



REGISTERED  
SPEED POST

F.No. 195/11/11-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6 FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue... 30.01.13

Order No. 93 / 2013-CX dated 30.01.2013 of the Government of India, passed By Shri D. P. Singh, Joint Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against orders-in-appeal No. Commr.(A)/423/VDR-II/10 dated 23.12.10 passed by Commissioner (Appeals) Central Excise & Customs, Vadodara.

Applicant : M/s Enkay Containers, Vadodara

Respondent : Commissioner of Central Excise, Vadodara-I

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ORDER

This revision application is filed by the applicant M/s Enkay Containers, Vadodara against order-in-appeal No. Commr.(A)/423/VDR-II/10 dated 23.12.10 passed by Commissioner (Appeals) Central Excise & Customs, Vadodara with respect to order-in-original passed by the Assistant Commissioner of Central Excise & Customs, Vadodara-II.

2. Brief facts of the cases are that the applicants are engaged in the manufacture of Aluminum Bottles/Containers falling under Chapter No.76 of Central Excise Tariff Act, 1985. The applicant exported the goods viz., Aluminum Bottles and filed a rebate claim under Rule 18 of Central Excise Rules, 2002. Along with their rebate claim, the applicant submitted the following documents:

- I. Quadruplicate copy of ARE-1
- II. Triplicate copy of Invoice
- II. Xerox copy of shipping Bill & Bill of Lading
- IV. Mate receipt.

2.1 The original authority observed that the applicant has not submitted the original & duplicate copy of ARE-1. Accordingly, show cause notice proposing rejection of the rebate claim filed by the applicant, on the ground that the rebate claim is not admissible as the applicant failed to submit original and duplicate copy of ARE-1. The said SCN was decided by the lower authority vide impugned order, who rejected the rebate claim on the abovesaid ground.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals), who rejected the appeal.

4. Being aggrieved with the said order-in-appeal the applicant has filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The Assistant Commissioner has stated in the Order that party has not submitted the original and duplicate ARE.1 along with rebate claim. The ARE-1 is not a proof of export and other evidence like invoice, Bill of Lading and Shipping Bill are sufficient to prove that the export has been done. Mere loss of ARE-1 in transit cannot be the basis for denying Rebate. Genuine exporter should not be penalized for some procedural lapses/loss of paper, which is not under exporter's control. We rely on the following judgements:

- (i) CCE Vis TISCO (Tube Division) reported in 2003 (156) ELT 777 (CEGAT)
- (ii) Clipsal Vis CCE, Ahmedabad reported in 2004 (174) ELT 188 (CESTAT) SMB.

It was held in above judgments that requirement the goods should be exported within 6 months. There is no requirement that proof should be submitted to the Department.

4.2 If ARE-1 is not submitted, the rebate may be allowed on the basis of other documentary evidences. We rely upon following case in this context:-

- (i) Hebenkraft reported in 2001 (136) ELT 979 GOI
- (ii) Kansal Knitware V/s CCE reported in 2001 (136) ELT 467
- (iii) Shri Krishna Pharmaceuticals v/s CCE reported in 1988 (36) ELT 190 (CESTAT)
- (iv) Model Buckets V/s CCE reported in 2007 (217) ELT 264 (CESTAT)

4.3 From above ground, it is very clear that rebate should be sanctioned in the absence of ARE.1 with the other documents which we have already

submitted in the office of the Assistant Commissioner. If the export is there at the Nil rate of duty, i.e. if export is done under Rule 19 under bond, no duty is payable and when it is under Rebate it should not be stopped due to procedural lapse. In our case, ARE-1 is not submitted which is the procedure but other documents has been submitted by us which prove that export has been done.

4.4 Applicant further vide letter dated 13.7.12 & 19.12.12 stated that Jt. DGFT, Mumbai has issued DEPB No.0310559446 dated 10.2.2010 against the same Shipping Bill and the said evidence should be enough to sanction the rebate claim, in the absence of original and duplicate ARE-1 forms.

