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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. 198/39-43/13-RA / 1998 . Date of issue: 26.09.22
F. No. 198/84/13-RA

ORDER NO. ²⁸⁰⁻⁸⁸⁵ /2022-CX (WZ)/ASRA/MUMBAI DATED 23.09. 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 : Commissioner of Central Excise, Customs & ST, Surat-II
Respondent : M/s. Hiran Orgochem Ltd.
Subject : Revision Applications filed under Section 35EE of the
Central Excise Act, 1944 against six Orders-in-Appeal
passed by Commissioner (Appeals), Central Excise,
Customs & Service Tax, Surat-II.

ORDER

These six Revision Applications are filed by the Commissioner of Central Excise, Customs & Service Tax, Surat-II (hereinafter referred to as the Applicant-Department against following Orders-in-Appeal passed by the Commissioner(Appeals), Central Excise, Customs & Service Tax, Surat-II:

S. No.	RA No.	OIO No./date	OIA No. /date	Total Amount Claimed
1	198/39-43/13-RA	ANK-III/RSR/227/R/11-12/25.10.11	CCEA-SRT-II/SSP-250/u/s 35A(3)(Final Order)/ 29.01.13	2,59,406
2		ANK-III/RSR/226/R/11-12/25.10.11	CCEA-SRT-II/SSP-251/u/s 35A(3)(Final Order)/ 29.01.13	48,338
3		ANK-III/RSR/228/R/11-12/25.10.11	CCEA-SRT-II/SSP-249/u/s 35A(3)(Final Order)/ 29.01.13	1,06,285
4		ANK-III/RSR/230/R/11-12/25.10.11	CCEA-SRT-II/SSP-247/u/s 35A(3)(Final Order)/ 29.01.13	1,31,138
5		ANK-III/RSR/229/R/11-12/25.10.11	CCEA-SRT-II/SSP-248/u/s 35A(3)(Final Order)/ 29.01.13	2,03,298
6	198/84/13-RA	ANK-III/RSR/295/R/11-12/27.12.11	CCEA-SRT-II/SSP-17/2013-14 u/s 35A(3)(Final Order)/ 29.04.13	1,02,526

2.1 Brief facts of the case are that M/s. Hiran Orgochem Ltd., Plot No.663, GIDC, Panoli, Tal-Ankleshwar, Dist.-Bharuch - 394116, (hereinafter referred to as the Respondent) are manufacturer-exporter of excisable goods falling under Chapter 29 of Central Excise Tariff Act, 1985. The respondent had filed various rebate claims for duty paid on export of goods to Bangladesh under Notification No.19/2004-CE(N.T.) dated 06.09.2004 issued under Rule18 of the Central Excise Rules,2002. The rebate sanctioning authority rejected the rebate claims, vide aforementioned Orders-in-Original (OIO), on the ground that the export goods crossed the border, i.e. reached Bangladesh from Mumbai on the same day, which appeared not possible looking at the distance from Mumbai to Petrapole.

2.2 Aggrieved, the respondent filed an appeal, which was allowed by the Commissioner (Appeals) vide impugned Orders-in-Appeal (OIA) inter alia on the basis of following findings:

The appellants in instant cases have established that goods were duty paid and were exported out of India for which the endorsement on the ARE-I made by the customs officials evidencing that the goods were cleared for export. The show cause notice and the Order in Original failed to establish that the goods cleared were different from the goods mentioned under Lorry receipts. In the absence of such evidence it would not be prudent to conclude that the appellants as having been granted refund erroneously. LRs are mostly written by clerks who are not well versed and these LRs do not come in the way to sanction the refund claim when everything else has been established by the claimants.

3.1 Hence, the Applicant-Department has filed the impugned Revision Applications mainly on the grounds that:

- i) The judgment and order of the Commissioner (Appeals) is contrary to the law, proven facts & evidence on record & thus improper, invalid, bad in law, erroneous and contrary to the statutory provisions and legislative intent contained in the statutory provisions of the Act and the Rules framed there under and therefore, the same deserves to be quashed and set aside.
- ii) The Commissioner (Appeals) has not assigned cogent and valid reasons and justification for the impugned decision in all the appeals filed by the claimant.
- iii) The original adjudicating authority passed the Order-in-Original with specific findings that the respondent has not established as to how export of goods cleared from the factory crossed the border of India and reached to the Bangladesh from Mumbai on the same day. Looking to the distance from the Mumbai to Petrapole (Land Customs Station to Bangladesh) it is not possible that the goods crossed Indian Border on the same day.

- iv) It is hard to believe that the transporter have committed similar mistakes through oversight writing the 'from and destination' in various LRs which is very important for transportation. The plea of the respondent that mistakes were committed by the transporter through oversight is not tenable/acceptable for the reason that same type of instances were noticed many times by the Department and necessary action was taken against them.. The claimant failed to establish that the goods cleared from the Customs Land Station were the same cleared from the factory for export.
- v) The Commissioner (Appeals) has erred in allowing the respondent's appeal whereas earlier in the case of same respondent & in the similar matter, the Commissioner (Appeals) ordered in favour of the Department. Such an order of the Commissioner (Appeals) is full of infirmity & erroneous. Hence the order of the Commissioner (Appeals) deserves to be set aside.

