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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.195/159/2015-RA/4500

Date of Issue: 04.10.2022

ORDER NO. 926/2022-CX (WZ)/ASRA/MUMBAI DATED 30-09-2022  
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 Kopran Ltd.

Respondent: Commissioner of Central Excise (Appeals-II), Mumbai.

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No.  
CD/133/RGD/2014-15 dated 08-01-2015 passed by the  
Commissioner of Central Excise (Appeals-II), Mumbai.

ORDER

This Revision Application is filed by the M/s Kopran Ltd., Vill-Savroli, Tal-Khalapur, Dist.-Raigad-410 202 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. CD/133/RGD/2014-15 dated 08.01.2015 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

2. The brief facts of the case is as follows:

a) The Applicant, a merchant exporter, had filed a rebate claim RC No. 23560 dated 29.01.2007 amounting to Rs.3,00,428/-. They then vide their lawyer's letter dated 19.01.2012 revised their rebate claim for Rs. 3,46,637/-.

b) The Applicant was issued deficiency memo cum Show Cause Notice dated 21.02.2012 on the following grounds:

- (i) Assessable value given in the ARE-1 is 21,24,000/- whereas the FOB value given in the Shipping Bill was Rs. 2,29,005/- only;
- (ii) The revised claim of Rs. 3,46,637/- filed on 19.01.2012 is barred by limitation as stipulated under Section 11B of the Central Excise Act, 1944.

c) The Deputy Commissioner, Central Excise (Rebate) Raigad vide Order-in-Original No 2636/11-12/DC (Rebate)/Raigad dated 31.03.2012 held that the revised claim of Rs. 3,46,637/- was time barred, however, the rebate claim of Rs. 3,00,428 filed on 29.01.2007 was within time limit and sanctioned Rs. 3,00,428/- under the provisions of Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002.

d) The Department then filed an appeal with the Commissioner of Central Excise (Appeals-II), Mumbai on the grounds that adjudicating authority has sanctioned erroneous rebate claim to the extent of Rs.2,70,259/- out of Rs.3,00,428/-, being time barred.

e) Simultaneously a Protective demand was issued bearing F.No.V/15-182/Reb/Kopran/Appeal/RGD/12-13 dated 28-08-2012, demanding the Rebate sanctioned amounting to Rs.2,70,259/- alongwith the interest and penalty.

f) Commissioner Appeal vide his Order-in-Appeal No. US/854/RGD/2012 dated 30.11.2012 set-aside the Order-in-Original dated 31.03.2012 to the extent of Rs. 2,70,259/- and allowed the departmental appeal. Being aggrieved by the said Order, the Applicant had filed the Revision Application with the Revisionary Authority.

g) The protective demand dated 28-08-2012 was adjudicated by the Additional Commissioner who vide his OIO No. Raigad/ADC/204(DL) 13-14

dated 12-02-2014, confirmed the demand along with the interest. Aggrieved by the said Order the applicant filed appeal with the Commissioner Appeal.

h) Commissioner Appeal vide OIA No CD/133/RGD/2014-15 dated 08-01-2015, rejected the applicant's appeal and upheld the Additional Commissioner's Order.

3) Aggrieved by the Commissioner Appeal's Order the applicant has filed the instant Revision Application on the following grounds:

3.1 The applicant submitted that the present proceedings are parallel proceedings in respect of the application filed by them before the Revisionary authority. Such parallel proceedings are impermissible in law for the reason that if the applicant succeeds in its application before the RA, they would be eligible for the rebate.

3.2 The applicant submitted that the Department appears to be under the misconception that the Applicant had added a new claim, being claim of the amount of duty mentioned in the Shipping Bill No 4022913 dated 28.01.2006, when in fact it was the amount in respect of this Shipping Bill itself which was mentioned in the Original claim/ covering letter dated 05.10.2006.

3.3 That the Applicant had exported the goods under form ARE-1, which clearly mentions the details of two shipment viz

(i) 25000 units (47 boxes) of Trasic injection valued at Rs. 2,34,000/-, cleared on payment of duty of Rs. 38,189/- exported under Shipping Bill No. 4022906 dated 28.01.2006.

(ii) 20,000 units (200 Boxes) of Felexin valued at Rs. 18,90,000/- cleared on payment of duty of Rs. 3,08,448/- exported under Shipping Bill No. 4022913 dated 28.01.2006.

3.4 That there was no specific form/ application in which the application for rebate is required to be filed, however as a matter of practice, the rebate claims are being filed under Form 'C'. As per Para 2.3 of Chapter 8 of the CBEC's Excise Manual of Supplementary Instructions, 2005-

*"2.3 For filing rebate claim: There is no specified for filing claim of rebate. The same may be done by the exporter on their letter head and filed with the requisite documents."*

Accordingly, the Applicant filed its rebate claim under the cover of the letter dated 05.10.2006 setting out the details of the ARE-1 No, the Central Excise invoice nos and the rebate claim amount and enclosing all the relevant documents. However, while filing its rebate claim, certain typographical errors crept into the covering letter viz

- i) Failed to mention the details of the second Shipping Bill viz Shipping Bill No 4022913; and
- ii) Inadvertently mentioned the rebate claim amount as Rs. 3,08,448/- instead of Rs. 3,46,637/-.