5. The case was scheduled for personal hearing on 28.6.2012, 12.10.2012 & 20.12.2012. Hearing held on 20.12.12 was attended by Shri N.Khil P Kapasi, Proprietor on behalf of the applicant who reiterated the grounds of Revision Application. Respondent department vide their written submission dated 8.12.2012 mainly relied upon contents of impugned orders.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. Government observes that the applicant's rebate claim was rejected on the ground that the applicant failed to submit original and duplicate copies of relevant ARE-1 forms. Commissioner (Appeals) upheld impugned order-in-original. Now, the applicant has filed this revision Application on grounds mentioned in para (4) above.

8. Government notes that for proper understanding of issue the relevant provisions of Notification and instructions regarding filing of rebate claim along with requisite documents to be perused are extracted as under:-

8.1 Para 8.2, 8.3 and 8.4 of part I of Chapter 8 of CBEC Excise Manual of Supplementary Instructions stipulates as under:-

*"8.2 It shall be essential for the exporter to indicate on the A.R.E. 1 at the time of removal of export goods the office and its complete address with which they intend to file claim of rebate.*

8.3 *The following documents shall be required for filing claim of rebate:*

- (i) *A request on the letterhead of the exporter containing claim of rebate, A.R.E. 1 numbers and dates, corresponding invoice numbers and dates amount of rebate on each A.R.E. 1 and its calculations,*
- (ii) *Original copy of the A.R.E.1,*
- (iii) *Invoice issued under rule 11,*
- (iv) *Self attested copy of shipping bill, and*
- (v) *Self attested copy of Bill of Lading.*
- (vi) *Disclaimer Certificate [ in case where claimant is other than exporter]*

*8.4 After satisfying himself that the goods cleared for export under the relevant A.R.E.1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of A.R.E. 1 duty certified by Customs, and that the goods are of 'duty-paid' character as certified on the triplicate copy of A.R.E.1 received from the jurisdictional Superintendent of Central Excise (Range Office), the rebate sanctioning authority shall sanction the rebate, in part or full. In case of any reduction or rejection of the claim, an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued."*

8.2 Para 3(b) of Notification No. 19/2004-CE/(NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002, envisage as under:-

*"3(b) Presentation of claim for rebate to Central Excise:-*

- (i) *Claim of the rebate of duty paid on all excisable goods shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner;*
- (ii) *The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime Commissioner of Central Excise shall compare the duplicate copy of application received from the officer of customs with the original copy received from the exporter and with the triplicate copy received*

*from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part."*

8.3 As per these statutory provisions and procedure prescribed under Notification No. 19/2004-CE/(NT) dated 06.09.2004 the goods shall be exported on the application ARE-1, directly from the factory or warehouse. The ARE-1 form, an application for removal of excisable goods for export is presented by the exporter to Superintendent Central excise for goods intended for export who shall verify the identity of goods mentioned in the application and the particulars of duty paid or payable and if found in order shall allow clearance and seal each package or the container in the specified manner and endorse each copy of the application (ARE-1s) in token of having done the examination of goods. The original and duplicate copies of ARE-1 will be handed over to exporter who will present the same before customs. The triplicate copy of application will be sent to the office with whom rebate claim is to be filed. On arrival at place of export, the goods shall be presented to customs together with original duplicate and quadruplicate (optional) copies of the ARE-1 application. The Customs who shall examine the consignments with the particulars as cited in the application and if they find that the same are correct and exportable in accordance with law, shall allow export thereof and certify on the application that the goods have been duly exported citing the Shipping Bill number and date & other particulars of export. The Customs officers shall return the original copy of the ARE-1 to the exporter and forward duplicate copy of ARE-1 either by post or by handing over to the exporter in a tamper proof sealed cover to the officer specified in the ARE-1 application. The rebate sanctioning authority shall compare the duplicate copy of ARE-1 received from Customs with original copy of ARE-1 received from exporter and also with Triplicate copy of ARE-1 received from Superintendent of Central Excise and if satisfied that claim is in order, he shall sanction the claim either in whole or in part.

