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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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. NO. 195/09/16-RA

4072

Date of Issue:

22.09.2022

ORDER NO. 268 /2022-CX(WZ) /ASRA/MUMBAI DATED 15 .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.

Applicant : M/s Shilcher Technologies Limited,  
Bil Road, Padra,  
District Vadodara.

Respondent : Pr. Commissioner of Central Excise & CGST,  
Vadodara – I, Central Excise Building, Race Course  
Circle, Vadodara – 390 007.

Subject : Revision Application filed under Section 35EE of the  
Central Excise Act, 1944 against the Order-in-Appeal No.  
VAD-EXCUS-001-APP-301/2015-16 dated 23.10.2015  
passed by the Commissioner (Appeals - I), Central Excise,  
Customs & Service Tax, Vadodara.

**ORDER**

The subject Revision Application has been filed by M/s Shilcher Technologies Limited, Vadodara (here-in-after referred to as 'the applicant') against the impugned Order-in-Appeal dated 23.10.2015 passed by the Commissioner (Appeals - I), Central Excise, Customs & Service Tax, Vadodara. The said Order-in-Appeal disposed of an appeal against the Order-in-Original No. Reb/262/1579/15-16 dated 26.08.2015 passed by the Assistant Commissioner, Central Excise & Customs, Division-II, Vadodara-I Commissionerate, which in turn had rejected a rebate claim of the applicant amounting to Rs.2,64,951/-.

2. Brief facts of the case are that the applicant who held Central Excise registration filed a rebate claim in respect of the duty paid by them on goods manufactured and exported by them under Rule 18 of the Central Excise Rules, 2002 (CER) read with notification no.19/2004-NT dated 06.09.2004. The goods were cleared under the cover of ARE-1 No.71/2014-15 dated 09.07.2014. The original rebate sanctioning authority rejected the said claim as it was found that the applicant had not fulfilled the conditions specified by notification no.19/2004-CE(NT) dated 06.09.2004 inasmuch as they had failed to submit the Original copy of the ARE-1 and the duplicate copy of the ARE-1 submitted by them did not bear the name and seal of the Customs officer who had signed the same. Aggrieved, the applicant preferred an appeal before the Commissioner (Appeals) who vide the impugned Order-in-Appeal dated 23.10.2015 upheld the order of original authority rejecting the rebate claim, as he found that submission of the original copy of the ARE-1 was an essential requirement in terms of Chapter 8 of the Excise Manual.

3. Aggrieved, the applicant has filed the subject Revision Applicant against the impugned Order-in-Appeal dated 16.03.2015 on the following grounds:-

(a) The impugned order was bad in law as the same was silent on various pleas made by them and hence deserves to be set aside on this ground alone;

(b) The said order does not dispute the export made by them nor does it doubt the duty payment on the same; that they had misplaced the original copy of the ARE-1 but had submitted duplicate copy of the same which was signed by the Customs officer and it provided the details necessary for the officer to co-relate the export and the duty paid by them;

(c) They submitted that rebate claims against export of duty paid goods is a statutory right and a minor procedural error such as non-submission of the original copy of the ARE-1 should not deprive them of their statutory right to claim rebate; that the same should not be insisted upon if there is other material evidence on record which shows proof of export and relied upon the decision of the Hon'ble High Court of Bombay in the case of UM Cables vs UOI [2013-TIOL-386-HC-MUM-CX];

(d) The elevation of the procedure set out in the CBEC Excise Manual to the level of a mandatory requirement was incorrect as the same was in the nature of instructions for facilitating the processing of rebate claims; and that Rule 18 itself made a distinction between conditions and limitations for grant of rebate and the procedures governing the same; they stated that the procedural requirement for submission of the original copy of the ARE-1 was for the concerned officers to co-relate that the goods exported are the same on which duty was paid; that in their case in the absence of the original ARE-1, the duplicate copy of the same should suffice; that such distinction between substantive compliance and procedural compliance has made by the Hon'ble Supreme Court in the case of Mangalore Chemicals & Fertilizers Limited vs Deputy Commissioner [2002-TIOL-234-SC-CX]; that the High Court of Bombay had in the case of Zandu Chemicals Limited vs UOI [2014-TIOL-1770-HC-MUM-CX] had in an identical case allowed the rebate claim on the basis of duplicate ARE-1;

(e) That a liberal view has to be taken for the sake of promoting exports and that there was no allegation of any malafide act/omission on their part with intent to seek wrongful rebate; and that their rebate claim should not be denied for a mere procedural infraction.