The Applicant rectified the same vide their letter dated 19.01.2012, however since the department did not arise any deficiency memo and / or did not point the error in respect of non-mentioning of the Shipping Bill No. 4022913, the Applicant did not rectify the same. Further, even the deficiency memo-cum-scn- call for personal hearing dated 21.02.2012 did not raise any objection/ deficiency regarding non mention of the Shipping Bill number.

3.5 That a perusal of the Order-in-Original would show that all the relevant documents in respect of the rebate claim of Rs. 3,08,448/- pertaining to goods exported under Shipping Bill No. 4022913 dated 28.01.2006 were submitted within the prescribed period of limitation of one year along with the original claim made vide letter dated 05.10.2006

3.5 That it is a settled position in law that so long as the original claim is filed within the prescribed period of limitation, mere fact that the same is amended/ revised on account of typographical errors/ mistakes apparent on the fact of the record would not make the revised claim time barred. They relied on the following decisions:

- a) CCE, Bolpur Vs Bhandiguri Tea Estate-2001(134)ELT116(Tri-Kolkatta);
- b) Goodyear India Ltd Vs CCus New Delhi- 2002(150) ELT331(Tri-Delhi);
- c) Arunoday Mills Ltd. Vs CCE, Ahmedabad-2003(156)ELT790(Tri-Mumbai);
- d) Rubberwood India P Ltd Vs C. Cus , Cochin-2006(206)ELT536(Tri-Bang);
- e) IOC Ltd-2007(220) ELT609

3.6 That non-mention of the Shipping Bill No. 4022913 was a mere procedural lapse and it is settled law that substantial benefit of rebate ought not to be denied on account of procedural/ technical infraction.

3.7 The Applicant submitted that the fundamental requirement for rebate is manufacture and export and as long as this fundamental requirement is met, other procedural deviations, if any, can be condoned. In the circumstances, the Commissioner (Appeals) erred in not condoning the procedural lapse of the Applicant and allowing the appeal of the department, especially in the facts of the present case. In support of the above, the Applicant relies on the following cases:

- a) Mangalore chemical & Fertilizers Ltd. versus DC in 1999 (55) ELT 437 SC
- b) IOC Ltd. versus CCE, Calcutta-II reported in 2004 (178) ELT 834 (Tri)

- c) In Re: Harison Chemicals reported in 2006 (200) ELT 171 (GOI) (GOI)
- d) In Re: Modern process printers reported in 2006 (204) ELT 632
- e) In Re: Cotfab Exports reported in 2006 (205) ELT 1027 (GOI)
- f) CCE., Raigad versus Micro Inks Ltd. - 2011 (270) ELT 360 (Bom)
- g) In Re: Ace Hygiene Products Pvt. Ltd. 2012 (276) ELT 131 (GOI)
- h) In Re: Vinergy International Pvt. Ltd. 2012 (278) ELT 407 (GOI)

3.8 The Applicant submitted that the adjudicating authority has sanctioned the rebate claim after duly examining and verifying the original documents. Commissioner (Appeals) erred in allowing the appeal of the department on the ground that the rebate claim was sanctioned on the basis of the documents not figuring in the original claim when in fact the same was very much a part of the original claim and mere non mention of the shipping bill no. 4022913 was a mere procedural/technical infraction and the substantial benefit of rebate ought not to be denied to the Applicant.

3.9 The Applicant further submitted that for reasons stated above, there is no infirmity in the refund claim. Therefore, the levy of interest is not sustainable.

3.10 The Applicant requested to set aside the Order-in-Appeal.

4. Personal hearing dates were fixed on 11-08-2021, 18-08-2021, 15-12-2021 and 21-12-2021. However, no one appeared before the Revisionary Authority for personal hearing on any of the appointed dates. Since sufficient opportunity for personal hearing has been given in the matter, the case is taken up for decision on the basis of the available records.

5. 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.

6. Government observes in this case, the Assistant Commissioner had sanctioned rebate claim of Rs.3,00,428/- and the same was appealed by the department with the Commissioner Appeal. Commissioner Appeals allowed the departmental appeal. Against the said Order, the applicant filed appeal with the Revisionary Authority. A protective demand was issued to the applicant for recovery of the rebate amount sanctioned to the extent of Rs.2,70,259/- on the grounds that the claims filed were time barred. The demand was confirmed by the Additional Commissioner. Commissioner Appeal rejected the applicant's appeal again and this has resulted in the current Revision Applications.