8.4 From above position, it becomes quite clear that ARE-1 application is the basic essential document for export of duty paid goods under rebate claim. Among the documents required to be submitted along with rebate claim only original/duplicate copy of ARE-1 are the original documents and in case of all other documents, photocopies of the same are admissible. The Customs certification on these copies of ARE-1 proves the export of goods. In the absence of said original and duplicate ARE-1, rebate sanctioning authority has no chance to compare these documents with triplicate copy of ARE-1 as stipulated under above discussed provisions of Notification No. 19/2004-CE/(NT) dated 06.09.2004 and therefore he cannot satisfy himself of the correctness of the rebate claim. So, submission of original and duplicate ARE-1 duly endorsed by customs establishes the export of duty paid goods and therefore is an essential requirement which cannot be done away with.

8.5 In case of export of goods without payment of duty under bond in terms of Rule 19 of Central Excise Rule 2002, there is a provision under Chapter 7 of CBEC Excise Manual of Supplementary Instructions (the chapter which relate to procedure/instructions in respect of export under bond without payment of duty) for accepting proof of export on the basis of collateral documentary evidences if original and duplicate copies of ARE-1 are lost. But in case of exports on payment of duty under rebate claim in terms of Rule 18 of the Central Excise Rules, 2002, there is no such provision under relevant Chapter 8 of CBEC Excise Manual of Supplementary Instructions (the chapter which relates to procedure/instruction in respect of export under claim for rebate) for acceptance of collateral document evidence if original and duplicate ARE-1 is missing. In the Chapter 8 of CBEC Excise Manual of Supplementary Instructions, CBEC has not relaxed the condition of submission of original and duplicate ARE-1 alongwith rebate claim in any exigency and therefore applicant's contention that in absence of ARE-1 rebate may be allowed on the basis of other documentary evidences, is not tenable.

8.6 The applicant has also contended that the DGFT has issued DEPB license against the same Shipping Bill and the said evidence should be enough to sanction rebate claim in absence of original/duplicate copies of ARE-I. In this regard observes that, DEPB scheme is governed by different statutory provisions which require different sets of compliance procedures, conditions and documentary requirements. Documentary evidences required to avail DEPB benefit cannot be squarely made applicable to avail benefit of rebate benefit. Moreover the provisions of CBEC's Excise Manual of Supplementary Instructions do not permit to accept the DEPB scrip in place of ARE-1 original/duplicate as essential documents to be filed along with rebate claim. Hence this contention of applicant is not acceptable.

8.7 The applicant has relied upon following case laws in favour of their contention:

- (a) CCE Vis TISCO (Tube Division) reported in 2003 (156) ELT 777 (CEGAT)
- (b) Clipsal Vis CCE, Ahmedabad reported in 2004 (174) ELT 188 (CESTAT) SMB.
- (c) Hebenkraft reported in 2001 (136) ELT 979 GOI
- (d) Kansal Knitware V/s CCE reported in 2001 (136) ELT 467
- (e) Model Buckets V/s CCE reported in 2007 (217) ELT 264 (CESTAT)
- (f) Shri Krishna Pharmaceuticals v/s CCE reported in 1988 (36) ELT 190 (CESTAT)

In the cases at Sr.No.(a)to(e); goods were exported under bond without payment of duty in terms of rule 19 of CER 2002 and in the absence of certified copies of AR4/ARE-1 form other collateral valid documentary evidences were allowed to be accepted as proof of export. This view is in conformity with the instructions contained in CBEC Excise Manual Supplementary Instructions as discussed above. Whereas instant case relates to export of goods on payment of duty under rebate claim in terms of rule 18 of CER 2002 and Chapter 8 of CBEC Excise Manual does not permit acceptance of any such collateral documentary evidence.



So the ratio of said case laws cannot be made applicable to this case. Similarly in the case of Shri Krishna Pharmaceuticals Ltd. at Sr.No. (f), the issue involved was regarding admissibility of exemption under notification No.105/80-CE dated 19.6.80 and valuation of goods. As such the facts of all these cited cases are different and rates of said case laws cannot be made applicable to the instant case.

8.8 In view of above position, Government is of considered view that in the absence of original/duplicate copy of ARE-1 duly endorsed by customs, the export of same duty paid goods which were cleared on ARE-1 form from factory of manufacture, cannot be established which is fundamental requirement for sanctioning the rebate claim under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE/(NT) dated 06.09.2004.