4. Several personal hearing opportunities were given to the applicant viz. 21.02.2018, 04.10.2019, 07.11.2019, 04.02.2021, 23.07.2021 and 17.08.2021/24.08.2021. However, the applicant/respondent did not attend on any date nor have they sent any written communication. However, an email dated 02.08.2021 from the Advocate of the respondent, Shri Vinay Kansara, was received informing that they could not attend the hearing on 23.07.2021 due to non-receipt of relevant documents as the respondent company was closed. He requested for granting a last chance by providing another date in August 2021. Hence fresh dates for personal hearing were fixed for 17.08.2021/24.08.2021. However, the respondent did not avail this opportunity too.

4.1 Since sufficient opportunities have already been given in the matter, the same is therefore taken up for decision based on available records.

5. Government has carefully gone through the relevant case records, perused the impugned Orders-in-Original, Orders-in-Appeal, and Revision Applications filed by the Applicant-Department.

6. Government notes that the issue to be decided in this case is whether due to incorrect details in the transportation document, viz. Lorry Receipt (LR) in respect of goods exported by road, a rebate claim filed under Rule 18 of the Central Excise Rules, 2002 can be rejected.

7. Government observes that the instant matter can be summarized as under:-

- i. The respondent, a manufacturer-exporter, had filed several rebate claims for export of goods falling under Ch.29 to Bangladesh during the period Sep'08 to Mar'09.
- ii. The rebate claims were sanctioned vide five separate OIOs by the Rebate sanctioning authority.
- iii. However, the Applicant-Department filed appeals against these five OIOs on the ground that in some of the ARE-1s (totally 11), Lorry Receipts showed that the export goods were transported from Mumbai and had crossed the Indian border at Petrapole (West Bengal) on the same date.
- iv. The Commissioner (Appeals) allowed the appeals, hence, five Show Cause Notices demanding recovery of wrongly sanctioned rebate amount were issued, which were confirmed by the original adjudicating authority.
- v. Thereafter, one more rebate claim was rejected by the rebate sanctioning authority on the same grounds.
- vi. The respondent filed appeals against these six OIOs which were allowed by the Appellate authority on the basis of findings mentioned at the foregoing para 2.2.
- vii. Hence, the Applicant-Department filed the instant six revision applications.

8.1 Government observes from the impugned OIA that in the grounds of appeal the respondent has submitted that:

- a *from their factory, the goods were removed through M/s. V-Trans (Vijay Transporter) to Bhiwandi; from there the consignment was transported by another transporter M/s. National Carriers Corporations, Mumbai from Bhiwandi to Petrapole and from Petrapole, the consignment was transported by M/s. Kalwania Roadways to Benapole.*
- b *M/s. Kalwania Roadways by mistake mentioned Mumbai to Benapole and due to this mistake it appears that the goods have been transported from Mumbai to Benapole in one day.*
- c *M/s. National Carriers Corporations has also committed similar mistake and have mentioned in some of the LRs, Bhiwandi to Benapole instead of Bhiwandi to Petrapole.*
- d *it is not the case of the department that the goods which were removed from the factory of the respondent have not been exported. Further, the customs officer, at the concerned border from where the exports have been carried out, had also verified and allowed the export putting their signatures on the ARE-I.*

8.2 Government finds that a tabulation showing LR-wise movement of export goods is available in the case file. One such tabulation is reproduced hereunder:

ARE-1 No./date	LR No./date	From	To	Name of Transporter(M/s.)
108/08-09 dated 27.10.08	3638462/27.10.08	Panoli	Bhiwandi	V-Trans
	1518/02.11.08	Bhiwandi	Petrapole	National Carriers Corporation.
	13705/08.11.08	Mumbai	Benapole	Kalwania Roadways

Government observes that 3 different transporters had transported the export consignment covering different places till final destination. As ARE-1 number is same in all the LRs, it is obvious that the same consignment was transported by these 3 transporters. It is apparent that M/s. Kalwania

Roadways has mistakenly mentioned origin of journey as Mumbai instead of Petrapole. In fact, in the itinerary, Mumbai is not at all covered. Further, Government observes that the Lorry Receipt, provides details such as No. of packages, description of contents of packages, Batch No., Mfg. date, Expiry date, Gross weight, Net weight etc. which can be verified with the export documents such as ARE-1, invoice etc. Therefore, the Appellate authority has rightly concluded that:

The show cause notice and the Order in Original failed to establish that the goods cleared were different from the goods mentioned under Lorry receipts. In the absence of such evidence it would not be prudent to conclude that the appellants as having been granted refund erroneously.