7. Government notes that all the points of issues raised by the Applicant in the current Revision Applications has already been decided by this authority in respect of the applicant's earlier appeal vide GOI Order No. 351/2019-CX(WZ)ASRA/Mumbai dated 13-12-2019

*"It is observed that the ARE-1 No. 700592 /2005-06 dated 30.01.2006 shows:*

- (i) 25000 units (47 boxes) of Trasic injection valued at Rs. 2,34,000/-, cleared on payment of duty of Rs. 38,189/-.*
- (ii) 20,000 units (200 Boxes) of Felexin (Cephalexin) valued at Rs. 18,90,000/- cleared on payment of duty of Rs. 3,08,448/-*

*and in Part B of ARE-1, the Customs Officer has certified that Shipping Bills No. "4022906 dated 28.01.2006 ,4022913 dated 28.01.2006", "MOL Ambition", M/R No.33551 dt 6/2/06" and "Sailed on 6/02/06". Further, it is observed that in the Mate Receipt No. 33551 dated 06.02.2006 the goods Cephalexin was exported through S/B No 4022913 dated 28.01.2006 and Container No. HLXU2256992, whereas in Mate Receipt No. 33550 dated 06.02.2006 the goods Transic Inj was exported through S/B No. 4022906 dated 28.01.2006 and Container No. HLXU2256992.*

8. Government finds that Applicant had submitted sufficient documentary evidence to substantiate the fact that the goods in question are excise duty paid and the same have been exported through ARE-1. 700592 /2005-06 dated 30.01.2006. The Original claim for Rs. 3,08,448/- was filed on 29.01.2007 and within time limit and after considering the Applicant's error, their subsequent letters and reply to the memo, adjudicating authority has correctly restricted the rebate amount to Rs.3,08,448/- i.e. the original amount claimed.

9. Government observes that there are catena of judgments wherein it has been held that time-limit to be computed from the date on which refund/rebate claim was originally filed. High Court Tribunal and GOI, have held in following cases that original refund/rebate claim filed within prescribed time-limit laid down in Section 11B of Central Excise Act, 1944 and the claim resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held time-barred as the time limit should be computed from the date on which rebate claim was initially filed. Government places reliance on the case of Apar Industries (Polymer Division) Vs Union of India [Special Civil Application No. 7815 of 2014 {2016 (333) E.L.T. 246 (Guj.)}] and while disposing the petition, the Hon'ble High Court of Gujarat in its Order dated 17.12.2015, observed that

*Thus, making of the declarations by the petitioner in format of Annexure-19 was purely oversight. In any case, neither Rule 18 nor notification of Government of India prescribe any procedure for claiming rebate and provide for any specific format for making such rebate applications. The Department, therefore, should have treated the original applications/declarations of the petitioner as rebate claims. Whatever defect, could have been asked to be cured. When the petitioner represented such rebate applications in correct form, backed by necessary documents, the same should have been seen as a continuous attempt on part of the petitioner to seek rebate. Thus seen, it would relate back to the original filing of the rebate applications, though in wrong format. These rebate applications were thus made within period of one year, even applying the limitation envisaged under Section 27 of the Customs Act. Under the circumstances, without going into the question whether such limitation would apply to rebate claims at all or not, the Department is directed to examine the rebate claims of the petitioner on merits. For such purpose, revisional order and all the orders confirmed by the revisional order are set aside. The Department shall process and decide rebate claims in accordance with Rules.*

*Government also observes that the aforesaid decision of High Court of Gujarat has been accepted by the department as communicated vide Board Circular No.1063/2/2018-CX dated 16.02.2018.*

*10. Applying the ratio of the afore stated judgement, Government holds that rebate claims filed by the respondent are made within period of one year from the date of export. In the instant case the original date of filing of these claims shall be taken as the date of submission of the original claims and subsequent applications are in continuation of the original claims and therefore are not barred by limitation under Section 11B of the Central Excise Act, 1944.*

*11. In view of foregoing discussions, Government holds that, since the original rebate claim was filed within stipulated time limit i.e. on 29.1.2007, the same are to be treated as filed in time.*

*12. In view of above, Government finds no infirmity in the Order-in-Original No. 1332/11-12/DC(Rebate)/Raigad dated 30.11.2011 and the same is upheld and Order-in-Appeal No. US/854/RGD/2012 dated 30.11.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai is sets aside."*

Thus Government finds that the case/ issue is Res-Judicata as the same has already been decided and the Order in Original No. 1332/11-12/DC(Rebate)/Raigad dated 30.11.2011 has been upheld.

8. In view of above, Government sets aside the Order-in-Appeal No. CD/133/RGD/2014-15 dated 08-01-2015 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II and allows the Revision application.

9. Revision application is accordingly allowed.

  
(SHRAWAN KUMAR)

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

ORDER No. 926/2022-CX (WZ)/ASRA/Mumbai DATED 30-9-2022.

To,

1. M/s Kopran Ltd.,  
Vill-Savroli,  
Tal-Khalapur,  
Dist.-Raigad-410 202
2. Shri Vipin Kumar Jain,  
TLC Legal (Advocate,  
Nirma, 19<sup>th</sup> Floor,  
Nariman Point, Mumbai-400021

Copy to:

1. The Commissioner of GST & Central Excise, 1<sup>st</sup> Floor, CGO Complex, CBD Belapur, Navi Mumbai-400614
2. The Deputy / Assistant Commissioner(Rebate), GST & CX , Belapur , CGO Complex, CBD Belapur, Navi Mumbai-400614
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.