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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. 198/82-83/13-RA/4525 Date of issue: 28.09.22

ORDER NO. 889-890/2022-CX (WZ)/ASRA/MUMBAI DATED 22.09.2022 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 two Orders-in-Appeal passed by Commissioner (Appeals), Central Excise, Customs & Service Tax, Surat-II.

ORDER

These two 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.	OIO No./date	OIA No. /date	Total Amount Claimed
1	ANK-III/RSR/283/R/11-12/ 26.12.11	CCEA-SRT-II/SSP-15/2013-14 u/s 35A(3)(Final Order)/ 29.04.13	2,15,361
2	ANK-III/RSR/284/R/11-12/ 26.12.11	CCEA-SRT-II/SSP-16/2013-14 u/s 35A(3)(Final Order)/ 29.04.13	2,31,812

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 excise goods falling under Chapter 29 of Central Excise Tariff Act, 1985. The respondent had filed two rebate claims for duty paid on export of goods under Notification No.19/2004-CE(N.T.) dated 06.09.2004 issued under Rule18 of the Central Excise Rules,2002 as detailed hereunder:

Date of filing Rebate claim	ARE 1 No./date	Claim amount (in Rs.)
05.02.2010	188/09.02.2009	2,31,812
22.02.2010	204/27.02.2009	2,15,361

The rebate sanctioning authority rejected the rebate claims, vide aforementioned Orders-in-Original (OIO), on the ground that *'the claimants have not fulfilled the core aspect i.e. the clearance of goods meant for export. Since their goods meant for export has been rejected by their customer and the same has been re- imported by them, and the customs authorities are not confirming genuineness of Shipping Bill.*

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:

5.3 I have examined the appellant's Grounds of Appeal & copy of documents furnished therewith, findings & Order-in-Original in context of provisions and instructions governing rebate of duty paid on export of goods under Notification No.19/2004-CE(NT) dated 6.9.2004 issued under Rule 18 of the central Excise Rules,2002 and I find that the appellants have furnished requisite documents and also satisfactorily explained that the goods were exported but subsequently rejected by the buyer and the goods have been re-imported on payment of Customs duties. In the facts of case, I find that the appellants have established that the goods exported & submitted required documents and on account of rejection by the buyer, the said goods were re-imported & import duties paid This itself proves that the goods were exported, and following the ratio of judgement of the Revisionary Authority -2006 (205) ELT 1093 (GOI), I hold that grounds of rejection of rebate claim that shipping bill verification not received by the department and BRC not furnished, are without any material substance and thereby, impugned order-in-original deserves to be set aside.

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

a. 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.

b. The Commissioner (Appeals) has not assigned cogent and valid reasons and justification for the impugned decision in all the appeals filed by the claimant.

c. The Commissioner (A), Central Excise, Customs & Service Tax, Surat-II vide OIA No. CCEA-SRT-11/SSP-15/2013-14 u/s 35A(3) (Final order) dated 29.04.2013 and CCEA-SRT-II/SSP-16/2013-14 u/s 35A(3)(Final Order)/ 29.04.13 has delivered the decision in favour of

the claimant with consequential relief within prescribed time limit under Central Excise Law and accordingly set aside the impugned orders-in-original as " non-sustainable" is not acceptable and deserves to be set aside.

d. The adjudicating authority while passing the order-in-original has found that the Claimant vide letter dated 11.11.2010 has informed that they had exported 1000 Kgs. of Enrofloxacin Base to M/s. United Veterinary-Sudan under ARE-1 No. 204/08-09 dated 27.02.2009 and 1500 Kgs. of Enrofloxacin Base to M/s. Vetoquinol Biowet-Poland under ARE-1 No. 188/08-09 dated 09.02.2009 under claim of rebate but the customer has not accepted the said goods due to quality problem and they have re-imported the rejected materials from the foreigner buyer under payment of Customs Duties and requested to the sanctioning authority to sanction their rebate claim.

e. The adjudicating authority found that the Notification No. 19/2004-CE(NT) dated 06.09.2004 does not provide anything in this regard, even if it is assumed that the goods had been exported and the same had been re-imported in that situation whether the rebate can be sanctioned. Also the claimant had not submitted any case law which says that when goods were re-imported, rebate can be sanctioned.

f. The goods were re-imported undisputedly; Rebate is refund of duty of excise paid on export of goods. If the goods were re-imported the excise duty refunded is required to be recovered. Once the goods are re-imported and cleared for home consumption no rebate is admissible. If rebate is paid then this will amount to clearance for Home Consumption without payment of excise duty. Admittedly rebate is an incentive for export of goods. Incentive is basically for bringing in foreign exchange and not burden the export with local duties. When no inward remittance of foreign exchange is there no rebate should be permissible.

g. The goods in the present case have been imported back, the Notification which covers re-import specifically mentions that in case

of re-import of goods exported under rebate, the rebate of Central Excise duty availed at the time of export is recoverable. In the present case the original adjudicating authority had rejected the rebate claim. The Commissioner(A) has allowed the appeal which is not correct, legal and proper.

