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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, Cuff Parade,
Mumbai- 400 005

F. NO. 195/455/16-RA/4449

Date of Issue: 04.09.2022

ORDER NO. 920/2022-CX (WZ) /ASRA/Mumbai DATED 29.09.2022 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 Lombardini India Private Limited,
J-2/1, MIDC Industrial Area,
Chikalthana, Aurangabad - 431 210.

Respondent: Commissioner of Customs and Central Excise, Aurangabad-I.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. NGP/EXCUS/000/APPL/449/15-16 dated 03.12.2015 passed by the Commissioner (Appeals), Central Excise & Customs, Nagpur.

ORDER

This revision application is filed by M/s Lombardini India Private Limited, J-2/1, MIDC Industrial Area, Chikalhana, Aurangabad - 431 210 (hereinafter referred to as "the applicant") against the Order-in-Appeal No. NGP/EXCUS/000/APPL/449/15-16 dated 03.12.2015 passed by the Commissioner (Appeals), Central Excise & Customs, Nagpur.

2. Brief facts of the case are that the applicant is engaged in the manufacture of excisable goods viz Internal Combustion (IC) Petrol Engines, Diesel Engines, Generator Sets and Components & Parts thereof falling under chapter sub heading Nos. 84073390, 84082020, 84099191 & 85022040 of the Central Excise Tariff Act, 1985. During the month of March 2014, they cleared goods for export under ARE: 1 No 41/2014 dated 11.03.2014 under "Physical Control" and upon export of goods, submitted rebate claim for Rs. 8,27,625/- on 12.06.2014 under Rule 18 of the Central Excise Rules, 2002 read with Notification 19/2004 CENT) dated 06.09.2004. While submitting the rebate claim, they submitted all required documents except the original copy of the ARE- No. 41/2014 dated 11.03.2014. The applicant claimed that the original and duplicate copies of the ARE-1 were lost by the Custom House Agent (CHA) and submitted First Information Report (FIR) original issued by Nhava Sheva Police Station towards loss of the ARE-1 form, along with the rebate claim. A show cause notice was issued to the applicant for rejection of the said claim under the provision of Section 11B) of Central Excise Act, 1944. Pursuant to following the provisions of the law, the adjudicating authority vide Order-in-Original No. 59/CEX/DC/2014 dated 30.01.2015 rejected the rebate claim under Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002.

3. Being aggrieved by the Order in Original, the applicant filed an appeal before the Commissioner (Appeals), Central Excise and Customs, Nagpur. The Appellate Authority vide Order-in-Appeal No. NGP/EXCUS/000/APPL/449/15-16 dated 03.12.2015, rejected the appeal on the grounds that the rebate cannot be granted in the absence of original and duplicate copies of

the ARE-1 and upheld the Order-in-Original passed by the adjudicating authority.

4. Being aggrieved with the impugned order in appeal, the applicant has filed this Revision Application on the following grounds :

4.1. That the instant case was not a case where ARE-1 was not submitted while clearing the goods under claim of rebate, but was one where after presentation & attestation from the Custom Authorities, the same were lost by the CHA and the same could be easily verified & substantiated from the Export Promotion Copy of the shipping bill which was duly attested by the customs authorities;

4.2. That it was a well settled position that substantial benefit cannot be denied for mere procedural lapse as was held in a catena of decisions given by Hon'ble Supreme Court and High Courts and also there were several decisions of the Courts and Tribunal wherein it was held that where original and duplicate copies of ARE-1 were lost, the rebate sanctioning authority should call for other collateral evidences to satisfy themselves that the goods were exported and that the duty of excise was paid and sanction of the rebate claim was in accordance with law if the said documents and the rebate claims are found in order;

4.3. That as required under the statutory provisions, as evidenced by documents filed before the adjudicating authority it was established that goods had actually been exported, duty of Central Excise, for which rebate/refund is claimed, was also paid and the incidence of such duty was not passed on to any other person;

4.4. That the procedure laid down in the Notification No.19/2004-CE (NT) dated 06.09.2004 and in CBEC's Manual of Supplementary Instructions is to facilitate the processing of an application for rebate and to enable the authority to be duly satisfied of the two fold requirements of the goods having been actually exported and the duty for which rebate/refund is claimed, had also been paid and the incidence of such duty had not been passed on to any

other person and in the instant case all the requirements had been satisfied and the only defect was that the original & duplicate copies of ARE-1 were lost and hence not filed with the refund claim;

4.5. That there was no other allegation other than that the rebate sanctioning authority had no chance to compare documents in the absence of original & duplicate ARE-1 duly endorsed by the customs. But sufficient collateral evidences like the Export Promotion Copy (EP Copy) of the Shipping bill duly attested by the custom authorities, self-attested copy of shipping bill, self-attested copy of Bill of Lading and disclaimer certificate were available to establish the export of duty paid goods;

