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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. 195/882/13-RA / 1334

Date of Issue: 24.02.2021

ORDER NO. 8 / 2021-CX (WZ) / ASRA/MUMBAI DATED 16.02.2021
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 CENTRAL
EXCISE ACT, 1944.

Applicant : M/s. Endeka Ceramics India Pvt. Ltd.

Respondent: Commissioner of Central Excise & Customs(Appeals), Surat-II

Subject : Revision Applications filed, under Section 35EE of Central
Excise Act, 1944 against Order-in-Appeal Nos. CCEA-SRET-
II/SSP-146/2013-14 dated 31.07.2013 passed by the
Commissioner of Central Excise & Customs(Appeals), Surat-II.



ORDER

This Revision Application has been filed by M/s. Endeka Ceramics India Pvt. Ltd., Plot No. 756/8 & 9, GIDC Estate, Jhagadia, Dist. Bharuch – 393 110 (hereinafter referred to as “the Applicant”) against the Order-in-Appeal Nos. CCEA-SRET-II/SSP-146/2013-14 dated 31.07.2013 passed by the Commissioner of Central Excise & Customs(Appeals), Surat-II.

2. The case in brief is that the Applicant, manufacturer had filed rebate claim of Rs 6,24,274/- dated 07.05.2012 in respect of ARE-1 No. 02/11-12 dated 04.05.2011. On scrutiny of the claim it was noticed that they had not submitted the Original and Duplicate copies of the ARE-1 duly endorsed by the Customs Authority of proof of export certifying the details of export viz Shipping Bill No., Mate Receipt no. etc. Hence, the Applicant was issued Deficiency/Query Memo dated 13.07.2012. The Assistant Commissioner), Central Excise & Customs, Division-II, Ankleshwar vide Order-in-Original No. 995/SRT-II/ANK-II/REBATE/12-13 dated 13.08.2012 rejected the refund claims under Section 11B of Central Excise Act, 1944. Aggrieved, the Applicant then filed appeal with the Commissioner of Central Excise & Customs(Appeals), Surat-II. The Commissioner(Appeals) vide Order-in-Appeal Nos. CCEA-SRET-II/SSP-146/2013-14 dated 31.07.2013 rejected their appeal.

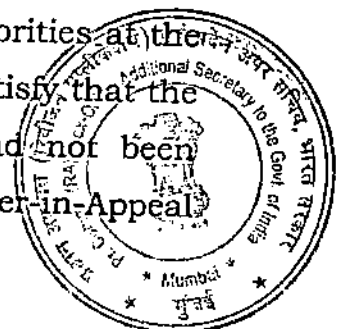
3. Aggrieved, the Applicant filed the current Revision Application on the following grounds:

- (i) The Commissioner(Appeals) had neither considered the factual position nor considered the substantial evidences in respect of the export of the goods. Even the ratios of most applicable judgment relied by the Applicant was conveniently ignored.
- (ii) The goods were undisputedly exported as it was quite evident from the different documents such as Shipping Bill, Bill of Lading, Mate Receipt, etc. The reason for non submission of the original and duplicate copies of ARE-1 No. 02/11-12 dated 04.05.2011 was that



the same were not provided by the Customs House Agent (CHA) at the Applicant as the CHA had lost the said copies. Hence they also lodged FIR.

- (iii) In respect of the FIR lodged by CHA, the Original Authority and the Appellate Authority had pointed out certain discrepancies which are not at all relevant. As regard the first discrepancy/query, the Applicant submitted that along with other documents, the concerned person of CHA was also carrying the original and duplicate copies of ARE-1.
- (iv) The Original Authority had raised doubt whether the FIR/Certificate duly signed by the Police Officer was correct or not. In this regard, the Applicant submitted that why should they put forth incorrect reason before the department particularly when the matter related to the rebate of duty which was already paid at the time of export of the finished goods. As a matter of fact, non submission of relevant documents was disadvantageous for them.
- (v) The Original Authority and the Appellate Authority had not disputed the facts regarding payment of duty and export of the finished goods. From the documents such as Shipping Bill, Bill of Lading, Mate Receipt, Bank Realisation Certification, etc., all the details are tallying with each other.
- (vi) The Custom Officer at the port had also verified and allowed the export by putting his signature on ARE-1. If the goods were not the same goods as removed from the factory premises of the Applicant, then the Custom Officer would not have allowed the export. In the circumstance when the goods have been exported, rebate claim ought to have been sanctioned. For this reason, as per the instructions contained in Para 13.7 of Chapter 7 of Supplementary Instruction of CBEC's Excise Manual, the Applicant had requested the Original Authority to get the fact verified from the Customs Authorities at the place of export and may call for collateral evidences to satisfy that the goods have been actually exported. But this point had not been addressed whether in Order-in-Original nor in the Order-in-Appeal.



and ignored the same thought it was submitted vehemently before the lower authorities.

