appeals) vide the impugned Order-in-Appeal.

3. Hence, the Applicant filed the impugned Revision Application mainly on the grounds that:

(a) The Commissioner(Appeals) has passed an order rejecting the rebate claim in gross violation of the principles of natural Justice by not verifying the documents with the original application dated 24.10.2007, which he was required to do in view of the fact that the Applicants had themselves brought into the notice of the Department that the copies of the aforesaid Shipping Bills, AREIs could not be released by the Customs and stated in the body of the Application dated 24.10.2007.

(b) Also, all the while when the Application for refund was made, the aforesaid Shipping Bills, AREIs were in the custody of the Central Government i.e. the Indian Customs and thus the non production of these documents to accompany the said claim was humanly impossible and beyond the reach of the Applicant. Thus, the observations of the Commissioner (Appeals) that the Applicant had

filed the rebate claim on 24.10.2007 without submitting the Original and Duplicate endorsed copies of the ARE-1 and copies of the Shipping Bills is to say the least preposterous and has such observations have been made to deprive the Applicants the rightful claim of the rebate sought by them. Thus, the decision relied upon by the Commissioner (Appeals) in the case of M/s. Vee Excel Drugs Pharma Pvt. Ltd 2014 (305) E.L.T_ 100 (All.) is not applicable as the said case pertains to a situation where the exporter had not filed the ARE-1 which was in his possession at the time of filing the Application whereas all the documents in the present case were with the Customs. In such a situation, the case law would not provide any respite to the Respondent to seek shelter for denying the rebate claim and hence the said decision has to be rejected on all fours as not applicable to the fact in the present case.

(c) The Respondent ought to have considered that the Applicant had exported the goods on payment of duty and having submitted the remaining documents, there was nothing left except to process the rebate claim. Hence the action of the Commissioner (Appeals) as contained in the said order is not only without jurisdiction and without authority of law, the same is also in gross abuse of the powers conferred upon him under the Act and/or in colourable exercise of such power and is therefore untenable and unsustainable on this ground also.

(d) The Respondent erred in citing the judgment of the Hon'ble Bombay High Court dated 27.10.2014, as the judgment rendered was in the context of the fact that the Applicants prior to 1.6.2015 i.e. the date when the customs handed over the impugned documents. Therefore, the judgment has no relevance today since all documents necessary for the processing of the rebate claim has been submitted to the Respondents for the purposes of sanctioning the refund claim.

(e) That, the letter rejecting the rebate claim is itself not a speaking Order and itself violates the principle of natural justice. Applicants were deprived of proper hearing and the Judgment of the Hon'ble Bombay High Court dated 27.10.2014 have been used against them demolishing their prayer for natural justice and they were denied due process of justice for which the whole proceedings was fatal being mere hypothetical.

(f) That, the ex parte order has deprived Applicants of an opportunity to present the correct facts and evidences. Applicants say and submit that because of the fact that no personal hearing was conducted by the Original Authority which has severely impaired the decision-making process and leading to wrong conclusions. Had the personal hearing being conducted, correct facts which are available on the record indicating the nature of the documents submitted would have been laid bare during the course of personal hearing. Applicants have been visited with the rejection of the rebate claim. Therefore, on this aspect itself the entire Order is required to be set aside on merits as not sustainable.

In view of above submissions, the applicant prayed to pass a suitable order or direction to quash and set aside the Order-in-Appeal No. CD/313/RGD/2016 dated 2.5.2016 or to pass any other order in the interest of the Applicant.

4. Personal hearing in the case was fixed for 29.06.2022. Shri Madhav S Murthy, Advocate, attended the online hearing and submitted that the claim was originally filed within time limit. Documents like ARE-1 were with Customs and have been submitted later. He requested to allow substantive right of rebate.

5. Government has carefully gone through the relevant case records available in the case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. Government observes that the issue involved is whether once a rebate claim has been rejected due to non-submission of relevant documents viz. ARE-1 and Shipping bill, the same can be claimed again by furnishing the missing documents?

7.1 Government observes that the applicant had filed a rebate claim dated 04.10.2007 for an amount of Rs.24,83,328/- which was rejected by the adjudicating authority as the applicant had not submitted the original and duplicate endorsed copies of ARE-1 and EP copy of the concerned shipping bill. Aggrieved, the applicant had filed appeals with Commissioner (Appeals), Revisionary Authority and the Hon'ble High Court of Bombay, sequentially, but all were rejected.

7.2 Subsequently, vide letter dated 17.07.2015, the applicant submitted the required documents with Maritime Commissioner and requested to sanction their rebate claim dated 04.10.2007. However, the rebate sanctioning authority, vide reply dated 07.08.2015, informed the applicant that the said rebate claim had already been decided and had attained finality by way of Order dated 27.10.2014 of Hon'ble High Court of Bombay. Aggrieved, the applicant filed an appeal, which was rejected vide the impugned Order-in-Appeal No. CD/313/RGD/2016 dated 15.03.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II.

8. Government observes that Section 11B of the Central Excise Act, 1944, stipulates limitation of time for claiming refund of duty, the relevant portion of which is reproduced hereunder:

Section 11B. Claim for refund of duty and interest, if any, paid on such duty -

(1) Any person claiming refund of any ¹[duty of excise and interest, if any, paid on such duty] may make an application for refund of such ²[duty and interest, if any, paid on such duty] to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form

and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of ¹[duty of excise and interest, if any, paid on such duty] in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such ²[duty and interest, if any, paid on such duty] had not been passed on by him to any other person :

.....
.....

Explanation. - *For the purposes of this section, -*

(A) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(B) "relevant date" means, -

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods,

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

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.....

Government finds that the limitation of one year is a statutory obligation and therefore both the Applicant and the Department are bound to ensure its compliance.

9. Government finds that in the instant case, the rebate claim was filed in the month of October 2007. Therefore in July 2015, when the missing documents in the rebate claim were submitted, the stipulated period of one year from the date of export had lapsed and the Department had no authority to take cognizance of the fresh submissions. Further, a matter which has been already decided by the Hon'ble Bombay High Court, cannot be re-opened by a lower authority on the basis of any new development and

therefore the rebate sanctioning authority had rightly stated that the matter had attained finality, which was affirmed by the Appellate authority.

10. In view of the findings recorded above, Government upholds the Order-in-Appeal No. CD/313/RGD/2016 dated 15.03.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II, and rejects the impugned revision application filed by the applicant.


(SHRAWAN KUMAR)

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

ORDER No. 779 /2022-CX (WZ)/ASRA/Mumbai dated 25.8.22

To,
M/s. Shree Precoated Steels Limited,
Rehman Building, 2nd Floor, Opp. Akbarallys,
24, Veer Nariman Road, Fort, Mumbai - 400 021.

Copy to:

1. Commissioner of CGST, Mumbai South,
13th & 15th Floor, Air India Building,
Nariman Point, Mumbai - 400 021.
2. Sr. P.S. to AS (RA), Mumbai
- ~~3. Guard file~~
4. Notice Board.