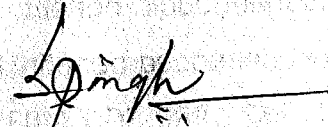
9. Government notes that nature of above requirement is a statutory condition. The submission of application for removal of export goods in ARE-I form is must because allowing such leniencies would lead to possible fraud of claiming an alternatively available benefit which may amount to additional/double benefit. This has never been the policy of the Government to allow unintended benefit Hon'ble Supreme Court in case of Sharif-ud-Din. Abdul Gani AIR 1980 SC (3403) & 203 (156) ELT (178) Bombay) has observed that distinction between required forms and other declarations of compulsory nature and/or simple technical nature is to be judiciously done. When non-compliance of said requirement leads to any specific / odd consequences then it would be difficult to hold that requirement as non-mandatory. As such there is no force in the plea of the applicant that this lapse should be considered on a procedural lapse of technical nature which is condonable in term of case laws cited by applicant. The Hon'ble Supreme Court in the case of J Yashoda Vs. Shobha Rani has discussed Section 63, 64 & 65 of Evidence Act, 1872 and therein upheld the High Court view that the photo copies cannot be received as secondary evidence

in terms of Section 63 of the Act and they ought not to have been received since the documents in question were admittedly photocopies, there was no possibility of the documents being compared with the originals. Government therefore holds that non-submission of statutory documents i.e. ARE-1 original and duplicate copy duly endorsed by customs and not following the basic procedure of export goods as discussed above, cannot be treated as just a minor/technical procedural lapse for the purpose of granting rebate of duty. Government has already held in GOI orders Nos.246/11-Cx dated 17.3.11, 216/11-Cx dated 7.3.11, 835/11-Cx dated 17.3.11, 736/11-Cx dated 13.6.11 509/12-Cx dated 30.04.2012, 525/12-Cx dated 30.04.2012 and 597-598/12-CX dated 22.05.12 and several other orders issued subsequently, that rebate claim is not admissible if the original and duplicate copy of ARE-1 is not submitted along with rebate claim.

10. In view of above circumstances, Government finds no infirmity in the order of Commissioner (Appeals) and hence upholds the same.

11. Revision application is thus rejected being devoid of merit.

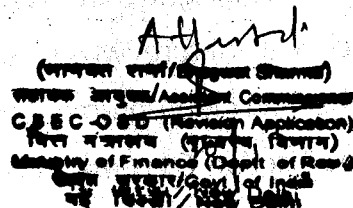
12. So ordered.



(D P Singh)

Joint Secretary (Revision Application)

M/s Enkay Containers  
94, GIDC, Por-Ramangamdi 391243  
Dist. Vadodara



(आयकर एवं/आयकर शुल्क)

आयकर अधिकारी/Assistant Commissioner

C.B.E.C.-O.D. (Revision Application)

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Ministry of Finance (Dept. of Rev.)

वित्त विभाग/Dept. of Rev.

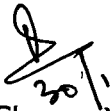
ए. नं. 195/11/11-RA

GOI Order No. 93 /13-Cx dated 30.01.2013

Copy to:

1. Commissioner of Central Excise & Customs, Vadodara-II, Central Excise & Customs Building, Subhanpura, Vadodara – 390 023.
2. Commissioner (Appeals), Central Excise & Customs, 1st Floor, Annexi New Central Excise Building, Race Course, Vadodara
3. Assistant Commissioner of Central Excise and Customs, Division: Makarpujra, Vadodara-II Commissionerate, 3<sup>rd</sup> Floor, Central Excise Building, Arkee Garba Ground, Ellora Park, Vadodara
4. Shri Rajendra R.Mirchandani, Advocate, Gujarat High Court, 206, Sunrise Point, Near Hanumanji Temple, Raopura, Vadodara-390001.
5. Guard File.
- ✓ 6. PS to JS (RA)
7. Spare Copy

ATTESTED



(B.P.Sharma)  
OSD (Revision Application)

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