- (vii) The rebate claim of duty paid at the time of export of the finished goods was filed in terms of Rule 18 read with the Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended. Rules 18 itself make a distinction between condition and limitation on the one side subject to which a rebate can be granted and the procedure governing the grant of rebate on the other side. The condition and limitation for the grant of rebate are mandatory and the procedures prescribed such as submission of documents etc., are directory. Hence for procedural lapses, rebate cannot be denied particularly when the export of the goods can be proved on the basis of the collateral evidences such as Shipping Bill, Bill of Lading, Mate Receipt, Bank Realisation Certification, etc. Hence non production of the copies of the ARE-1 would not ipso facto result in the denial of rebate claim.
- (viii) Here the Applicant relied on few of case laws
 (a) UM Cables Ltd Vs UOI [2013 (293) ELT 641 (Bom)];
 (b) Kansal Knitwares vs CCE [2001 (136) ELT 467 (T)];
 (c) Cotfab Exports [2006 (205) ELT 1027 (GOI)]
- (ix) The rebate claim which was otherwise completely legal and valid, cannot be denied on account of such small procedural and technical lapses which were rectified later on, when pointed out by the authority. There are number of judgment and it is a settled legal position that for minor technical and procedural discrepancies, or lapses, the rebate claim cannot be rejected, particularly when the export of goods in all such cases, were duly established with all relative supporting documents.
- (x) The Applicant prayed that the impugned Order-in-Appeal be set aside and their revision application be allowed with consequential relief.



4. A Personal Hearing was held on 11.12.2019. No one appeared on behalf of the Applicant and the Asstt. Commissioner, Div.-X, Vadodara-II attended the hearing on behalf of the Respondent. The Respondent submitted that the Original and Duplicate copy of the ARE-1 was lost and FIR was filed. Further, he reiterated the Order-in-Original and Order-in-Appeal and requested to uphold the same. However, there was a change in the Revisionary Authority, hence a final hearing was granted on 01.12.2020, 04.12.2020 and 09.12.2020, however none appeared for the hearing.

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. On perusal of the records, it is observed that the Applicant in support of their rebate claims had produced the set of the following documents:

- (i) Copy of FIR Certificate issued by the Churchgate Railway Police Station, Mumbai dated 25.06.2011 in r/o missing Original and Duplicate copies of ARE-1 No. 02/11-12 dated 04.05.2011;
- (ii) Triplicate copy of ARE-1 No. 02/11-12 dated 04.05.2011;
- (iii) Duplicate copy of Central Excise Invoice No. E0006 to E0013 dated 04.05.2011;
- (iv) Self certified copies of Shipping Bill No. 3541721 dated 05.05.2011;
- (v) Self certified copies of Bill of Lading No. AWSL072698N dated 11.05.2011;
- (vi) Self certified copies of Mate Receipt No. 26300020 dated 11.05.2011;
- (vii) Self certified copies of RG 23 A Part-II Account;
- (viii) Self certified copies of Commercial Invoice and Packing List;
- (ix) Declaration.

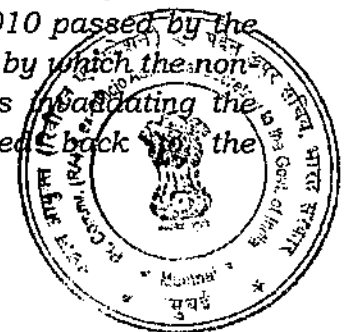
7. The Commissioner(Appeals) had rejected the Applicant's rebate claims for non-furnishing of Original and Duplicate copies of respective ARE-1. The Applicant submitted that the said goods had been exported vide Shipping



Bill No. 3541721 dated 05.05.2011 and Mate Receipt No. 26300020 dated 11.05.2011. However, the Original, Duplicate copy of ARE-1s ARE-1 No. 02/11-12 dated 04.05.2011 were misplaced. Therefore along with the Triplcate copy of the ARE-1, they submitted the copy of FIR issued by the Churchgate Railway Police Station, Mumbai dated 25.06.2011 in r/o missing Original and Duplicate copies of ARE-1 No. 02/11-12 dated 04.05.2011. Government notes that evidence of duty payment and export of goods have been submitted by them and it was not disputed by rebate sanctioning authority. Rebate claim was rejected only on technical/procedural grounds. Government finds that there are caters of judgments stating that substantive benefit cannot be denied on mere procedural lapse.