8.3 Government observes that the Appellate authority in his findings has observed that all the norms and conditions in respect of export of goods under rebate, prescribed under Notification No.19/2004-CE(N.T.) dated 06.09.2004 and para 8.3 of CBEC's Excise Manual of supplementary Instructions- 2005 have been followed/satisfied by the respondent and that they had established that goods were duty paid and were exported out of India which is affirmed by endorsement on the ARE-1 made by the customs officials. Government agrees with the findings of the Appellate authority that the respondent had satisfactorily explained the reason for discrepancy in mentioning the place of origin and destination of the consignment while issuing LRs by the transporter.

8.4 Government observes that in the case of M/s. Jumbo Mining Ltd. [2013 (32) S.T.R. 481 (Tri. - Bang.)], the Hon'ble Tribunal held that:

There is no dispute with regard to the quantity of goods cleared from the factory and transported to the port or with regard to the service tax paid on the GTA service used for transportation. The only reason stated by the lower authorities for denying rebate of the service tax paid on the GTA service is that details of the exporter's invoice were not specifically mentioned in the lorry receipts. It is not the case of the department that

the lorry receipts did not tally with the export documents in respect of other essential particulars. In other words, a broad correlation is found in the instant case of the assessee also. In this view of the matter, it is held that the appellant is entitled to a rebate of Rs. 1,35,802/-.

8.5 In a recent judgment, *M/s. F.S. Enterprise vs. State of Gujarat* [2020 (32) G.S.T.L. 321 (Guj.)], while deciding a case wherein, inter alia, the seizure of vehicle was effected on the ground that lorry receipt issued by the transporter was a photocopy without computerised serial number and contact number details, the Hon'ble Gujarat High Court held as follows:

14. Examining the facts of the present case in the light of the above statutory provisions and binding instructions issued by the Board, the conveyances in question with goods being TMT Bars etc. were intercepted by the second respondent on 2-4-2019 and FORM GST MOV-01 came to be issued to the persons in charge of the conveyance. The annexures to the forms contain the details of the invoice as well as the e-way bill, which clearly indicates that both the documents prescribed under Rule 138A of the CGST Rules had been produced when the conveyances came to be intercepted. It seems that inspection of the conveyances was not carried out; however, an order of detention came to be made under Section 129(1) of the CGST Act, detaining the conveyance with the goods on the following ground :

"Supplier GSTin Regi effective date is 14-3-19. Recipient GSTin Regi effective date is 28-3-19. L.R. issued by transport is photo copy without computerised serial No. and contact No. details."

15. Thereafter, a notice under Section 129(3) of the CGST Act came to be issued in FORM GST MOV-07 proposing to levy tax and penalty and calling upon the petitioner to appear before the second respondent on 9-4-2019 at 11:30 a.m.

16. Thus, though the person in charge of the conveyance had produced the documents which were statutorily required to be kept with him during the course of transportation of the goods, the vehicle in question was detained on extraneous grounds namely that the lorry receipt issued by the transporter was a photocopy without computerised serial number and contact number details.

28. From the facts and circumstances noted hereinabove, it is evident that the person in-charge of the conveyance carrying the goods in question had in his possession, the invoice as well as the e-way bill in respect thereof, and both such documents were produced before the proper officer when the conveyance in question came to be intercepted. It is not the case of the respondents that any discrepancy was found in the aforesaid two documents. Under the circumstances, in the light of the instructions contained in Circular dated 13-4-2018 issued by the Board, it was incumbent upon the second respondent to issue a release form in FORM GST MOV-05 and allow the conveyance to move further. However, the conveyance in question has been detained on the ground of discrepancy in transport certificate which is not a requirement prescribed under the statute. Under the circumstances, the second respondent was not justified in passing the order of detention under Section 129(1) of the CGST Act.

8.6 Government observes that in the instant case too, no doubts such as duty paid nature of the goods, compliance of mandatory conditions, and preparation of prescribed documents etc. in respect of export/rebate claim of the export consignment have been raised by the Applicant-Department. A discrepancy in a non-statutory document cannot become a reason to doubt genuineness of an export, when all other stipulated requirements have been complied.

9. In view of the above findings, the Government finds no reason to annul or modify the impugned Orders-in-Appeal passed by Commissioner (Appeals), Central Excise, Customs & Service Tax, Surat-II.

10. The impugned six Revision Applications are disposed of on the above terms.


23/9/22

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

ORDER No. 280-285 /2022-CX (WZ)/ASRA/Mumbai dated 23.09.2022

To,
M/s. Hiran Orgochem Ltd.,
Plot No.663, GIDC, Panoli,
Tal.-Ankleshwar, Dist.- Bharuch - 394116

Copy to:

1. Commissioner of CGST & Central Excise,
New Central Excise Building,
Chowk Bazar, Surat - 395 001.
2. Shri Vinay Kansara,
DF 31 & 32, Sardar Patel Complex,
Opp. C.Ex. Office, GIDC, Ankleshwar - 393 002.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.