In light of the above, the applicant prayed that the impugned Order-in-Appeal be set aside with consequential relief.

4. Personal hearing in the matter was held on 30.06.2022 and Shri Dhruvank Parikh, Chartered Accountant appeared online on behalf of the applicant. He submitted that the Commissioner (Appeals) has rejected their claim only on the ground that the original ARE-1 was not submitted. He requested for the rebate to be allowed as export of duty paid goods is not in doubt.

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

6. Government finds that the issue involved in the present case lies in a narrow compass and is limited to deciding whether the impugned Order-in-Appeal was proper in upholding the rejection of the rebate claim of the applicant as they failed to file the original copy of the ARE-1. Government finds that the primary ground on which the Commissioner (Appeals) has rejected the rebate claim was that the original copy of the ARE-1 was an essential requirement in terms of notification no.19/2004-CE(NT) dated 06.09.2004 and the instructions contained in CBEC Excise Manual of Supplementary Instructions, 2005.

7. On examination of the impugned order of the original authority, Government finds that the Order-in-Original has listed the list of documents, apart from the Original copy of the ARE-1, required for sanction of a rebate claim, viz. Invoice under Rule 11, Copy of Shipping Bill, copy of

Bill of Lading. Government notes that neither of the lower authorities have found any deficiency with the rebate claim in question to the extent of these documents not being submitted by the applicant. Government notes that the impugned Order-in-Appeal has actually recorded that the rebate claim was filed by the applicant in the prescribed form along with the relevant documents except the original copy of the ARE-1. Government notes that the applicant had, in the absence of the original copy of the ARE-1, which they claimed to have misplaced, submitted the duplicate copy of the ARE-1 which bore the signature of the Customs officer but not his designation or seal. As regards the duplicate copy of the ARE-1 not bearing the seal or designation of the Customs officer, Government finds that the same cannot be held against the applicant, particularly in the absence of any allegation of fraud or misconduct against them. Given the above, Government finds that there was enough contemporaneous documentary evidence before the original authority to determine whether the duty was paid and the goods on which such duty was paid had been actually exported.

8. Government notes that the applicant is a registered manufacturer in the jurisdiction of the original authority and hence it is not the case it was beyond the original authority to verify the duty paid nature of the goods, as indicated by the Invoice. Further, the aspect of the goods cleared for export having been actually exported could be verified by co-relating the details on the Invoice/duplicate copy of the ARE-1 vis-à-vis the Shipping Bill/Bill of Lading presented by the applicant. Government finds that the neither of the lower authorities have raised any doubt on the duty paid nature of the goods cleared or the actual export of the goods; in fact, the original authority has recorded that the goods in question have been exported. Given these facts, Government finds that the documents submitted were good enough to establish that the goods cleared from the factory for export on payment of duty were actually exported. Government finds that the decision of the lower authorities, to reject the rebate claim of the applicant merely on the grounds of non-submission of the original copy of the ARE-1, to be incorrect. There is no gainsaying the fact that it is a well settled principle that substantial benefit like rebate should not be denied on procedural grounds.

9. Government finds that the Hon'ble High Court of Madras in the case of Shree Ambika Sugars Limited vs Jt. Secretary Ministry of Finance, Department of Revenue, New Delhi [2019 (368) ELT 334 (Mad)] had held that rebate claimed cannot be rejected on the ground of procedural infractions. Government finds the non-submission of the original copy of the ARE-1s in this case is a merely procedural lapse and rebate cannot be denied when other documents establishing the export of the goods and its duty paid nature are available on record.

10. In view of the above, Government sets aside the impugned Order-in-Appeal dated 23.10.2015 and holds that the respondent is eligible to the rebate claimed by them. The Revision Application is allowed with consequential relief.

*Shrawan*  
15/9/22

(SHRAWAN KUMAR)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. 868 /2022-CX (WZ) /ASRA/Mumbai dated 15.09.2022

To,

1. M/s Shilcher Technologies Limited,  
Bill Road, Padra,  
District Vadodara.
2. M/s Trivedi & Gupta Advocates,  
9, Sevaknagar, G-1, Janak Apartment,  
Race Course Circle, Vadodara - 390 007.

Copy to:

1. Pr. Commissioner of Central Excise & CGST, Vadodara - I, Central Excise Building, Race Course Circle, Vadodara - 390 007
2. The Commissioner of Service Tax (Appeals-I), Vadodara, Central Excise Building, Ist floor Annex, Race Course, Vadodara - 390 007.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.