8. In this regard it is noticed that while deciding an 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.), observed at para 16 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 vitiating the rebate claim and the proceedings were remitted back to the*

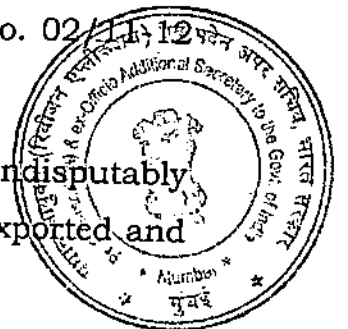


*adjudicating authority to decide the case afresh after allowing to the Petitioner an opportunity to produce documents to prove the export of duty paid goods in accordance with the provisions of Rule 18 read with notification dated 6 September, 2004 [Order No. 1754/2010-CX, dated 20 December, 2010 of 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*.*

9. Further, the Hon'ble High Court, Gujarat in *Raj Petro Specialities Vs Union of India* [2017(345) ELT 496 (Guj)] also while deciding the identical issue, relied on aforesaid order of Hon'ble High Court of Bombay.

10. Government finds that ratio of aforesaid Hon'ble High Court orders are squarely applicable to the issue in question. Government in the instant case notes that the Original and Duplicate copy of ARE-1 No. 02/11-12 dated 04.05.2011 were misplaced/lost by the Applicant. However, the Applicant submitted the Triplicate copy of the ARE1s duly endorsed by the Central Excise Superintendent and Inspector which shows the sealed containers Nos. as "1. SIKU 200878(4); 2. SIKU 295729(2); 3. ILSU 201565(4); 4. SIKU 301473(4); 5. SIKU 301381(0); 6. RFCU 200620(9); 7. SIKU 290325(0); 8. SIKU 293251(9). The Mate Receipt No. 26300020 dated 11.05.2011 and the Shipping Bill No. 3541721 dated 05.05.2011 also show the container nos as "SIKU 2008784, SIKU 2957292, ILSU 2015654, SIKU 3014734, SIKU 3013810, RFCU 2006209, SIKU 2903250, SIKU 2932519". The Superintendent of Customs in the Shipping Bill No. 3541721 dated 05.05.2011 endorsed the Let Export as "MR No. 26300020 dated 11.05.2011". The Applicant then filed the rebate claim of Rs 6,24,274/-dated 07.05.2012 in respect of ARE-1 No. 02/11-12 dated 04.05.2011.

11. Therefore the documents furnished by the Applicant indisputably prove that duty paid goods under claim for rebate have been exported and



hence the rebate claim should not have been denied only on grounds of non-production of original and duplicate copy of ARE-1 particularly when the same are lost, and an FIR to this effect is on record. It is incumbent upon the adjudicating authority to verify the documentary evidences furnished by the Applicant as resorting rejection on technical grounds/procedural lapses would not serve the purpose of justice.

12. With the above observations, Government remands the matter to the original authority for the limited purpose of verification of the claim with directions that he shall reconsider the claims for rebate on the basis of the aforesaid documents submitted by the Applicant. After satisfying the authenticity of those documents, and the fact of export of duty paid goods, the original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

13. In view of above, Government sets aside the impugned CCEA-SRET-II/SSP-146/2013-14 dated 31.07.2013 passed by the Commissioner of Central Excise & Customs(Appeals), Surat-II and the matter is remanded to the Original Adjudicating Authority.

14. The revision application is allowed in terms of above.

Shrawan
16/2/2021
(SHRAWAN KUMAR)

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

ORDER No 81/2021-CX (WZ) /ASRA/Mumbai Dated 16.02.2021

To,
M/s. Endeka Ceramics India Pvt. Ltd.,
Plot No. 756/8 & 9,
GIDC Estate, Jhagadia,
Dist. Bharuch - 393 110.

Copy to:

1. The Commissioner of Central Goods & Central Excise, CGST Building, Opp. Gandhi Baugh, Chowk Bazar, Surat - 395 001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.
4. Spare Copy



ATTESTED

अधीक्षक
Superintendent
रिवीजन एप्लीकेशन
Revision Application
मुंबई इकाई, मुंबई
Mumbai Unit, Mumbai