On the above grounds the Applicant-Department has prayed to set aside the impugned OIAs and restore the impugned OIOs.

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 re-import of goods exported, 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 two rebate claims for export of goods falling under Ch.29 to Sudan and Norway.

ii. The Rebate sanctioning authority had issued a deficiency memo as the respondent had failed to produce Bank Realisation Certificate in respect of the two exports.

iii. In reply, the respondent submitted that both the export consignments were rejected by the foreign buyer due to quality problem. Hence, the same were re-imported after payment of Customs duties.

iv. The Rebate sanctioning authority rejected both the claims, vide impugned OIOs, on the grounds of non-fulfilment of export as the consignments were rejected and non-confirmation of genuineness of shipping bill by the Customs authorities.

v. The respondent filed appeals against the OIOs which were allowed by the Appellate authority on the basis of findings mentioned at the foregoing para 2.2.

vi. Hence, the Applicant-Department has filed the instant revision applications.

8.1 Government observes that Section 20 of the Customs Act,1962 allows re-importation of export goods into India. The Section reads as under:

> *Section 20. Re-importation of goods. - If goods are imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof*

8.2 Government observes from the impugned OIO that the respondent had re-imported the export goods rejected by their foreign buyer on payment of Customs duty and had thus abided by the stipulated provisions of law. The re-importation of goods on payment of Customs duty by the respondent has not been challenged by the adjudicating authority or by the Applicant-Department. Therefore, Government does not agree with the contention of the Applicant-Department that '*If the goods were re-imported the excise duty refunded is required to be recovered. Once the goods are re-imported and cleared for home consumption no rebate is admissible. If rebate is paid then this will amount to clearance for Home Consumption without payment of excise duty.*' Government observes that the stipulated 'duty paid' character

of the impugned export goods is also unchallenged. Thus, on the same goods, duty as applicable under Central Excise Act,1944 has been paid at the time of clearance for export and thereafter duty as applicable under Customs Act,1962 has been paid at the time of re-importation into India. The goods have therefore twice suffered the duties and allowing rebate will not cause any undue loss to the exchequer.

8.3 As regards the contention of the Applicant-Department that *when no inward remittance of foreign exchange is there, no rebate should be permissible*, Government finds that the statutory obligations and stipulated conditions in respect of rebate of duty paid at the time of export of goods, do not mandate any such requirement. In this regard, Government finds support in the case of M/s. Steelage Industries Ltd. v/s. Collector of Central Excise, Bombay-I [1996 (88) E.L.T. 575 (Tribunal)], wherein while deciding the matter regarding duty demanded on the goods cleared for export by executing B-1 Bond but re-imported because the vessel caught fire, the Hon'ble Tribunal held as follows:

> *6. Supreme Court have in Collector v. Sun Exports - 1988 (35) E.L.T. 241 (S.C.) = 1988 (17) E.C.R. 6 (S.C), held that once the goods go out of Indian Territorial Water, export is complete.*
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> *7. The Customs Department have charged import duty on the subject goods, indicating that on due investigation, they have ascertained that the goods were taken out of Indian Territorial Water, resulting in export of goods, as has been held by the Supreme Court in the said judgment.*
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> *9. When the customs duty has been collected vide proviso to Section 20(1) of the Customs Act, taking the export having already been effected and bring back of the goods tantamount to importation, there is no cause to allege that exportation had not taken place and hence, excise duty was chargeable. The ground raised gets its clear answer in the judgment of the Supreme Court referred to above.*
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> *10. Raising the demand for the excise duty therefore, does not appear justified and cannot be sustained. The order of the authority below therefore cannot be sustained and is set aside.*

8.4 The Applicant-Department has also contended that *the Notification which covers re-import specifically mentions that in case of re-import of goods exported under rebate, the rebate of Central Excise duty availed at the time of export is recoverable.* However, the Applicant-Department has not provided any details such as number/date of issue etc. of the Notification relied upon by them; hence Government is forced to ignore this contention without going into its merit.

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

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

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

ORDER No. 889-890 /2022-CX (WZ)/ASRA/Mumbai dated 29.09.2022

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.