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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.198/04/2016-RA (CX) / 3219

Date of Issue: 13-09-2022

ORDER NO. 846/2022-CX (WZ)/ASRA/MUMBAI DATED 05.09.2022  
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.

Applicants : Commissioner of Central Excise & Customs, Raigad

Respondent: M/s Filatex India Ltd.

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. CD/729/  
RGD/2015 dated 29.10.2015 passed by the Commissioner  
(Appeals), Central Excise, Mumbai Zone-II.

ORDER

The Revision Application has been filed by Commissioner, Central Excise & Customs, Raigad Commissionerate, (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. CD/729/ RGD/2015 dated 29.10.2015 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-II.

2. The issue in brief is that M/s. Filatex India Ltd., plot No.D-2/6/A, Dahej-2, Industrial Estate Jolva Vagra, Dahej, Bharuch-392130 (herein after referred to as "the respondent"), had filed rebate claims totally amounting to Rs. 2,89,564/- under ARE-1s No. 008 dated 19.05.2014 under the provisions of Rule 18 of Central Excise Rules. 2002 read with Notification No. 19/2004-CE (NT) dated 06-09-2004, for the duty paid on export of goods. The rebate sanctioning authority rejected the rebate claim vide OIO No. 3395/14-15/ DC (Rebate)/Raigad dated 16-02-2015 on the grounds that out of the documents produced with the rebate claim, Triplicate copy of ARE-1 is endorsed by Superintendent in charge of M/s Filatex India Ltd, Bharuch. However, prior to submission of the claim the name of M/s Filatex India Ltd was scored out and the name of M/s SRV synthetics as manufacturer was stamped. Further, that the Jurisdictional Range Superintendent of M/s Filatex India Ltd informed that no duty has been paid as mentioned on the subject ARE-1 and the jurisdictional Superintendent of M/s SRV Synthetics has informed that no export has taken place from the factory premises of M/s SRV Synthetics.

3. Aggrieved by the said order, the Respondent preferred appeal before Commissioner (Appeals) who vide his Order-in-Appeal No CD/729/RGD/2015 dated 29.10.2015 allowed the appeal with consequential relief.

4. Being aggrieved with the Commissioner Appeal's Order, the Applicant-Department filed this Revision Application on the following grounds:

4.1. The Respondent submitted the Original, Duplicate and Triplicate copies of ARE-1 No 008/2014-15 dated 19.05.2014. The triplicate copy of the said ARE-1 has endorsement of the Superintendent, Range-IV, Bharuch Division certifying the duty payment of Rs. 2,89,564/- vide RG-23A Pt-II entry No 572 dated 19.05.2014.

4.2. Later, the Superintendent, Range-III, Bharuch Division-V informed that the quadruplicate copy of the ARE-1 No 08/14-15 dated 19.05.2014 is not traceable in their office and the quintuplicate copy of the said ARE-1 was called for from the respondent; that the payment of duties in the transaction vide Entry No 572 dated 19.05.2014 at RG 23A Pt II as mentioned on the ARE-1 No 08/14-15 has not been done by the Respondent.

4.3. The respondent submitted that the original manufacturer of goods is M/S SRV Synthetics and they have acted as merchant exporter in this case and the goods were directly exported from the premises of M/s SRV Synthetics, Silvassa.

4.4. The jurisdictional Superintendent of Range-III, Silvassa vide his report dated 02.12.2014 bearing no SLV-III/Veri SRV/14-15 informed that the invoice bearing No 002039 dated 19.05.2014 was issued by M/s SRV Synthetics, Dadra to M/s Filatex, Dahej, on payment of duty, but no export against the ARE-1 08/19.05.2014 was made from the premises of M/s SRV Synthetics, Silvassa.

4.5. The report of Range Superintendents as discussed above and also the endorsement on the triplicate copy bring out the facts that the goods have not been exported from the manufacturer premises i.e. M/s SRV Synthetics, Silvassa. The original name of M/s Filatex India Ltd has been scored out and the name of M/s SRV Synthetics, Silvassa was stamped as manufacturer. However, while doing so it was forgotten that the endorsement on the back of

the said ARE1 needed to be done by the Superintendent in charge of the manufacturer's factory. However, in this case the same has been done by the Superintendent in charge of the merchant exporter i.e. M/s Filatex and even subsequent report of the Range Superintendent denied the fact any duty being paid.

4.6. The Respondent has thus contravened the provisions of Notification No 19/2004 CE(NT) dated 06-09-2004 in as much as they failed to follow the procedure mentioned therein which is reproduced below.

*“ Where goods are not exported directly from the factory of manufacture or warehouse, the triplicate copy of application shall be sent by the Superintendent having jurisdiction over the factory of manufacture or warehouse, who shall, after verification, forward the triplicate copy to the officer with whom rebate claim is to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records.*

*In case of self sealing, the triplicate and quadruplicate copies of the ARE-1 shall be submitted to the Superintendent or Inspector of Central Excise having jurisdiction over the factory or warehouse within twenty four hours of removal of the goods.”*

4.7. The Respondent requested to take into consideration the facts / grounds as stated above and to order to set aside the Order in Appeal.