4.6. That the rebate sanctioning authority could have examined and verified the cross reference of ARE-1 No. 41/2014 dated 11.03.2014 with additional collateral evidences like Annexure IX in Form 'C, the declaration filed by the applicant, the export invoice issued by the Applicant, the packing list duty certified by the Range Superintendent of Excise, the Export Promotion Copy of the Shipping Bill, and the copy of the FIR filed at Nhava Sheva Police Station, Navi Mumbai, which could have easily substantiated the genuineness of the claim. Also, the Bank Realisation Certificate (BRC) issued by the Directorate General of Foreign Trade (DGFT) was a conclusive evidence of export of goods;

4.7. That as per Notification No 19/2004 dated 06.09.2004, the requirement of filing original application before Assistant/Deputy Commissioner has been prescribed under Procedures at 'Para (3) (b) Presentation of claim for rebate to Central Excise' and thus it was rightly contended that the requirement of filing ARE-1 with rebate claim was a procedural requirement and not a statutory and mandatory condition;

The applicant relied upon the following case laws in support of their contention

- (i) M/s UM Cables Ltd v. Union of India 2013 (293) E.L.T. 641 (Bom.)
- (ii) M/s. Zandu Chemicals Limited Vs. Union of India & Anr. [2015 (315) ELT. 520 (Bom.)]

4.8. That the Appellate Authority's view that CBEC has not relaxed the condition of submission of original and duplicate ARE-1 along with rebate claim and that there is no provision to accept collateral documents as evidence of export in the absence of original and duplicate of ARE-1 were unrealistic and unwarranted. That the rebate sanctioning authority has to satisfy himself about the propriety of the refund claim and grant claims in bona fide cases in the interest of justice as conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory

The applicant relied upon the following case laws in support of their contention:-

- (i) Commissioner of C. Ex., New Delhi Vs. Hari Chand Shri Gopal [2010 (260) E.L.T. 3 (S.C.)]

4.9. That it has been held in a catena of judgments that where original & duplicate copy of ARE-1 were lost, additional collateral evidences should be relied to satisfy that goods have actually been exported. Reliance placed on the following decisions:

- (i) SPL Industries Ltd. Vs. UOI [2013 (294) E.L.T. 188 (P & H)]
- (ii) Commissioner Of Central Excise, Jamshedpur vs. TISCO (Tube Division) [2003 (156) E.L.T. 777 (Tri. - Kolkata)]
- (iii) Shreeji Colour Chem Industries vs. Commissioner Of C. Ex, Vadodara [2009 (233) ELT. 367 (Tri. - Ahmd.)].

4.10. That the courts had held that an Export Promotion Copy (EP Copy) of the Shipping bill duly attested by the custom authorities was sufficient evidence to ensure that the goods had been exported out of India.

The applicant relied upon the following case laws in support of their contention:-

- i) CCE, Belgaum vs. Model Buckets & Attachments Pvt. Ltd. [2014 (300) E.L.T. 510 (Kar.)]
- ii) CCE Chandigarh vs. Kanwal Engineers [1996 (87) ELT. 141 (Tri)]

4.11. That in Re: Shalina Laboratories Pvt. Ltd. 2014 (312) E.L.T. 868 (G.O.I.) the Revisional Authority remanded back the case for reconsideration of the rebate claim on the basis of re-constructed copy of ARE 1 duly certified by the Custom Authorities.

4.12. The applicant has submitted that in the following case laws the facts are identical to the instant case

- (i) M/s. Zandu Chemicals Limited vs. Union of India & Anr. [2015 (315) E.L.T. 520 (Bom.)],
- (ii) In Re: Garg Tex-O-Fab Pvt. Ltd. [2011 (271) E.L.T. 449 (G.O.I.)].

4.13. That the First Information Report (FIR) in original issued by Nhava Sheva Police Station for loss of the ARE-1 was also submitted with the claim;

4.14. That the case of M/s West Coast Pigment Corporation which was relied by the Appellate Authority was not relevant to the present case.

5. The Applicant also filed an application for condonation of delay alongwith the revision application. The applicant stated that due to a *bonafide* belief that an appeal in the instant case lay with the CESTAT, Mumbai, they filed an appeal before CESTAT, Mumbai within the period of three months, But when they came to know that the right forum for filing appeal in the case of rebate of central excise duty was before Revisionary Authority, the said revision application was filed by them. The applicant further stated that there was a delay of 2 months and 26 days in filing of the revision application and requested that the delay be condoned

6. Personal hearing in the case was scheduled for 21.06.2022 or 05.07.2022. Shri Rahul Thakar, Advocate appeared for the hearing on behalf of the applicant, on 05.07.2022 and submitted that the claim had been rejected merely because original and duplicate ARE-1 were not submitted. He informed that FIR in this regard was filed and that since export of duty paid goods is not in dispute, minor deficiency in documents should not take away their substantiated right.

7. 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.

8. At the outset, the Government notes that the applicant has filed for condonation of delay. The Revision Application was filed on 20.06.2016. The date of communication of the Order of the appellate authority as informed by the applicants is 22.12.2015. Accordingly, the applicants were required to file the applications by 22.03.2016 (i.e. taking the first 3 months into consideration) and by 22.06.2016 (i.e. taking into consideration a further extension period of 3 months). Thus from the records it is seen that the revision application has been filed within the extended period of three months

8.1. The applicants in their application for condonation of delay have cited the reason that they had initially erroneously filed the appeal with CESTAT Mumbai but subsequently filed the revision application on ascertaining that the Revisionary Authority was the right forum before whom the appeals in cases of rebate of central excise duty was to be filed.