5. A personal hearing in the case was fixed on 17.06.2022 and 01.07.2022. No one appeared for the hearing on behalf of the applicant. Shri Dinesh Mehta, Advocate appeared on behalf of the Respondent. He appeared online and reiterated his earlier submissions. He submitted that minor procedural infractions cannot take away the substantive right of rebate when there is no dispute on the export of duty paid goods. He requested to maintain Commissioner Appeal's Order.

6. Government has carefully gone through the relevant case records available in case files and perused the impugned Order-in-Original, Order-in-Appeal, Revision Application, Oral and written submissions of the Respondent.

The issue for the Government to decide is whether the Rebate allowed by the Commissioner Appeal to the Respondent is correct or otherwise.

7. Government observes that the rebate claim of Central Excise duty amounting to Rs.2,89,564/-, filed by the Respondent had been rejected in terms of Section 11B of Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002 and Notifications issued thereunder. The Rebate claims was rejected on the following grounds:

- a) the name of M/s SRV Synthetics was stamped after crossing the name of the Respondent in ARE-1;
- b) the jurisdictional Range Supdt of M/s SRV Synthetics has reported that Invoice bearing No. 002039 dated 19-05-2014 was issued by M/s SRV Synthetics to M/s Filatex India Ltd, Bharuch on payment of duty, but no export against the said ARE-1 was made from their premises.
- c) the ARE-1 is certified by the jurisdictional Range Supdt of the Respondent and not the Jurisdictional Supdt of the Manufacturing unit ie M/s SRV Synthetics.

8. On going through the records submitted by the Applicant and the Respondent, Government observes the following:

- a) The name of M/s SRV Synthetics was stamped after crossing the name of the Respondent in ARE-1. The Respondent has informed that they being merchant exporter has wrongly indicated their name instead of mentioning the manufacturer's name in the ARE-1.
- b) Invoice bearing No. 002039 dated 19-05-2014 issued by M/s SRV Synthetics shows the name and address of the Buyer as M/s Filatex India Ltd., Dahej, Bharuch but the name and address of the consignee is shown as Filatex India Ltd, JNPT, Mumbai. This point clarifies that the

goods have been directly sent from the manufacture's premises to the Port and not to the Respondent's Unit located at Bharuch.

- c) There is endorsement of ARE-1 of the Customs Officer to the effect that the goods have been exported
- d) The Gross weight, Net weight, Number of Cartons, Description of goods appearing in the ARE-1 tallies with the weight, quantity and description mentioned in the Invoice No. 002039 dated 19-05-2014 issued by M/s SRV Synthetics, the Shipping Bill and the Bill of Lading
- e) There is a cross reference of the number and the date of ARE-1 in the Shipping Bill

9. In view of the above Government finds that in this case duty has been paid on the goods cleared from the manufacturing unit and the said goods have been exported. The essential condition for granting rebate is that the goods get exported and duty has been paid on such export which has been fulfilled in the instant case. There is a procedural lapse on the part of the respondent, which the Commissioner Appeal has also observed in his Order at para 5 wherein he concludes as *"It is a fact that the appellant being merchant exporter instead of mentioning manufacturer's name in the column in ARE-1 has wrongly indicated his name. Later on, he deleted his name and inserted the original manufacture's name i.e. M/s. SRV Synthetics in the column provided for manufacturer of the goods. This correction was effected before the actual export. Report called by the Adjudicating Authority also confirms that the quintuplicate copy of ARE-1 M/s Filatex bears the same correction. In this case, the goods have exported and proof of export is also available. This was mere mistake which has been duly corrected by the merchant exporter. Therefore, they entitled to the rebate claim."* Hence Government finds that the Respondent is entitled for the rebate claim.

10. Reliance is placed on the judgment of Hon'ble High Court of Bombay in the case of Zandu Chemicals Ltd. v. Union of India wherein the court has held

that interpretation of statutes, procedural requirement are capable of substantial compliance, and cannot be held to be mandatory 2015 (315) E.L.T. 520 (Bom.). Further, Government, in the case of Agio Pharmaceuticals Ltd. has held substantial condition of Rule 18 of Central Excise Rules, 2002 are complied with, therefore rebate cannot be denied for minor procedural infraction 2014 (312) E.L.T. 854 (G.O.I.).

11. In view of above discussion, Government does not find any reason to interfere with the Commissioner (Appeals), Central Excise, Mumbai Zone-II's OIA No CD/729/ RGD/2015 dated 29.10.2015 and hence Revision application filed by the Department-Applicant is rejected.

12. The Revision Application filed by the Applicant/Department is rejected.

  
(SHRAWAN KUMAR)

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

ORDER No. 846 /2022-CX (WZ)/ASRA/Mumbai dated 05.09.2022.

To,

The Pr. Commissioner of CGST & C.EX,  
Ground Floor, Kendriya Utpad Shulk Bhavan,  
Sector-17, Plot No.1, Khandeshwar,  
Navi Mumbai-410206

Copy to:

1. M/s Filatex India Ltd., 321, Market Chamber-V, Nariman Point, Mumbai-400021
2. Adv D. H. Mehta, Vivek Enclave Shop No. 4, Shivaji Nagar, Borivali (W), Mumbai-400103
3. Sr. P.S. to AS (RA), Mumbai
4. Notice Board
5. Spare Copy