8.2: For understanding the relevant legal provisions, the relevant section is reproduced below :

Section 35EE. Revision by Central Government. -

(1) The Central Government may, on the application of any person aggrieved by any order passed under Section 35A, where the order is of the nature referred to in the first proviso to sub-Section (1) of Section 35B, annul or modify such order :

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.....

(2) An application under sub-Section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

.....

8.3. From above, Government observes that the revision application has been filed within the condonation period of three months and as the reasons cited by the applicant are plausible and genuine, condones the delay on the part of the applicant in filing of the revision application and proceeds to examine the case on merits.

9. In the instant case, the rebate claim was rejected on the sole ground that the original and duplicate copies of the ARE-1 were not submitted by applicant and the adjudicating authority contended that in the absence of the original and duplicate copies, there was no option to compare the documents which were certified by Customs with the triplicate copy of the ARE-1 and thus the evidence of export and correctness of the rebate claim could not be ascertained.

9.1. Government notes that the applicant had filed an FIR for the loss of the original and duplicate copies of the ARE-1 and had submitted the self attested copy of the shipping Bill duly signed by the customs authorities, Bill of lading, mates receipt among other documents, alongwith the claim

9.2. In this regard, the Government finds that the Manual of Instructions that have been issued by the CBEC specifies the documents which are required for filing a claim for rebate. Among them is the original copy of the ARE-1, the invoice and self-attested copy of shipping bill and bill of lading. Further paragraph 8.4 of the said Manual specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported as evident from the original and duplicate copies of the ARE-1 form duly certified by customs. The second is that the goods are of a duty paid character as certified on the triplicate copy of the ARE-1 form received from the jurisdictional Superintendent of Central Excise. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect

of goods which were exported and that the goods which were exported were of a duty paid character.

9.3. Government notes that the applicant had submitted the documents viz. shipping bill, bill of lading, mate receipt, bank realisation certificates and Central Excise Invoices in respect of the said consignment exported by them. These collateral documents were sufficient to ascertain whether the goods cleared under said ARE-1 had been exported or otherwise. Further, in case of any doubt arising with the adjudicating authority the genuineness of the document could have been referred to the Customs Authorities and Central Excise Authorities and could have been verified.

9.4. The Government, therefore, holds that the non-submission of original and duplicate copies of ARE-1 form by the applicant should not result in the deprivation of the statutory right to claim a rebate subject to the satisfaction of the authority on the production of sufficient documentary material that would establish the identity of the goods exported and the duty paid character of the goods.

10. Further, in several decisions of the Union Government in the revisional jurisdiction as well as in the decisions of the CESTAT, the production of the relevant forms has been held to be a procedural requirement and hence directory as a result of which, the mere non-production of such a form would not result in an invalidation of a claim for rebate where the exporter is able to satisfy through the production of cogent documentary evidence that the relevant requirements for the grant of rebate have been fulfilled. It is also observed that, in the present case, no doubt has been expressed whatsoever that the goods were exported goods.

10.1. Also, it is observed that a distinction between those regulatory provisions which are of a substantive character and those which are merely procedural or technical has been made in a judgment of the Supreme Court in Mangalore Chemicals & Fertilizers Ltd. vs. Deputy Commissioner. The Supreme Court held that the mere fact that a provision is contained in a statutory instruction "does not matter one way or the other". The Supreme

Court held that non-compliance of a condition which is substantive and fundamental to the policy underlying the grant of an exemption would result in an invalidation of the claim. On the other hand, other requirements may merely belong to the area of procedure and it would be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes which they were intended to serve. The Supreme Court held as follows :

"The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some other may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."

11. Government holds that the rejection of the rebate claim solely on the ground of non-submission of original / duplicate copies of ARE-1, when sufficient collateral documents are available on records and there is no allegation of the goods not having been exported, is not just and proper.

12. In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. NGP/EXCUS/000/APPL/449/15-16 dated 03.12.2015 passed by the Commissioner (Appeals), Central Excise & Customs, Nagpur and allows the revision application.

13. The revision application is disposed off in terms of above.


(SHRAWAN KUMAR)

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

ORDER No 920 / 2022-CX (WZ) / ASRA / Mumbai DATED 29.09.2022

To,
M/s Lombardini India Private Limited,
J-2/1, MIDC Industrial Area,
Chikalhana, Aurangabad - 431 210.

Copy to:

1. The Commissioner of CGST, Aurangabad, N-5, Town Centre, CIDCO, Aurangabad-431003
2. The Commissioner of CGST, Nagpur Appeals, GST Bhavn, P.B. No 81, Telangkhedi Road, Nagpur 440 001
3. Shri Rahul Thakar, Advocate, RSA Legal Solutions, 937A, JMD Megapolis, Sector 48, Sohna Road, Gurgaon 122 001, Haryana
4. Sr. P.S. to AS-(RA), Mumbai
- ~~5. Notice Board~~
6. Spare Copy.